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**FINAL REPORT ON THE
INTEGRATED STUDY ON LAND AND FAMILY JUSTICE**

VOLUME 1: LITERATE REVIEW FINDINGS

VOLUME 2: FIELD SURVEY FINDINGS

VOLUME 3: RECOMMENDATIONS

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EXECUTIVE SUMMARY

Land is a natural resource that is limited and finite but with immense commercial (as an asset and factor of production), social-cultural, spiritual and aesthetic value. On the other hand, a family particularly in the context of Uganda is a fluid social construct deriving its strict definition from a particular social-cultural context. Land and family conflicts have been shown by various studies¹ to be the most prevalent form of livelihoods disruption to many households' and individuals. The Justice Law and Order Sector (JLOS) has adopted a holistic approach to the administration of justice, ensuring actions that translate into improved institutional service delivery, human rights observance, enhanced access to justice for all and poverty reduction in all areas in Uganda including the conflict affected regions, this implies recognition that peoples' needs and aspirations of the justice system are closely intertwined with their livelihood opportunities. The (JLOS) Strategic Investment Plan (SIP II) aims at enabling all people in Uganda to live in a safe and just society has extended its priority focus to two additional areas of Land and Family Justice in addition to Commercial and Criminal Justice.

Objectives:

This integrated study on land and family justice is conceived as a basis for rationalizing approaches aimed at meeting the objectives of SIP II. It encompassed the following issues;

- (a) Administration of land and family justice (processes and structures)
- (b) Barriers and factors (social, political, cultural economic etc) that prevent certain social groups from accessing land and family justice and from claiming their family rights or land rights
- (c) Views, perspectives, aspirations and experiences of the seekers of family justice and land justice as well as other stakeholders.
- (d) Land and Family dispute resolution fora (mechanisms, systems, structures and processes)
- (e) Quality of family and land justice (in terms of efficiency, effectiveness and sustainability)
- (f) Existing initiatives on access to justice in the land and family sectors by Government Ministries Department and Agencies, Civil Society and the Private sector
- (g) Economic, poverty and gender perspectives and impacts on family and land justice delivery system.
- (h) Strategic interventions needed to enhance access to family and land justice

Thus the overall objective was to undertake an integrated study on bottlenecks to the effective protection and promotion of land and family rights with emphasis on access to justice. This will form the basis for a prioritized sequenced and comprehensive sectoral intervention and reform of land and family justice within the overall framework of the JLOS.

The Study Report:

This report is set in four parts; Volume One on Literature Review, Volume Two presents Survey Field findings and Volume three tackles the Conclusions and Recommended Actions. The Annexes to this study are consolidated in a separate Volume Four which details methodology and detailed review of other studies in the area of investigation. The first volume undertakes a comprehensive literature review as the first stage of

¹ MISR&EPRC: Prevalence and Implications of land Conflicts, 2002; John Kigula, 2006; PEAP Review, 2004; and, World Bank: Post Conflict Land Policy and Land Administration Issues, 2006; Land Policies for Growth and Poverty Reduction, 2002

gathering information needed to focus and position the issues / areas for concern, investigation, evaluation, validation and consultation on the land justice and family justice component under JLOS SIP II. It thematically presents an analysis the conceptual definition and understanding of access to justice in terms of land and family sectors, describes the key socio-economic factors that directly relate to access to justice within Uganda's context giving account of how poverty levels, HIV/AIDS prevalence rates, literacy levels, gender differentials, marital differentials, internal displacement due to conflicts and corruption interact with access to justice and influence access to justice.

A review of the policy and legal framework is also undertaken, to show the interaction that JLOS needs to make with Poverty Eradication Action Plan 2004-2008 and Government's Medium-Term Competitiveness Strategy (MTCS), Land Sector Strategic Plan 2001-2011, Draft National Land Policy 2007, Peace Recovery and Development Plan (PRDP), 2007 to deliver effective and appropriate justice in the land and family sectors. Institutions and process in the administration of justice are also dealt with, Initiatives in access to land and family justices, as well as an articulation of possible JLOS linkages that relate to delivery of land and family Justice. Review of literature concludes with a summary of emerging issues, on the basis of which the field survey is designed.

Field findings in volume two, serve to interweave a perceptual view and reality analysis into the study in order to propose achievable strategic actions that JLOS can undertake. A total of 3,574 households were included in the survey, 209 Focus Group Respondents and 86 Key informant Interviews. This exploration revolved around three key components of access to justice; *accessibility* meaning simplified procedures, and services that are affordable, available within a reasonable time and distance, and presented in plain language; *effectiveness* meaning that appropriate services are matched to families' needs; that services promote timely, fair and lasting resolution of disputes, and *integration* meaning minimizing overlaps and gaps in services and linking services so users can move easily from one service to another as appropriate.

Volume three of this report comprehensively consolidates the findings of literature review and field survey to present a set of recommended actions for Land and Family justice within the existing JLOS SIP II framework, it points out the extra-ordinary institutional threats to administration of justice and delivery of services by JLOS institutions and concludes with a summary of recommended interventions and action under the various key result areas of focus under JLOS SIP II.

Under Land Justice the following key findings and issues emerged;

1. Prevalence of land conflicts at household level is high (34.9%) and is slightly higher amongst rural households (36%) compared to urban households (33%). Child headed households reported a comparatively higher prevalence of land conflicts (41.3%). Only 20% of land conflicts are not reported to any dispute resolution option. With a dispute resolution rate of 59.9% for land conflicts at first instance; with an average dissatisfaction rate of only 13.3% and an average (40.9%) the land justice system was rated as fair.
2. The existing landlord-tenant relationship as enacted in the Land Act is a major contributor to the escalating land conflicts and land disputes in the country. Kibanja on Mailo has the highest prevalence of land conflicts rated at 30%. The current provisions in the Land Act are not effective in the resolving the land use deadlock hence the rampant mass evictions of occupants by registered owners
3. Land conflicts point to lapses in tenure administration and management especially with regard to boundaries (32%), ownership (19%) and its transmission, occupation,

trespass and fraudulent transactions. Inheritance and succession wrangles account for (15.5%) and illegal occupation at 12.3%

4. Land disputes are on the increase and yet there is lack of or no capacity at all in the institutions charged with the adjudication and settlement of land disputes.
5. There is currently a legal lacuna as far as compensation to lawful occupants and bonafide occupants are concerned. The principal law on compensation i.e. the Land Acquisition Act, 1965 is not only outdated, but it is also inconsistent with the provisions of the 1995 Constitution
6. Land Act (Amendment) Bill 2007 has sparked off controversies in a wide section of the population, yet it fails to address the root causes of eviction. The seemingly unfair prescriptions that impinge on the proprietary interests of the landowners in the exercise of advertent interests by bonafide occupants asserted by the Act is at the core of this problem.
7. Uganda as a country does not have an Involuntary Resettlement Policy to cater for the increased number of forced evictions/displacement which calls for involuntary resettlement (due to infrastructure projects and evictions from wetlands, forests and other protected areas).
8. The leading options of first instance are local councils 1 and 2 rated at a level of 57.7%, followed by Clan and other community leaders rated at 27.5%. It's apparent that the land justice seeking behaviour and choice of options at the first reporting level is strongly influenced by distance to the resolution option (22.9%), the understanding that it is 'legal requirement to go there' (21.3%) and familiarity with how the particular option actually works (18.9%)
9. Corruption and illegitimate demands for money slow the justice delivery process, 88% of those who seek land justice are asked to pay un-receipted payments. It is important to note that refusal to honour summons is a significant reason in impeding the process of justice at a ranking of 11.6%
10. There is a multiplicity of land disputes resolution for a, which many times leads to "forum shopping" without clear hierarchy. There is a multiplicity of systems and institutions and working in parallel. This has created overlaps and conflicts in the processing of land disputes.
11. By the time the mandate of the Land Tribunals expired in November 2006, the caseload was as follows; registered cases: 6,900; completed cases: 2,468; pending / partially heard cases 4,432². The modus operandi of circuiting contributed to delays in settlement of disputes and increased the case backlog. By the time Land Tribunals closed, they had developed complex jurisdiction and litigation procedures which are usually associated with ordinary courts of law, contrary to the intent of their set up.
12. The land rights administration system is beset by a number of malfunctions and these are a source of land conflicts and disputes.

In Family Justice the following key findings emerged:

1. 40% of household are involved in family disputes with rural households, leading at a prevalence of 41%, while the urban household stand at 38%; domestic violence is the most significant type of family conflict with a prevalence of 25.7%, even though child headed household reported 'asset stripping/grabbing' at 34.1% and succession and inheritance conflicts at 22.2%. 32.3% of all the family conflicts go unreported to any dispute resolution option. In aggregate terms, 72.4% of family members play a

² This is in addition to 2768 land cases which were reported still pending in the High court as at 30/4/2007 (JLOS Progress Report presented to the twelfth Joint GOU/Donor Review, June 2007).

role in family disputes while other actors including neighbors / community members (11.7%) and clan leaders (12.1%).

2. 39.1% of female respondents were prevailed upon not to report a family conflict because family conflict situation turn out to be very complicated and embarrassing, hence the option for the privacy of consensual dispute resolution despite the pitfalls.
3. A number of laws under the compendium of family laws need to be reformed so that they are in conformity with the various principles that uphold justice. Numerous laws related to family justice are either outdated or non-applicable for any meaningful results, yet sit on the statute books. In essence JLOS needs to re-align laws and justice access mechanisms for family to respond to situations pertaining on ground.
4. The law reform process has been frustratingly slow as parliament has been unable to enact appropriate laws to attain family justice, even with numerous court petitions, the legislature has not followed suit to heed calls for law reform.
5. Overall, even though formal institutions are accessed, informal institutions such as clans and families play a vital role in family conflict resolution. The local council (50.5%), clan (29.2%) and other relatives (6%) are the most common first instance options in seeking justice as far as family conflicts are concerned. The rate of resolution of family conflicts is 76.9%; with an average dissatisfaction rate of only 16.4% for decisions made by various foras. 30% of users perceive the system to be expensive or generally unaffordable, while 51% of all users surveyed felt the family justice system was fair.
6. Police is one institution that is well positioned in the improvement of access to justice for women, children, elderly and persons with disabilities, because of the Family Protection Unit however, the highest number of cases abort at the police due to corruption because of the many processes and technical procedures involving filling of forms and taking of evidence which directly affect the perception of affordability.
7. Findings show high perceptual levels of corruption where 91.3% of payments are not receipted for justice seekers under that access institutions for family justice.
8. Legal aid service providers on family issues are also affected by delays in the formal justice system which in effect increases the costs of their operations and further compromises access to justice for the poor persons they represent.
9. 24.8% households registered their children at birth; 46.7% said they registered their marriages, while 27.7% reported incomplete payment of bride price and 21.1% reported no payment as hindrances to registration. With regard to registration of deaths only 13.7% reported having done so. These findings are not in consonance with reality because; Respondents assumed that immunization cards are birth certificates hence giving a distorted picture; demand for birth certificates by Uganda National Examinations Board (Primary leaving Examinations) registration had forced a number of parents to register for birth certificates.

