

TrustLand

Policy Brief

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Legal Pluralism in Land Dispute Management

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Executive Summary

Twenty years of armed conflict in northern Uganda ended formally in 2006, but the emergence and rapid escalation of land conflicts hastened hope for a peaceful return in post-war northern Uganda. These disputes continue, a decade after resettlement. These disputes are occurring in the context of a plural legal environment, where more than one institution is involved in land dispute management. Disputants are free to forum shop in anticipation for better outcomes. Plural institutions and fora overlap, dominate, and/or contradict one another. Few formal procedures for collaboration/interactions exist and litigants, in their attempts to resolve land disputes through forum shopping, lay the ground for the emergence of still more disputes over land. This study was thus informed by three primary objectives: it examined the plurality of land dispute management; analyzed how this plurality could be harnessed for a more peaceful resolution of land disputes; and examined how plurality balances with the concept of rule of law, access to justice and human rights.

Through an extended case method where over 20 land disputes were followed in the districts of Amuru, Pader, and Agago for a period of twelve months, between 2016 and 2017, the study recommends:

- Setting standards for coordination between and amongst institutions involved in land dispute resolution
- Organizing more trainings and capacity building of traditional institutions in mediation and human rights, so that their results are more acceptable to other bodies, as those institutions will trust in what they do; and
- The need to officially recognize mediation results that are done by the traditional institutions so that once disputes move to formal court, the decisions of traditional institutions should be admissible

Introduction and background

In Uganda, land dispute resolution is characterized by plurality of institutions and law. The Land Act 1998, which regulates land tenure relations for the first time officially provided for the possibility of both state and non state institutions including local council courts, formal magistrates courts and the traditional institutions to participate in land dispute resolution. In Northern Uganda, particularly the post war situation has created an environment for further multiplication and utilization of other institutions, both state and non state, which are not necessarily mandated to handle land disputes (see Fig. 1).

War disrupted the functionality of some of mandated institutions, particularly the traditional institutions, because the elders who were the custodians of some of these traditional norms and values died during the war. The cattle that used to be the main source of wealth for the Acholi people have been rustled, leaving the elders without control of these sources of authority in the wake of return from encampment.

On the other hand, the formal institutions at the grassroots – the Local Council Court (LCC) were also rendered dysfunctional following the

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successful petition of the constitutional court in 2006 that rendered their operation illegal, thus creating a gap in local dispute resolution. By the time people returned from the camps and cases of land conflicts became widespread, only the magistrate's court has remained as the first court of instance. Moreover, the practicality of access, affordability and effectiveness in resolving large streams of land cases became impractical, leading instead to more land conflicts, with

many turning violent. With this state of affairs, some NGOs swung into actions, by amongst other things, building the capacity of traditional institutions in alternative dispute resolution, and also directly providing legal aid to some vulnerable individuals involved in land conflicts.

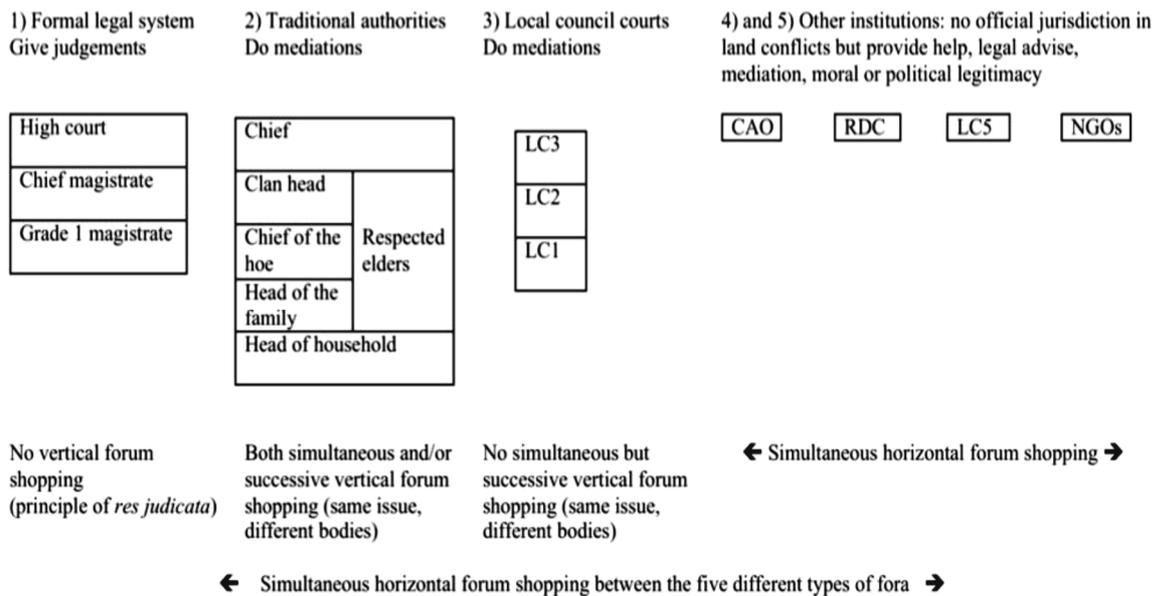


Fig.1: Plural environment for land dispute management in post-war northern Uganda (Source. Anying & Gausset 2017)

This provided many options for disputants to go to resolve their disputes. In most cases disputants are free to move from one institution or forum to another, depending on the one, which promises favorable outcomes. This movement is termed forum shopping.