With regard to Land Justice the following recommendations and Strategic Interventions are put forward among others;

1. The land law requires urgent reforms to remove the glaring conflicts between the legal provisions and the current socio-economic realities, addressing the root causes of the rampant evictions rather than the manifestations. In addition the compensation law also needs reform. JLOS has to strategically position itself and fast track the formulation of the National Land Policy that started 2 years ago.
2. Efforts should be made to domesticate the principals in the international legal instruments to protect and promote the several aspects of legal and human rights. In particular the relevant laws should stipulate the procedural protections which should

be applied in relation to forced evictions by the government, private persons and bodies.

3. Special funds should be allocated to handle the existing and growing huge case backlog. The Judiciary should as a matter of urgency develop and cost a land cases backlog reduction strategy.
4. This study recommends the immediate re-operationalization of Land Tribunals as the most viable land dispute resolution institution that has not been overtaken by events. Government should deal with the structural issues that led to the poor performance of Land Tribunals as detailed on page 103 of this report.
5. Local Council Courts are accessible in both physical and technical terms, affordable, user friendly, participatory and effective because they are conciliatory and faster, leaving both the parties satisfied. In addition, people have confidence in them as administrators of justice that people understand and identify with. JLOS should encourage the public to use LC courts to settle land disputes as one way of reducing the growth of land cases in the formal system.
6. JLOS should promote the use of alternative dispute resolution mechanisms (ADR) as an alternative to formal litigation in the land justice system. There is need to develop a regulatory framework and standards for ADR especially that undertaken by Legal Aid Service Providers and informal institutions.
7. There is need to define a clear hierarchy in order to guarantee finality and authoritativeness of decisions of all dispute processing mechanisms subject only to appeal to higher levels of jurisdiction.
8. There is need to develop and enforce minimum standards of service delivery in the land justice system. There is also need to develop and monitor time-standards and targets at institutional level.
9. Reforms in land rights administration framework being implemented by the Second Private Sector Competitiveness Project (PSCPII) by the Private Sector Foundation on the Land Registry are in the right direction and should be supported by JLOS.
10. Conflict-affected districts in Lango Acholi, Karamoja and Teso need and deserve special attention and affirmative action in so far as land administration and land justice are concerned.

With regard to Family Justice the following recommendations and strategic interventions, among others are put across;

1. Enrich informal processes by providing guidelines or institutionalizing informal focal points given the sensitive nature and subtleties or complexities of family conflicts that often deliver outcomes biased against vulnerable groups (women, children, elderly and persons with disabilities). In terms of targeting, responses or programmes to enhance family justice must have spouses within marital relations as the ultimate beneficiaries since they are the major perpetrators of family conflicts.
2. JLOS and its stakeholders, in collaboration with Uganda Law Reform Commission should cultivate relational linkages with the legislature so as to actively pursue the reform of family law by lobbying and recruiting a cadre of family law reform activists to challenge and urge the Parliament of Uganda to raise to its challenge of law making on the basis of directives by the Constitutional Courts set forth in the various petition rulings on family matters.
3. JLOS should provide an environment that encourages the bench to engage in judicial activism
4. The justice seeking public is cushioned in a bed of customs and norms that often hinder the realization of many rights for vulnerable groups especially women and

children. There is need for law reform to adequately take into account norms on the ground.

5. Ascertainment of property rights within family, with particular emphasis on succession and inheritance since a combination of causes revolve around failure of both social institutions and processes to guarantee property rights (asset stripping/grabbing, death of spouse, polygamy and bride price, property etc).
6. The institutional structures needed to ensure that the laws are implemented are often weak or even non-existent. In essence it is not enough for the law to be on the statute books, it has to be enforced or implemented to deliver justice.
7. JLOS should provide public education and guidance on the different dispute resolution forums and institutions involved in the delivery services on family justice (both formal and informal), with clear definition of mandates, sensitization on roles and hierarchy of the formal and informal.
8. In order to respond to corruption, JLOS will have to improve its own internal mechanisms of monitoring judicial officers and offices, however there is a need to go an extra mile and call on the moral values of the users themselves.
9. Informal institutions such as clans and families play a vital role in family conflict resolution, these need to support and strengthen them through institutionalization of roles and issuance of guidelines by JLOS
10. Record keeping (especially of case proceedings) is one of the major areas needed to strengthen of the family justice system and institutions especially the informal ones. LC Courts need to be encouraged and supported to keep appropriate record of cases that they deliberate on. If it is utterly impossible to record proceedings, at least they should record summary of key issues that the defendant and plaintiff have proved before the court influencing the judgment in case one of the parties prefers to appeal.
11. It was recommended that compulsory registration of births and death be instituted to ease succession matters since paternity and relations will be easy to establish.

In conclusion therefore;

1. Law reform is a key recommendation arising out of a review of both land and family justice administration. This is a key area for action under the JLOS SIP II and this strategic intervention only places added components onto this already established agenda.
2. From the prevalence of both land and family disputes at the basic structural level which is the household, it is clear that the administration and management of both land and family disputes will continue to exact considerable demands in the area of administration of justice, thus a sustained demand for JLOS services in land and family sectors.
3. There is a dominant preference for disputes to be resolved at the lowest level possible which this calls for empowering of the ground dispute-resolution institutions; alternative dispute resolution training; emphasis on the role of LCs and coordination of justice administration actors. Original jurisdiction for dispute resolution and land administration over customary tenure should rest with traditional institutions (clans) and to the extent possible these institutions need to be integrated into the statutory land administration system.
4. If District Land Tribunals are revived, their location needs to stay within JLOS. However JLOS need to engage with the Ministry of Lands in order to come to terms with the concept of land justice which is considered a priority rather than judicial

service. In addition, the absence of tribunals would not be gravely felt if the Local Council courts were equipped and in position to dispense land justice.

5. Legal aid service provision is presently adhoc and lacking in its key aspects of disadvantaged persons' rights protection and promotion, empowerment and accountability. Lack of legal aid service provision remains a big hindrance to access to justice, since formal JLOS institutions charged with administration of land and family justice are thin on the ground; it is important that a process is guided or steered by JLOS.
6. Access to family and land justice presupposes awareness of law and rights; and ability to assert one's rights. Ongoing awareness efforts by both JLOS Institutions including the Judicial Service Commission and Civil Society Organizations need to be streamlined to ensure effective targeting; minimal duplication and also strengthened.
7. There exist a number of complementary initiatives within both civil society and the private sector that need to be brought on board as part of JLOS intervention in family and land justice. Areas of current strength within civil society include strategic litigation in family justice; legal aid service provision and conducting of legal education programmes in both land and family justice among others. The Private Sector Foundation has invested in research on land rights that can form a sound spring board for land related interventions in the Sector.
8. The conflict-affected districts in Lango Acholi, Karamoja and Teso need and deserve special attention and affirmative action in so far as land administration and land justice are concerned. The urgency cannot be over-emphasized as failure to resolve emerging land disputes and conflicts might trigger another wave of armed conflict.

Limitations of the Study

It is important to note that the conduct of field work in this study was affected by several issues emanating from situations beyond the control of the study team.

- (a) Floods and the subsequent effects on ability to travel slowed the commencement of field work in north and north east regions.
- (b) CHOGM activities affected the pace of general field work especially key informant interviews mainly in the central region and Kampala Institutional respondents.
- (c) Ebola in western Uganda has curtailed the progress and commencement of field work in Kibale, Hoima, Kasese, Kiruhura, and Bushenyi.
- (d) Fuel shortage (after the Kenya Elections) continued to affect the immediate resumption of field work after Christmas holidays.

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VOLUME 1: LITERATURE REVIEW

Literature review was undertaken as the first stage of gathering information needed to focus and position the issues / areas for concern, investigation, evaluation, validation and consultation on the land justice and family justice component under JLOS SIP II. The results of literature review are thematically presented under family justice and land justice summarily highlighting the policy framework and context issues, legal framework, processes and institutional framework issues that are pertinent to land and family justice.

1. BACKGROUND

1.1 INTRODUCTION

The Justice Law and Order Sector adopted a holistic approach to the administration of justice. JLOS SIP II reflects a heightened focus on the poor and marginalized groups, a direction arising from the sector's obligation to demonstrate results to the general public to whom it is ultimately accountable. It tasks the JLOS to ensure actions that translate into improved institutional service delivery, human rights observance, enhanced access to justice for all and poverty reduction in all areas in Uganda including the conflict affected regions³. The sector also recognizes that the peoples' needs and aspirations of the justice system are closely intertwined with their livelihood opportunities. Obtaining a speedy and fair remedy in a land dispute, a safe and value-free forum to be heard in a domestic violence case, being informed and consulted as a victim in a criminal case, and settlement of contractual disputes all happen in people's daily lives⁴.

Globally, crime ranks with corruption and uncertainty of policy and judicial behavior as one of the serious problems that increase the cost of doing business in a country and aggravates levels of poverty. In the wake of lawlessness and inadequate protection from theft, violence and other acts of predation, markets cannot develop and property rights are least effective. Similarly, land and family justice have been highlighted as key issues of concern especially for poor and marginalized persons. Land disputes rank among the highest countrywide and are often the cause of other disputes including family and domestic violence, assaults and murder⁵.

The protection and enforcement of land rights is a big challenge in Uganda due to several factors which include high poverty levels, conflict, customary practices, poor economic, legal and institutional policies and frameworks and poor socio-economic frameworks. These factors often undermine the effective protection and enforcement of land rights through a land justice system. The poor and vulnerable groups, such as women, children, the elderly, and people living with HIV/AIDS who are often marginalized are more prone to suffer abuse of their rights to effectively access, manage, and utilize land.

The challenge of protection and enforcement of family justice in Uganda is often compounded by the gender-related barriers at different levels of society, lack of substantive laws and their poor administration and the poor attitudes of communities where disputes occur. Violations of family rights are often hidden within the home and community setting and include domestic violence, lack of maintenance, child neglect, denial of inheritance. The poor and marginalized groups⁶ still bear unreasonable

³ Justice Law and Order Sector (JLOS), 2007 Strategic Investment Plan II 2006/7- 2010/11

⁴ *ibid*

⁵ *ibid*

⁶ The PEAP 2004 categorizes the marginalized to include juveniles, women, people in conflict affected or remote areas, HIV/AIDS patients, and the poor

burdens taking the form of physical distance to JLOS institutions, cost of access, language and attitudinal barriers and existence of conflict situations⁷.

1.2 SOCIO-ECONOMIC CONTEXT

1.2.1 Poverty

According to the Uganda Bureau of Statistics, 38% of Uganda' population live below the poverty⁸ and these are mainly women therefore they are financially constrained to access representation in courts of law. Due to poverty women fear being divorced, fear of paying back bride price and losing a bread winner and protection of the children. At the local level there is community pressure against enforcement of legal rights, adherence to communal and cultural practices and beliefs which conflict with formal legal rights and which are disadvantageous to the vulnerable groups especially women⁹. For instance, there is fear amongst the women to report cases which are socially and culturally acceptable like marital rape, child marriages and wife beating and other sexual violence as it is a shame to their homes.¹⁰

Table 1: Head Count Poverty Trends in Uganda, 1992/93 – 2005/06

Proportion of population below poverty line	1992/93	96/97	1999/2000	2002/03	2005/2006
All Uganda	55.5	44.0	35.2	38.8	31.1
Rural	59.4	48.2	39.1	42.7	34.2
Urban	28.2	16.3	10.3	14.4	13.7
Poverty status by region					
Central	45.5	27.7	20.3	22.3	16.4
Eastern	59.2	54.3	36.5	46	35.9
Northern	71.3	58.8	65.8	63	60.7
Western	52.8	42.0	28.1	32.9	20.5
Observations	9,920	6,655	10,696	9,711	7,400

Source: Appleton, 2001 and Appleton and Ssewanyana, 2003 and UNHS, 2006

Poverty fundamentally disempowers individuals by constraining their capacity to protect themselves from abuse; the poor are often powerless and entangled in the deprivation trap, access to justice is fundamental to breaking the deprivation trap. Poverty prevents the vulnerable groups to pursue cases for legal redress, physical restraint, threats and intimidation by family and community members, serious failings (e.g. inadequately trained and biased officials) in the pursuit of legal claims, and insufficient funding of governmental agencies designed to enforce the law.

Uganda Bureau of Statistics through the UNHS has been over the years compiling data on poverty trends in Uganda. Though the trend in poverty has been declining, it still remains high with slightly over 31% of the population in Uganda living below poverty levels. There exists also high disparity between regions with the Northern region with the highest poverty level of about 61% (Table 1 above). Poverty can easily lead the population to loose their land by selling at cheap price to solve critical issues like sickness or salvage them from jail.

⁷ Justice Law and Order Sector (JLOS), 2007

⁸ The proportion of people living below the poverty line in Uganda dropped from 56% to 31% in 2005/06. The PEAP 2004 categorizes the poor and marginalized to include juveniles, women, people in conflict affected or remote areas, HIV/AIDS patients.

⁹ See , Human Rights Watch, Just die Quietly : Domestic Violence and Women's Vulnerability to HIV in Uganda, August 2003

¹⁰ Action Aid : Women's Access to Justice in Conflict: Research Report 2007 at 32

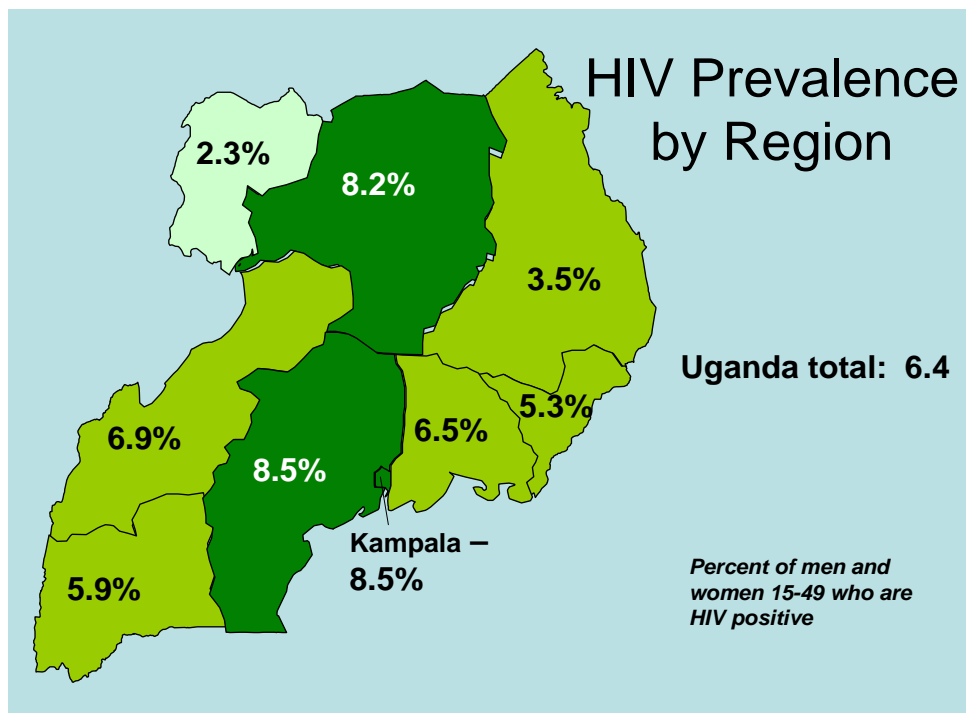
The poverty status of Ugandans at an individual and collective level raises the following implications for access to justice and economic development:

- (i) Poverty disempowers individuals and groups of people and increases inequality in various aspects of life. This diminishes the initiative of the poor to pursue their rights.
- (ii) Crime can be magnified in the poorer communities due to the marginalization and poverty faced. However white collar crime also occurs without poverty being present and is often less visible and undetected.
- (iii) the cost of pursuing justice is not affordable by the poor
- (iv) the poor have a high propensity to commit crime
- (v) Poor families increase the incidence of juvenile delinquency.
- (vi) Juvenile delinquents constitute a large percentage of petty offenders with the likelihood of growing into hardened criminals

1.2.2 HIV/AIDS

HIV/AIDS renders the population vulnerable due to the fact that people have to look after the sick and therefore get drained of resources in terms of losing the valuable working time and money spent on the sick. On the other hand, the dead person due to the HIV/AIDS leaves a lot of gap especially if he or she is a bread winner. The population effected with HIV given the rate of 6.4% translates to about 1.5 million people (Map 2 below). This means the population affected due to HIV/AIDS is quite big in terms of those who died of HIV/AIDS and those who are sick of the same. Statistics from MOH, 2006 rates HIV/AIDS to contribute the highest (25%) to mortality in Uganda¹¹.

Map 2: HIV Prevalence by Region



Source: MOH, Sero-Survey, 2004/05

At the beginning the pandemic was tackled from a medical perspective which led to the establishment of the AIDS Control Programme by the Ministry of Health in 1986. In 1992 the Uganda AIDS Commission (UAC) was formed to coordinate the multicultural National Operational Plan (NOP) and HIV/AIDS Policy Guidelines. In 1997 a National

¹¹ PEAP 2004/5-2007/8

Strategic Plan Framework (NSP) was developed was revised for HIV/AIDS activities in Uganda 2003/04-2005/06. The NSP for 2007/8-2011/12 is in the process of being formulated. Uganda has an obligation under its national and international commitments to act regarding the pandemic. According to the UNGASS Declaration on Commitment on HIV/AIDS (2001), a realization of human rights and fundamental freedoms for all is essential to reduce vulnerability to HIV/AIDS. It further notes that “a respect for the rights of persons living with HIV/AIDS drives an effective response”.

The Government has established a Human Immunodeficiency Virus Control Bill 2007 which seeks to provide control measures for the Human Immuno Deficiency Virus and to provide for testing and counseling services to persons infected or living with Acquired Immuno Deficiency Syndrome. At the national level, the government has established the National Orphans and Other Vulnerable Children Policy (OVC). Uganda national AIDS Policy and National Strategic Plan 2007/8 – 2011/12 is still in the making. There has been a high level of awareness but this has not translated into reduction of new cases and violations of human rights continue with the resultant negative impact in these efforts.

There is no law to protect against discrimination on the basis of HIV/AIDS and the country has not yet developed indicators with reference to laws and regulations that protect against discrimination of persons living with HIV/AIDS. However, there is need to investigate the effects of HIV on land and family justice implications for the implementation of SIP II include¹²:

- (i) the effect of HIV/AIDS on the sustenance and productivity of the labor force in JLOS institutions
- (ii) social stigma leading to discrimination in various spheres of life including education, employment and in the pursuit of justice particularly for widows and orphans.
- (iii) the need to ensure access to the necessary health services and freedom from discrimination for prison inmates (men, women and juveniles).
- (iv) delays in the Administrator General’s Office and implications for the rights of families affected by HIV/AIDS.
- (v) implications of HIV/AIDS on the law of sexual offences.