It against this backdrop that this study investigated the efficacy of such multiplicity of institutions in dealing with the complexities of post-war land conflicts in northern Uganda. The study identified and investigated three key issues:

- The plurality of land dispute management in post war northern Uganda;
- It analyzed how this plurality could be harnessed for a more peaceful resolution of land disputes; and
- How the plurality balances with the concept of rule of law, access to justice and human rights

Approach and Methodology

We followed up a number of land disputes using an extended case study method, where a number of cases were drawn primarily from three districts – Amuru, Pader and Agago and followed for a period of twelve months between 2016 and 2017. We triangulated the extended case method with interviews, focus group discussions, and reviews of documents, mainly concluded and ongoing land cases at the Magistrates and traditional courts; and with the NGOs that deal in land rights and social justice in northern Uganda. The key informants included Magistrates, Lawyers, NGO practitioners, traditional leaders, local council leaders, land disputants and witness, and key community members.

Results

Our findings suggest that the availability of options, which makes freedom of movement by disputants to different institutions possible, may enhance access to justice by providing several choices for disputants to

seek redress, and it is ideal in post-war context, where not everybody can afford access to formal justice system. However the study cautions that this freedom of choice, also known as ‘forum shopping’ need not be taken as a cliché because of the existence of power differentials between and amongst disputants, which may influence the actions of institutions in dispensing justice. This power exists both in terms of monetary and socio-cultural contexts in society, which works to influence institutions handling land disputes. The study also revealed that a loose collaboration is emerging between and among institutions through sharing expert information, logistics, and training of traditional leaders to push their agenda. This loose cooperation serves to limit the challenges associated with forum shopping and social networks that some disputants have, which provides the recipe for institutional and legal manipulations, thus obstructing access to justice and rule of law.

Further, the study found that different fora are linked with distinct institutional forms. When distinct institutions regularly collaborate to hear cases and resolve community conflicts, communities and their leaders are establishing a mixed or hybrid judicial practice, drawing on multiple institutional forms. For instance, collaboration between *rwodi* and LCs and NGOs/CBOs also means that they learn from each other – eg basic NGO-style human rights, gender issues, the use of writing and written documentation, which many traditional institutions have adopted in recording their mediation outcomes. Some of these mediation results are being presented as court evidence in the magistrate’s court. It is important to mention, however, that the Magistrate takes own discretion whether or not to consider such evidence in the preceding of the case.

In addition, traditional institutions are found to be more effective in resolving micro-level land disputes that occur within family, between families of same lineage, within clan setting, or with neighbors that share a long history of collaboration and social bonds. Yet, they have challenges in complying with the basic human rights principles and rule of law, which are basic tenets of NGO operations.

Conclusion

In a situation where no institution is entirely accepted as legitimate/effective/ trusted, and/ or distrusted in dealing with land disputes given the post-war background, institutions are forced to work together to remain relevant.

In practical terms, each of the institutions involved in land dispute resolution in northern Uganda draw strengths from one another, because there is both functionality and dysfunctionality associated with each one of them. By coming together in distinct ways in different local communities they find legitimacy, trusts and strengths in one another and the populace as more parties take their cases for redress.

Coming together of the institutions has the benefits of reducing the transaction costs, as land dispute resolution may become less time consuming.

Implications and Recommendations

Recommendation(s)	Relevant actors
<ul style="list-style-type: none"> Set standards for coordination between and amongst institutions involved in land dispute resolution 	<ul style="list-style-type: none"> JLOS NGOs Government
<ul style="list-style-type: none"> Organize more trainings and capacity building of traditional institutions in mediation and human rights, so that their results are more acceptable to other bodies, as those institutions will trust in what they do. 	<ul style="list-style-type: none"> JLOS NGOs Government
<ul style="list-style-type: none"> Traditional institutions need to be supported to make records of the proceedings of mediation 	<ul style="list-style-type: none"> JLOS NGOs Government
<ul style="list-style-type: none"> The need to officially recognize mediation results that are done by the traditional institutions so that once disputes move to formal court, the decisions of traditional institutions should be admissible 	<ul style="list-style-type: none"> JLOS NGOs Local Governments



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