1.2.3 Literacy Levels

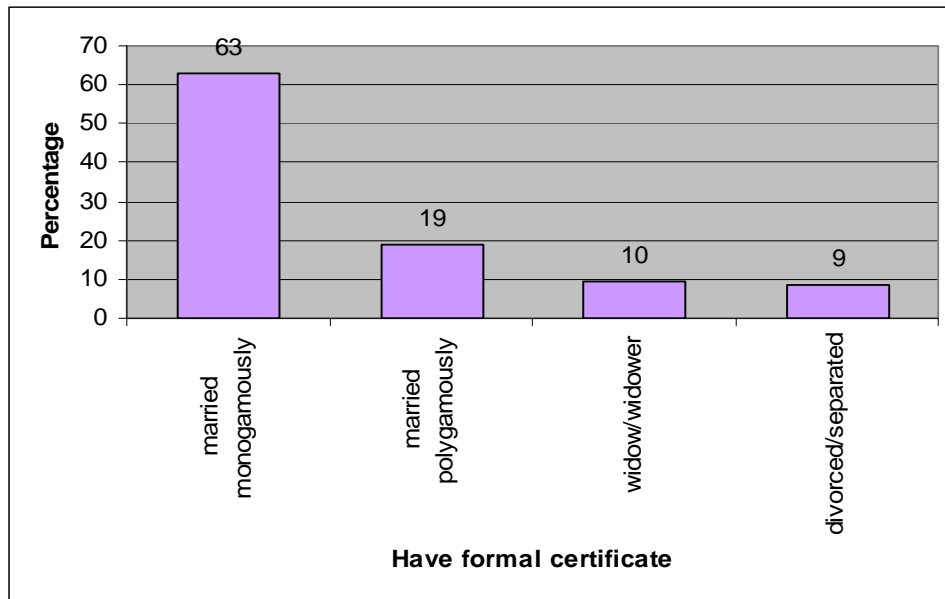
A population that is illiterate will find problems in understand or informing them of basic laws that govern society. Illiterate population can easily fall prey of injustice in terms of land and even family matters. The 2002 population and housing census collected data on the levels of education and literacy. Results from the Census, 2002 show that the literacy rate was 70% among the persons aged 10 years and above. The female and male literacy rates were 62% and 77 percent respectively. The literacy levels were higher among the urban population at 88% compared to the rural population at 67%. The implication of this is the ability to seek justice and following procedures and processes within the justice systems that are often written in English or have to be read for comprehension.

1.2.4 Domestic Disputes

Domestic disputes are linked to polygamy, extra marital affairs, and quarrels over lack of maintenance, undue demands for money by husbands, and violence drunken husbands. Other aspects that may give rise to family conflict may arise from polygamous families and death of a husband. Studies have shown that a death of a husband will lead to some relatives of the husband forcefully evicting the widow out of her properties.

¹² Justice Law and Order Sector (JLOS), 2007 Strategic Investment Plan II 2006/7- 2010/11

Figure 3: Percentage Distribution showing Marital Status in Uganda



Source: UNHS 2006 Data

A polygamous family will also experience a severe problem amongst the widows when a husband is lost. Data obtained from UNHS 2006 indicate that about 19% of the families have polygamous marriages.

1.2.5 Conflict and Internally Displaced Persons

The PEAP indicates that nationally, 5% of the population is internally displaced with the attendant effects of increased poverty and HIV infection rates. In addressing itself to the questions of access to justice in conflict affected areas and for internally displaced persons, the implementation of SIP II is faced with the following realities¹³:

- (i) Breakdown of civil administration of justice creates volatile communities. This increases insecurity of persons and their property, and raises incidence of crime such as escalation of rape of women and girls, domestic violence and murder.
- (ii) Temporary replacement of civil administration of justice with military arrangements has often compromised the quality of justice.
- (iii) The need to balance the relationship between traditional and formal justice systems, where the former are not always rights-respecting and the latter is weakly institutionalized.
- (iv) The destruction of property and displacement of persons increases land disputes and issues of compensation
- (v) how to reconcile between accountability and the quest for immediate and tangible 'perceptions' of justice without jeopardizing long-term structural reform plans.

For Acholi sub-region¹⁴ IDP return has not happened as anticipated, indeed in Teso IDP return is complete, in Lango it is over 95% while in Acholi sub-region uneven patterns of return ranging from 5% to 15% have been recorded¹⁵, IDP return is however dependant upon;

- (a) Successful conclusion of the Juba Peace talks, to rid IDPs of the scepticism about peaceful and irrefutable return.

¹³ Justice Law and Order Sector (JLOS), 2007 Strategic Investment Plan II 2006/7- 2010/11

¹⁴ which at times, is at variance with Teso and Lango sub-regions due to difference in the period of displacement, where in the former displacement has been for a period not less than 7 years to a maximum of 15 years and latter at 3 to 7 years

¹⁵ UNCHR, Jan 2008

- (b) Provision of socio-economic services and infrastructure in the villages that IDPs are returning to.

The protection of property rights and re-establishment of production relations on land will be important for bridging the poverty gap¹⁶, between war-affected areas (northern Uganda) and the rest of the country which has been widening since 1997. The ability of IDPs to secure their land and property on return will have long term implications for peace and stability. The basic understanding of land / natural resource claims and conflicts likely to occur is summed up as follows;

(a) *Decline in Land Tenure Security*

Clarification of the status of tenure (including opportunities for negotiated stay) of land where IDP camps have been located, in relation to the realities that the land owners have to face upon camp closure and how to manage the populations that are unable to return. A number of claims for compensation that are peculiar to displacement and return of IDPs have emerged and they need specific response in policy or administration framework. These can be classified as follows;

- (i) IDP Camp sites (for use of the land during time of IDP settlements and for depreciation in value due to human settlements on land formerly used for agriculture and pit latrines)
- (ii) Military detaches (for occupation and use of land, land and resource depreciation especially trees)
- (iii) In addition, the quantum of compensation will have to be decided.

Legal aid would be useful in informing people of procedures and assist them in preparation of claim forms, if claims for compensation are to be pursued; an issue which at best is unclear for the moment in terms of national policy and which lacks political support despite the fact that concerns over compensation mechanisms are on the rise¹⁷. In addition, the setting up transit sites, satellite camps or return sites in Acholi land whose scale and magnitude is likely to replicate concerns already raised in relation to main camps on a much larger scale, at lower levels, for shorter periods.

The World Bank Survey, 2007¹⁸ found that on average, the trend of occurrence of land disputes has been steadily rising from 12.8% at the time of displacement for the respondents involved in the survey to 15.5% during displacement, and to a conflict prevalence of 16.4% at survey time, expected to rise in Acholi as return increases. The main sources of disputes and insecurity are obscure boundary markers and (perceived) land scarcity. Such disputes are mostly occurring on land that was left behind upon displacement; a number of people on return attach a higher value to land and thus are moving to individualize what was previously perceived to be communal land while rigorously defending what had been allotted to them for access, use and sharing by the members of the community, hence disagreements and clashes. Illegal occupation of

¹⁶ Estimated to be at 64% in Acholi region compared to the national average of 38% (UNDP, 2007, Human Development Indicators for Uganda)

¹⁷ Restitution requires the adjudication of competing claims to determine who has a more legitimate claim to land. It is important to bear in mind that solutions for land claims should not be seen as a simple declaration of entitlement to land rights but should also strive to support national reconciliation. Compensation may be proposed for people who cannot have their land restituted and this may be in money or in kind (equivalent land located elsewhere)

¹⁸ Northern Uganda Land Studies, Analysis of Post Conflict Land Policy and Land Administration: a Survey of IDP Return and Resettlement: Issues and Lesson from Acholi And Lango Regions, by Margaret A. Rugadya, Eddie Nsamba-Gayiiya and Kamusiime Herbert, 2007 for the World Bank to input into the PRDP and the Draft National Land Policy.

land by neighbours (early returnees) and relatives, raising the incidence of disputes as IDP return gains momentum.

A high level of distrust of the Central Government's intentions toward Acholi land exists and has persisted, giving rise to a substantial level of tension¹⁹ that has a high chance of erupting into violence unless matters are clarified, the situation is further fuelled by politics driven by feelings and emotions that have shaped and defined the articulation between Government and Acholi peoples views over land and natural resources tenure. It is felt that the government, the army and rich people have taken a lot of interest in land without clearly elaborating their motives or intentions, this is not helped by the fact that Government and the Executive is openly and vigorously backing the pursuit of land by investors for large-scale commercial interests, an opportunity that speculators and grabbers are manipulating for individual gains and benefits.

(b) Customary tenure: which way forward?

There is a large information and knowledge gap on not only rights under current law but also clarity and transparency over Government's intentions, that has given rise to a new host of tensions and misgivings over any proposed programmes that are viewed as threats to indigenous customary interests. The Acholi have rightly argued that the Government and other external actors (be they development or invest) have failed to understand or appreciate the fact that customary tenure has a holistic "bundle of rights"²⁰ and for Acholi region, this bundle is segmented to suitable land use practices²¹. Fundamental ecological and conservation principles are embedded within these tenure arrangements allowing for the sustainable management and utilization of key biodiversity resources. These principles include, for example, controlled hunting, preservation of selected tree species for cultural, spiritual and medicinal values and use of energy saving cooking technologies.

There have been suggestions that communal rights over extensive areas (especially those holding sensitive natural resource, eco-systems and catchment areas of particular communal, cultural and ecological importance) be demarcated and registered under cultural trusts (such as the Acholi cultural trust or Lango Cultural Foundation). However, this approach is proposed by the elite leadership in the sub-regions, without adequate consensus amongst themselves²² and is still to be endorsed by the communities whose level of understanding of such a proposal is limited. The major challenge or fear associated with this is the possibility of manipulation by the elite and powerful, opening up new avenues of conflict and insecurity.

In addition, customary inheritance disputes especially those related to land rights of widows and orphaned children, the tenure security of these vulnerable groups has

¹⁹ Between cultural leaders who feel they are the custodians of land in Acholi region and political leaders who feel the legal mandate to mediate such land matters lies with them. Evidence shows a divide in the leadership on how to carry forward the tenure.

²⁰ (1) The right to derive benefit from the asset (Use right), (2) The right to decide who shall be permitted to use the asset and under which conditions (Management right) (3) The right to derive income from the use of the resource (Income right) (4) The right to consume destroy and transform the land (Capital right) (5) The right to sell give away or bequeath the asset (Transfer right)

²¹ the Acholi traditional land tenure regime has four interlinked arrangements which include: land for homesteads, land for cultivation, land for grazing, and land for hunting. This regime of tenure was exercised and enforced through an elaborate clan structure with inbuilt mechanisms for conflict resolution and mitigation.

²² evidence of rivalry as to who should spearhead such as process and a clash of egos amongst the local leaders (political and cultural); there is lower level dismissal and disassociation from the concept of Acholi Trust despite the fact that it is evidently an innovative approach able to deal with the numerous fears on land.

declined, because they have been marginalized during the return process²³. These groups have failed to assimilate / resettle or have not joined in the exodus back home; they are forced to hang on in the IDP camps. Evidence shows that they lack the financial and human capacity to rebuild shelter and livelihood at place of origin; and that return of such groups is not smooth as the social structures that would consider their interests and needs are either weakened or not in position to effect actions despite the necessity. A clear example of this is the growing trend of women without land occupying marginal lands such as wetlands as a livelihood strategy. Wetlands form a significant part of the Acholi land base held under communal interests and rights for clans and families. There is need to design specific interventions to protect the land rights of these vulnerable groups like women, widows and orphaned children

(c) *Institutional structure for Land Administration and Management*

The context is such that statutory dispute resolution mechanisms are not in place due to general state institutional breakdown in northern Uganda, while years of displacement have substantially eroded the authority and outreach of traditional dispute resolution mechanisms. In addition, clarity on intent and meaning of customary law and rights is distorted resulting in abuse of the system within family and clans. Traditional institutions, which have legitimacy lack legality; formal institutions for control and management of land and natural resources are ill-equipped and incapable of recognizing intricate needs of particular grassroots land communities, thus lack adequate capacity for response and containment of disputes and conflict that are escalating on return of IDPs²⁴. The traditional institutions though not legally sanctioned to handle land disputes are in most instances the courts of first instance and the Local Council system is strongly dependant on their structures and services. There has been an emergence of alternative power centres that impinge on the traditional Acholi land management structures. This is evidenced by the apparent competition between the traditional institutions, local governments and other structures with authority over land. The weak government presence at the local level is aiding widespread degradation, resource capture and competition which could exacerbate conflicts between communities, clans and institutions.

(d) *Land rights and Natural Resources Management*

Studies have found that depletion of resources such as cutting trees have indeed led to instances of land conflicts but are not the main source of land conflict in Northern Uganda. At one level the natural resource and land conflicts are intertwined since land is a natural resource. However, the framework of natural resources management does not adequately address the whole host of problems arising from tenure insecurity or lack of adequate or failure to appropriately adjudicate property rights, which is the main source of land conflicts. Additionally studies have found that land justice and administration systems are severely lacking due to institutional decay. The GoU plan does not address the need for increased resources and capacity building of land and natural resources institutions in Northern Uganda, nor is there a concretized acknowledgment and move to address the role of customary institutions on land tenure and natural resource management, despite their centrality in tackling such issues.

1.2.6 Gender Considerations

A JLOS study on Gender and Access to Justice (2001) revealed that gender related barriers in accessing justice occur at different levels of substantive laws, the

²³ Evidence shows that they lack the financial and human capacity to rebuild shelter and livelihood at place of origin, Evidence shows that return of groups is not smooth as the social structures that would consider their interests and needs are either weakened or not in position to effect actions despite the necessity.

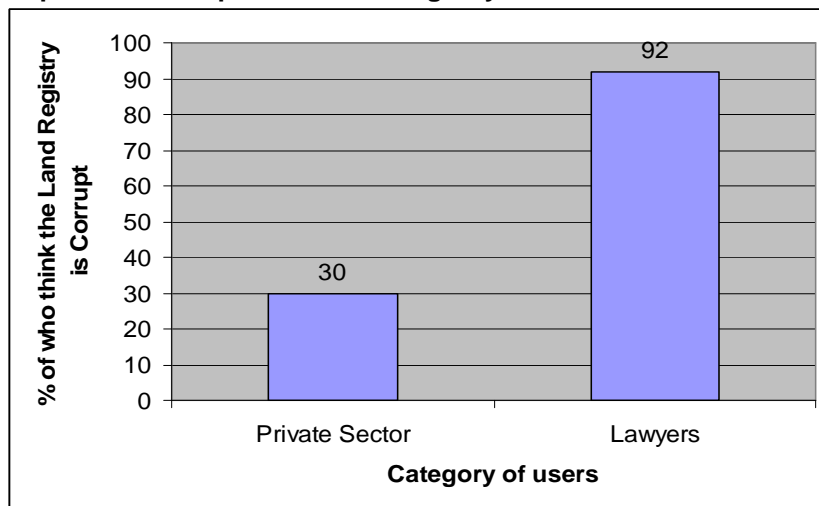
²⁴ The fundamental problem as lack of effective government presence leading to high incidents of crime, human rights abuses, sexual offences by the marauding LRA and some Uganda Peoples Defense Forces (UPDF) soldiers who also contribute to the abuse of people's rights

administration of law and the community where disputes occur²⁵. These barriers are interlinked and should be responded to comprehensively. The study further established that whereas there are factors that affect access to justice for both men and women, the structural gender inequalities and biases that permeate all levels of society invariably aggravate and in some cases increase the hurdles that women must overcome in order to access justice. For example women are viewed as property and belong to the husband's clan as result of payment of bride price. Upon the death of the spouse a widow is expected to be inherited by the relative of the dead man. Property ownership is identified with the husband since he is the head of the family. In some instances family property is situated on clan land and other members of the clan consider it as clan property. The identity of property in terms of custom denies most women property.

1.2.7 Corruption

Despite Government of Uganda's (GoU) array of policy formulations and technical achievements, several studies including the 2003 National Integrity Survey reports indicate that the perception of corruption and real level of corruption in public offices in Uganda is still high. This undermines GoU efforts to promote good governance and fight poverty. The most common types of corruption complained about in public office include non-payment of salaries, delay in service delivery, mismanagement and misappropriation of public resources and abuse of office.²⁶

Figure 4: Perception of Corruption in Land Registry



Source: MOJ Survey, 2004

JLOS has a crucial responsibility in the fight against corruption to ensure that the problem is stemmed within justice delivery agencies, and to prosecute and punish perpetrators so that it does not continue with impunity. The Land Registry processes about 15,000 to 20,000 transactions annually²⁷. MOJ carried out a survey in 2004 and found out that the registry was making an average of 100 filings per day. The filing involves transfers, lodging and release of caveats, withdraws and release of mortgages, extension of leases, surrender of leases, fresh registration of leases and free holds. The report of the survey indicates also that 92% of the lawyers perceive an increase in corruption in the Land Registry. However, perception from the Private Sector rated corruption in the Land Registry at only 30%.

1.2.8 Land Ownership in Uganda

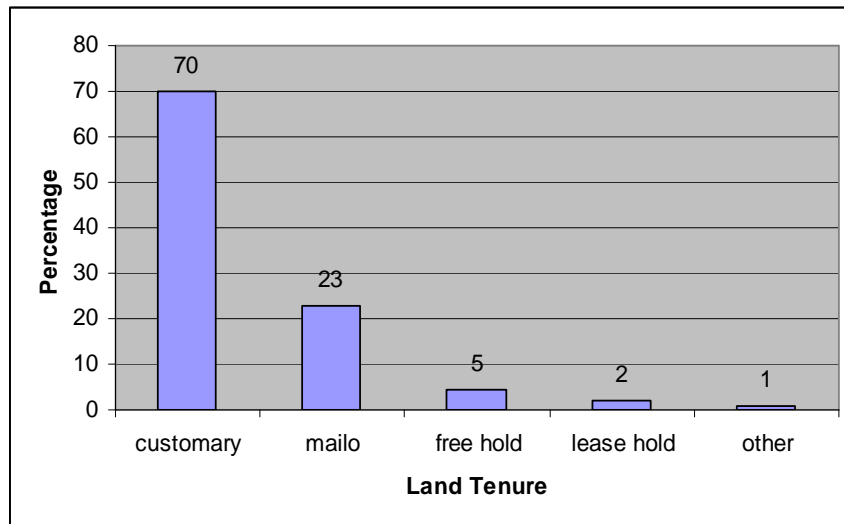
²⁵ Justice Law and Order Sector (JLOS), 2007 Strategic Investment Plan II 2006/7- 2010/11

²⁶ IGG's Report to Parliament 2002

²⁷ MOJ Survey, 2004

In Uganda, land ownership is categorized into; mailo, freehold, customary and leasehold ownership. Results from the National Household Survey (UNHS), 2006 show that majority (70%) of households in Uganda own customary type of land (see figures below). Mailo land is owned by about 23% of the population that own land. Evidence indicates that about 50% of most Ugandan households' wealth is held in the form of land. However national surveys under UBOS have not collected data on land dispute resolution, this dimension has either been handled by the JLOS Baseline Surveys or individualized services surveys either by civil society organizations or specific interested parties.

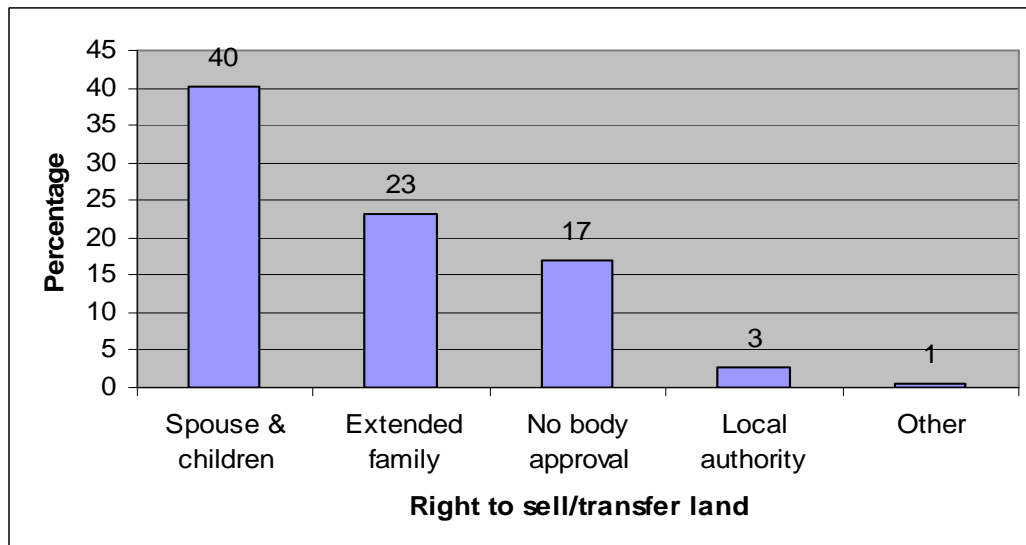
Figure 5: Percentage Distribution showing Land Tenure in Uganda



Source: UNHS 2006 Data

Data available from the UNHS 2006 indicates that majority (40%) of the household owners of land have to obtain permission from their spouse or children to sell land. About 23% have to obtain permission from extended families in order to sell land. It's only about 17% of the land owners who do not obtain approval from anybody (Figure 7 below).

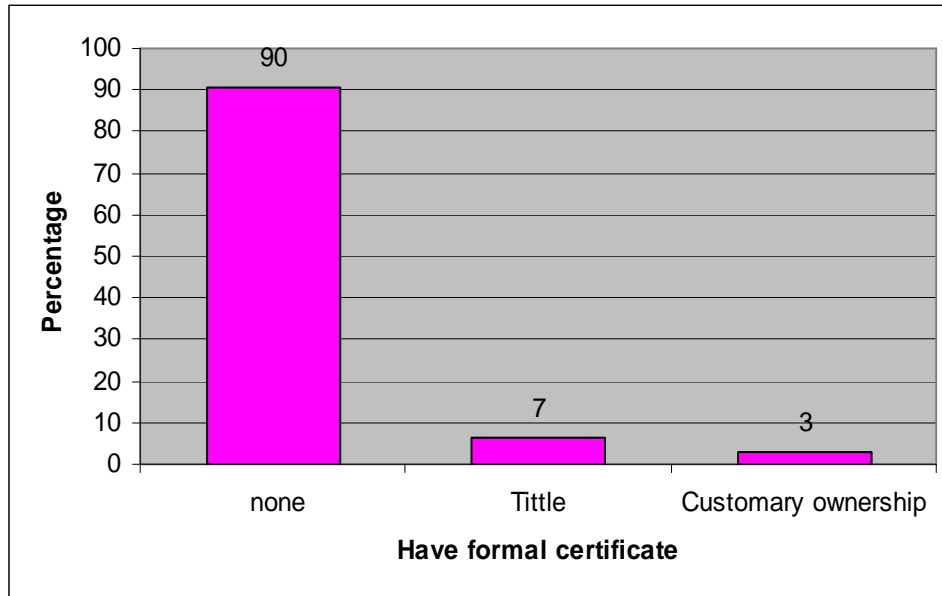
Figure 6: Percentage Distribution showing Right to Sell/Transfer Land Ownership



Source: UNHS 2006 Data

The UNHS 2006 also collected data on whether land has formal certificate. This data is relevant due to ease in settling disputes when they arise. Persons with land which has some form of certificate or proof of documented ownership are less likely to have problems when disputes arise. Results of survey indicate that majority (91%) of land owners do not have any form of certificate of land ownership (see figure 8 below).

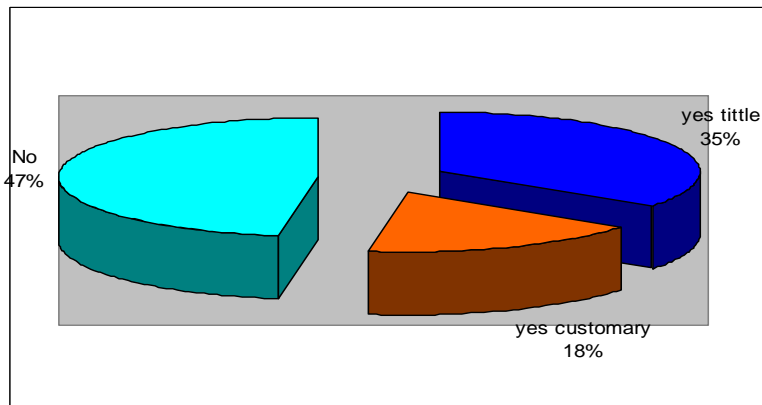
Figure 7: Percentage Distribution showing whether Land owners have Certificates



Source: UNHS 2006 Data

The land register in Uganda, which operates on the Torrens System of land registration, embodied in the Registration of Titles Act (Cap. 230), was established over 100 years ago. It is estimated that 60% of the records in the register is currently out of date; this therefore means that the available information is no longer reliable and therefore impinges on the integrity of land register since it does not depict the true situation with regard to the current ownership and other interests on registered land. The legal effect of this situation is that since land ownership and other rights over registered land is recognized or deemed acquired upon registration a considerable number of otherwise valid transactions and/or interests cannot be statutorily protected due to non-registration. Results from the UNHS show that overall about 53% of the land owners who do not have certificates are interested in obtaining one (Figure 9 below).

Figure 8: % Distribution showing interest in obtaining land title



Source: UNHS 2006 Data

The failings in the land registration system have been identified as a significant barrier to investment and the development of the land market in Uganda. As a result of the current poor state of the manual records in the Land Registry, service delivery is slow, cumbersome, and frustrating. The land registration processes are now prone to mistakes and occurrences of fraud, which makes information unreliable in many instances.

1.3 RELEVANT NATIONAL POLICIES

1.3.1 Poverty Eradication Action Plan 2004-2008 and Government's Medium-Term Competitiveness Strategy (MTCS)

In 1995, Uganda started a process of developing a comprehensive and sustainable development strategy, with an overall objective of wiping out abject poverty in the country. This process culminated in the formulation in 1997 of the Poverty Eradication Action Plan (PEAP)²⁸. During the 1990s, Uganda experienced significant growth which averaged 7 percent annually, and also achieved a reduction in the incidence of poverty, which fell from 56 percent in 1993 to 31% in 2005/06. This growth was largely due to both the country's ambitious policy reform program and to its relative political stability. In Uganda, the focus of economic planning has moved away from the forecasting and management of macroeconomic aggregates, to the process of refining and implementing a Poverty Reduction Strategy (PRS) which is sustainable in terms of policies, plans and programmes, ensuring proper resource management (NSSD) and operating within a fully Comprehensive Development Framework (CDF), to transform Uganda into a modern economy in which all agents, in all sectors, can participate in economic growth, keeping in mind the needs of future generations.

The Government of Uganda has revised its development strategy; the Poverty Eradication Action Plan (PEAP) 2004/05 – 2007/08. The PEAP describes the participatory process underpinning the development of the PEAP strategy, provides a poverty diagnosis, and presents policy measures, sector plans, costing, and a results-oriented policy matrix for sustainable economic growth and poverty reduction over the 2004/05-07/08 period. It argues for a shift of the policy focus from recovery to sustainable growth and structural transformation and presents specific Government policies to accelerate poverty reduction. It places emphasis on the importance of a stable and consistent macroeconomic framework, fiscal deficit reduction, conflict-resolution, good governance, increased production and productivity in the agricultural sector, and strengthened human development. The problem of high population growth and increasing income inequality are noted as major challenges in the fight for poverty reduction.

The PEAP 2004 identifies various policies for accelerating growth and poverty reduction, and improving service delivery through five pillars: (i) economic management; (ii) enhancing production, competitiveness and incomes; (iii) ensuring security, conflict resolution and disaster preparedness; (iv) good governance; and (v) promoting human development. PEAP indicates poverty, conflict and internal displacement of people, as well as HIV/AIDS among the contextual issues posing serious challenges to all sectors of Uganda's economy. In addition, access to justice is also affected by the socio-economic context which includes gender-based discrimination and corruption. Under

²⁸ The Poverty Eradication Action Plan (PEAP) was issued in three Volumes: Vol. 1-Strategic Policy Framework, Vol. II-Public Investment Plan and Vol. III-Principles for Improved Partnerships. These and all major publications by MFPEP are available at the Website: www.finance.go.ug

pillar 2 of the PEAP on enhancing productivity and competitiveness focus of land reforms is geared to clarify land rights and strengthen rights of the poor.

The Government's Medium-Term Competitiveness Strategy (MTCS) sets out reform priorities including reforms in commercial law and its application, the regulatory and administrative framework governing business transactions, and land registration. It also calls for improvements in infrastructure services, including the regulatory framework for utilities. MTCS has been successful in improving the investment climate, leading to a reduction in the processing time for legal cases, improvements in investor support services and improvements in telecommunication services, these improvements have only led to growth in traditional agricultural and manufacturing sectors.

1.3.2 JLOS SIP II

Uganda has pursued the development and implementation of sector-wide policies, investment plans and programmes, with the participation of representatives of as many stakeholders as possible, in a genuine partnership, which involves Government at the centre and the decentralized lower levels of government in the Districts; external funding agencies (development partners); the Civil Society and NGOs and the Private Sector. The Justice Law and Order Sector Second Strategic Investment Plan (JLOS SIP II) consolidates progress and builds upon processes undertaken in the first JLOS Strategic Investment Plan that was launched in November 2001. JLOS SIP II bears a heightened focus on the poor and marginalized groups, a direction arising from the Sector's obligation to demonstrate results to the general public to whom it is ultimately accountable, premised on continued institutional engagement while at the same time fostering novel human rights based initiatives²⁹.

SIP II articulates the policy framework in which the Justice Law and Order Sector (JLOS) strategic plan anchors its investment in Pillars 2, 3 and 4 of the Poverty Eradication Action Plan (PEAP)³⁰. Under SIP II, JLOS reforms³¹ are geared towards making the justice system responsive to Uganda's growth demands and competitive disadvantages on the global scale which include; organized crime, slow processes (e.g. in settlement of disputes), unfavorable property rights and laws (e.g. laws on land ownership, employment laws) and favoritism in decisions of government officials³². Challenges to land justice can be grouped under two general categories of;

- (i) Land administration and registration: this includes land acquisition, registration, titling, and legislation. The multiplicity of land tenure systems in Uganda including *mailo*, freehold, and leasehold has been a big deterrent to investment. Reforms under the LSSP are geared towards solving these challenges.
- (ii) Land dispute resolution: this brings to question the laws and capacity of institutions charged with the adjudication and settlement of land disputes that are on the increase in Uganda. These disputes often lead to high costs, deter investments and are a drain on resources of poor households and the economy. Currently, there is a huge case backlog of land disputes in all forums which has been put at over 5,000 cases in the Land Tribunals alone. Land disputes have

²⁹ Justice Law and Order Sector (JLOS), 2007 Strategic Investment Plan II 2006/7- 2010/11

³⁰ (i) economic management; (ii) enhancing production, competitiveness and incomes; (iii) ensuring security, conflict resolution and disaster preparedness; (iv) good governance; and (v) promoting human development

³¹ Responding to 5 strategic objectives; To Promote Rule of Law and Due Process; To Foster a Human Rights Culture across JLOS Institutions; To Enhance Access to Justice for all particularly for the poor and marginalized; To Reduce the Incidence of Crime and promote Safety of the Person and Security of Property; To Enhance JLOS Contribution to Economic Development

³² Justice Law and Order Sector (JLOS), 2007 Strategic Investment Plan II 2006/7- 2010/11

also resulted in public disorder and mob violence, leading to loss of lives especially in districts like Kibaale³³.

Reforms in the JLOS have a direct bearing on improvements in the micro economic environment in which businesses operate such as the inadequate provision of services in the land and business register, an outdated legal framework in selected areas, and inefficiencies in trade-related support institutions, including customs and standards.

1.3.3 LSSP 2001-2011

The Land Sector Strategic Plan (LSSP) was developed to provide a holistic framework for guiding the Government, the private sector and civil society in the implementation of sector wide reforms in the management and use of Uganda's land resources. It marks a landmark approach to sector-wide development encompassing the broad spectrum of sector actors and services in a common mission to develop a new policy framework, new techniques, and new institutional arrangements for service delivery in recognition of this re-orientation.

In most countries, land and associated real estate constitute one of household's most important assets. However, the value of this asset and its economic usefulness is often jeopardized by insecurity of property rights that can arise from three main factors, namely (i) inappropriate or unclear legislation; (ii) non-existent or ambiguous land records; or (iii) the inability to enforce existing land rights. With the passage of the 1998 Land Act and the regulations to implement this Act and in the 2002 Land Sector Strategic Plan, Uganda addressed the first issue and indicated its willingness to deal with the remaining two³⁴. One of the key constraints is the inadequate provision of services in the land registry. The land register operates in a dilapidated office environment, employing an outdated manual records storage and management system and support institutions. The problems with the land registry make it costly to verify the status of the land, which in turn affects the ability to sell the land and associated real estate³⁵. In addition, LSSP tackles women's secure access and utilization of land resources by recognizing that women's land rights in Uganda are limited both by the inequitable legal structure and by traditional practice³⁶. Women do not always share in the benefits of production, even though they may have done most of the work. As a result, women often are much less enthusiastic than men about production participation because of the men's control of incomes.

1.3.4 Draft National Land Policy, 2007

In Uganda the centrality of land in the economy; the political ambiguity on the land question; the social and cultural complexity of the land question, particularly the fact that for many communities land relations are also social relations and the overall governance framework in which land issues are played out and resolved is important. Land policy can make things worse or better but it is only exceptionally a critical factor of conflict, especially in countries and societies where the vast majority of the population depends on agriculture for its survival, and even in countries coming out of war³⁷.

The Draft policy recognizes that competition over land, caused, among others, by population growth, resource depletion, and scarcity is the cause of conflict, insecurity and environmental stress in many parts of Uganda, this is exacerbated by trans-boundary conflict. An important consequence of conflict is increased poverty due to

³³ JLOS SIP II page 14 and 15

³⁴ Ibid, 2007

³⁵ Land Sector Strategic Plan, 2001-2011

³⁶ Land Sector Strategic Plan, 2001-2011

³⁷ Deninger, 2003

abandonment of agricultural and livestock activities, quite apparent in Northern Uganda, making the need for restoring stability in land relations and the resumption of sustainable livelihood activities, a critical component of the national land policy of Uganda³⁸. The Draft National Land Policy described the land rights administration system in Uganda as typically beset by a number of malfunctions, prominent among which are: a high degree of obsolescence, bureaucratic complexity, managerial opacity, operational inefficiency and high transaction costs.

For intent and purpose, the policy sets the framework for administration of land justice, in which the only envisaged institution mechanisms seem to focus on dispute resolution and does not address the rather important aspect of delivery of land services and ascertainment of rights, as depicted in the table below;

Table 9: Content of Draft National Land Policy

ISSUES	PRINCIPLES
<p>A number of issues requires policy clarification. These are the need to;</p> <ul style="list-style-type: none"> (i) re-engineer land rights administration system (ii) modernize and simplify land rights delivery (iii) enhance capacity for land demarcation, survey mapping, (iv) restructure the system of management of land disputes (v) develop a robust land information system (vi) explore mechanisms for the generation of land revenue and (vii) divest to other agencies or privatize certain land rights administration functions or service 	<p>Reforming the land rights administration framework, however, will have to take account of the following principles, namely that;</p> <ul style="list-style-type: none"> (i) must be designed and operated with a view to enhancing and facilitating the management of land resources both as property vested in the public, communities and individuals, and as an asset central to national development; (ii) will not function effectively unless it is provided with resources and personnel at all levels of operation; (iii) must at all levels must be transparent, cost-effective and accessible to the ordinary land using public; and (iv) must be treated as a professional function hence should not only be delinked from routine public administration, but more important, be insulated from demands exerted by political elites bent on appropriation of land resources.
SPECIFIC ISSUES	STRATEGIES
<p>Restructure the system of management of land disputes.</p> <ul style="list-style-type: none"> (i) For land held under customary, tenure disputes are often part and parcel of social reconstruction in specific community settings. The Land Act approaches this issue by establishing an elaborate structure of tribunals with jurisdiction over a wide range of land issues in rural and urban areas. (ii) The Act also provides for the appointment of adhoc mediators to assist the tribunals in the resolution of disputes in appropriate circumstances. (iii) No specific recognition is given under the Act to indigenous mechanisms of dispute processing or customary law as a normative framework for the processing of disputes under customary land tenure. This has created overlaps and conflicts in the processing of rural land disputes. 	<p>In order to remedy that situation, legislative and other measures will be taken to ensure that;</p> <ul style="list-style-type: none"> (i) the operation of tribunals are devoid of complex jurisdiction and litigation procedures usually associated with ordinary courts of law; (ii) the law provides clear choice of law rules for land tribunals to enable the simultaneous application of state and customary law depending on the circumstances, facts and characteristics of the dispute before them; (iii) indigenous dispute management institutions are accorded precedence in respect of disputes over land held under customary land tenure; (iv) the progression of certain customary land disputes from generation to generation is discouraged through the maintenance of records of final determination at all levels of jurisdiction; and (v) the finality and authoritativeness of decisions of all dispute processing mechanisms are guaranteed subject only to appeal to higher levels of jurisdiction; and (vi) a special division in the High Court is established to handle land disputes arising under any tenure regime to ensure the development of a consistent property jurisprudence for Uganda.

³⁸ MWLE, 2006

It is important at this level that land administration is distinctively addressed from conflict resolution, rather than rely heavily on either of the two, since they are complimentary in nature and the smooth functioning of one determines the efficiency of the other. Just as the LSSP, the draft Land Policy even though suggests the recognition of the role of traditional land administration systems, not specific strategy address how they will relate with statutory mechanisms put in place. It is not clear how and where the two will meet and how they will meet (the terms or conditions). It is imperative that such overtones are dealt with to avoid redundant policy or shelved policy.

1.3.5 Peace Recovery and Development Plan, 2007

This plan is a commitment by GoU to stabilize and recover the north in the short-term (3 years) through a set of coherent programmes under a consolidated framework, it is considered by the OPM's office to be a follow-up on the NUSAF programme³⁹. It specifically acknowledges the impact of conflict status and extent of vulnerability in communities affected by war by adopting a conflict framework rather than a development framework, acknowledging that state authority has not been functioning normally for over 20 years.

The PRDP whose commitments are a reflection of the PEAP, re-echoes its objectives as; objective 1: consolidation of State Authority, objective 2: rebuilding and empowering communities, objective 3: revitalization of the economy and objective 4: Peace building and reconciliation. JLOS is the major contributor to the realization of objectives 1, 2 and 4 and indeed the focus is on empowering JLOS institutions to re-establish their operations on ground. However this focus doesn't cascade to land justice administration or family justice administration. The PRDP only focuses on natural resource management (NRM) and does not address the issues of land conflict stemming from boundary disputes, encroachment, or squatting which are all highlighted in various studies.

The issue of NRM is important and sustainable NRM can mitigate the prevalence of land conflicts. The studies have found that depletion of resources such as cutting trees have indeed led to instances of land conflicts but are not the main source of land conflict in Northern Uganda. At one level the NRM and land conflicts are intertwined since land is a natural resource. However, the framework of NRM does not adequately address the whole host of problems arising from tenure insecurity/lack of adequate property rights, the main source of land conflicts. The studies found that a lack of systematic demarcation which has led to poor boundary markers, encroachment, and squatting are the main sources of conflict. GoU policy must be able to address these issues, which are not always directly tied to NRM.

Additionally, studies have found that land justice administration systems are severely lacking. The GoU plan does not address the need for increased resources and capacity building of land institutions in Northern Uganda, and these institutions are not only important for land conflict management but also NRM. Furthermore, the GoU plan does not address the role of customary institutions and tenure even within natural resource management. The studies of northern Uganda have highlighted the centrality of customary tenure and institutions in tackling land issues. Hence the importance of addressing the complex challenges faced by property rights when addressing NRM; this is a linkage is ignored by the PRDP, which will most likely render PRDP initiatives fruitless or unsustainable. Given the acknowledgement of the need to contextualize the

³⁹ Interview with Resettlement Officer, OPMs' office

challenges to property rights, access to justice becomes a central component. The PRDP fails to take into account the linkages between having secure property regimes and functioning land administration and the feasibility of NRM and conservation strategies.

A study conducted by the UNDP on Local Council Courts and Legal Aid provides a good background on the current situation of legal services in Uganda. The aggregate Uganda findings state that LCCs are the main institutions approached by respondents for dispute resolution. Within the camps in Gulu, district camp leaders were ranked first followed by traditional leaders and LCCs as institutions for dispute resolution. Across the northern districts of Gulu, Lira, and Apac, traditional leaders were the ranked first as the institution most often approached for dispute resolution. These results highlight the centrality of LCCs and traditional leaders in the current dispute resolution mechanisms

Finally, by virtue of the plan's sole focus on NRM it does not address the need for sensitization on property rights or issues of compensation. Knowledge of property rights are in fact not only important in stemming the incidence of land conflict but may also have a role in promoting conservation practices. Furthermore, in regards to the topic of information, the northern Uganda studies have highlighted the high level of distrust of central government's intentions to land in northern Uganda, and government initiatives must address this issue head on if they are to be successful. Compensation is not tackled in the existing policy framework, yet Courts are going to be bombarded with cases of such a nature and will be an issue of contention for returning IDPs. There is need to set forth clear guidelines and plan for the reality recognizing the absence of secure property rights and likely incidence of land conflict.

2. LAND JUSTICE

2.1 CONCEPTUAL FRAMEWORK

Collins English Dictionary defines access as the “right or privilege to approach, reach, enter or make use of something”. That is as far as the literal meaning goes. However, in the context of access to justice, access should be conceived in a comprehensive sense to include aspects of contact, entry and use of the legal/judicial system. Access to justice relates to whether or not individuals, groups and communities realize de-facto justice from the enforcement of substantive law as well as the quality of justice meted out on them by the justice delivery system.

Access to justice revolves around three major components⁴⁰:

- a) *Accessibility* means simplified procedures, and services that are affordable, available within a reasonable time and distance, and presented in plain language.
- b) *Effectiveness* means that appropriate services are matched to families’ needs; that services promote timely, fair and lasting resolution of disputes,
- c) *Integration* means minimizing overlaps and gaps in services and linking those services so users can move easily from one service to another as appropriate. It means that providers share common objectives and cooperate in planning and delivering those services; and it means that related services share common values and priorities, and their policies and procedures are consistent and coherent.

According to Sarah Byrne, Gabriela Mirescu, and Sean Muller (2007)⁴¹, improving access to justice means⁴²:

- a) Establishing an efficient, accountable and flexible set of institutions in the justice sector: ranging from independent courts to professional police, and from transparent law making to prison management according to international human rights standards;
- b) Giving people the rights they are entitled to (or, to put it in another way: giving them the *one* right to *all* rights), especially the right to acquire, own, and defend property;
- c) Fighting discriminatory mechanisms in the justice sector, be they practical (physical distance from legal institutions, unaffordable fees, criteria regarding standing, bureaucratic procedures, delays and backlogs, and lack of legal aid), social-cultural (differences in language, norms, and social or cultural background) or institutional (legal/formal) barriers.

In another perspective, relying more on bottom-up dynamics, access to justice is conceived as a three-floor house: on the ground floor, people have to be aware of their rights, which they can go on claiming in the next floor (access in the narrow sense), whereas in the top floor they are re-assured of equal treatment, which inspires confidence. The issue of law and access to justice raises enduring questions about the nature of law and the concept of justice. There are also operational problems that are associated with these phenomena. The fact that legal services are expensive and unaffordable by the majority of the population and the corruption that blights the system create additional distortions. In discussing the problem of access to justice in relation to

⁴⁰Sarah Byrne, Gabriela Mirescu, and Sean Müller , January 2007 Decentralisation and Access to Justice International Research and Consulting Centre (IRCC) Institute of Federalism, Fribourg

⁴¹ In Decentralization and Access to Justice, commissioned by Swiss Agency for Development and Co-operation (SDC)

⁴² Sarah Byrne, Gabriela Mirescu, and Sean Müller , January 2007

law one needs to bear in mind the distinction between legal justice and social justice. This distinction is necessary and important because even if the legal system worked like clockwork it would still produce a severely limited kind of justice. That kind of justice is not all-embracing in the substance it delivers⁴³.

A Study on Participatory Poverty Assessment on Safety, Security and Access to Justice: Voices of the Poor in Uganda (2002)⁴⁴, concludes that poor people enjoy access to justice when they are able to use institutions that are quick, relevant and effective in meeting their legitimate needs. Justice systems that are remote, unaffordable, slow or incomprehensible to ordinary people effectively deny them legal protection.

The Legal Aid Baseline Survey and Needs Assessment (2004) found that there are specific factors that impact on access to justice for the people of Uganda, especially the poor and the factors include the high cost of litigation, lack of awareness of rights, technicalities in using the formal justice system, attitudes and orientation of personnel in the justice system, lack of co-ordination among legal aid service providers, gaps in monitoring the quality of services provided, breakdown in the justice system in war affected areas, juvenile related constraints and aspects of social difference as a basis of marginalization (age, health status and gender).

According to the Joint Survey on Local Council Courts and Legal Aid Services in Uganda (2006), what communities need in terms of access to justice is a system that fulfils the following criteria:-

- i. affordable for the poor,
- ii. fast and prompt service delivery
- iii. fair and responsive to all social categories – the poor, women, youth and disabled
- iv. physically accessible,
- v. free of corruption and bribery
- vi. adequate technical capacity of personnel,
- vii. conciliatory and conclusive on cases,
- viii. bearing enforcement powers for decisions made.

Land Justice is the totality of structures, processes and institutions which are responsible for protection of land (and property in a wider sense) rights, enforcement of these rights and the resolution of land disputes. These structures, processes and institutions are both formal/statutory and informal/traditional. Land rights refer to the ability to effectively own, secure, use and dispose land and resources thereon for the betterment of self and community and overall economic development.

The protection and enforcement of land rights is a big challenge in Uganda due to several factors which include high poverty levels, conflict, customary practices, poor economic, legal and institutional policies and frameworks and poor socio-economic frameworks. These factors often undermine the effective protection and enforcement of land rights through a land justice system. The poor and vulnerable groups, such as women, children, the elderly, and people living with HIV/AIDS who are often marginalized are more prone to suffer abuse of their rights to effectively access, manage, and utilize land. Most communities have laws to protect, regulate and enforce land/property rights, security of tenure, and use of land for economic development and empowerment.

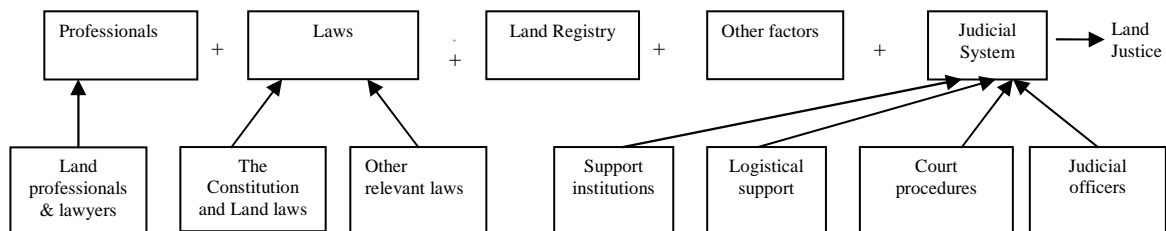
⁴³ Frederick W. Jjuuko, accessed 1st October 2007,

www.kituochakatiba.co.ug/LAW%20AND%20ACCESS%20TO%20JUSTICE.htm

⁴⁴ Study by Windsor Consult Development Consultants, commissioned by the Ministry of Justice and Constitutional Affairs

In Uganda we have a legal dualism (both statutory and customary) for the protection, regulation and enforcement of land/property rights. The statutory framework for protection and enforcement of land rights vests in the Constitution, the Land Act, Cap- the Local Council Courts Act, 2006, the Registration of Titles Act and other land related laws. For the purposes of this study, our understanding of the land justice system comprises the following elements as depicted in the diagram below:

Figure 10: Conceptual framework for Land Justice System



The judicial system (both formal and informal) is one element of the land justice system. The other complimentary elements of the land justice system are;

- 1st. The land professionals who man the land sector and lawyers who are always the entry point into the formal land justice system.
- 2nd. The laws include the Constitution, the Land Act, the Local Council Courts Act, the Registration of Titles Act, the Mortgage Act, and other relevant laws.
- 3rd. The judicial system (Courts, Land Tribunals, formal ADR forum, informal dispute resolution systems and their systems of operation)
- 4th. Support institutions include JLOS institutions, the legal aid service providers, the traditional/customary land dispute resolution institutions, the District Land Boards etc.
- 5th. And other factors which may include informal land dispute resolution mechanisms, cultural practices, government policies, among others.

2.2 INTERNATIONAL LEGAL AND HUMAN RIGHTS INSTRUMENTS

1. The Universal Declaration on Human Rights (UDHR) of 1948

- According to Article 16, women and men are entitled to equal rights before and during marriage and its dissolution.
- Article 17 recognizes that “everyone has the right to own property alone as well as in association with others” and that “no one shall be arbitrarily deprived of his property”.
- Article 25 provides for the right to an adequate standard of living, including housing.

2. The International Covenant on Civil and Political Rights (ICCPR) of 1966

- Article 17 prohibits arbitrary or unlawful interference with a person’s privacy, family and home and recognizes the right of every person to protection of the law against such.
- Article 26 confirms that everyone is entitled to the equal protection of the law, without discrimination on any ground, including sex.

3. The International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966

- Article 3 obliges the State Parties to “undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant”.
- Article 11(1) lays down the right to adequate housing⁴⁵. In its General Comment No. 4 of 1991, the Committee on Economic, Social and Cultural Rights explains that the right to adequate housing consists of the following elements:- a) legal security of tenure⁴⁶; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility⁴⁷; (f) location and (g) cultural adequacy;
- Under General Comment No. 7 of 1997 the Committee on Economic, Social and Cultural Rights defined “forced eviction” as “the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of access to appropriate form of legal or other protection”.
- The Commission on Human Rights has stated that a forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing, which can only be justified in extreme circumstances⁴⁸

4. The Habitat Agenda (1996)⁴⁹

- Para 40(b) commits governments to “providing legal security of tenure and equal access to land to all people, including women and those living in poverty”.
- Governments committed themselves against forced evictions under para 40, 61, and 98.
- *Para 40(n) reads “We further commit ourselves to the objective of protecting all people from and providing legal protection and redress for forced evictions that are contrary to the law, taking human rights in consideration; when evictions are unavoidable, ensure as appropriate that alternative suitable solutions are provided”.*
- Para 61(b) states.....These actions include, providing the legal security of tenure and equal access to land for all, including women and those living in poverty, as well as effective protection from forced evictions that are contrary to the law, taking human rights into consideration....⁵⁰

5. Pinheiro Principles on Housing Land and Property Restitution

The *Pinheiro Principles* provide specific policy guidance regarding how to ensure the right to housing and property restitution in practice and for the implementation of restitution laws, programmes and policies, based on existing international human rights,

⁴⁵ The literal text is “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. In 1991, the Committee on Economic, Social and Cultural Rights issued its General Comment No. 4 on the Right to Adequate Housing, thereby breaking the elements of the human right to an adequate standard of living down into inter alia, the right to adequate housing

⁴⁶ The Committee emphasizes that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats, no matter what type of tenure they enjoy.

⁴⁷ The Committee makes it clear that increasing access to land by landless or impoverished segments of society should constitute a central goal within many state parties. Access to land is described as an entitlement.

⁴⁸ Commission on Human Rights Resolution 1993/77, Whenever evictions are necessary, for whatever justifiable reason, there are acceptable ways of carrying out such evictions and these include: adequate notification, genuine consultation with those affected and comparable alternative settlement, where appropriate must be negotiated by all interest groups, with provision for legal resource to those affected.

⁴⁹ The Habitat Agenda was adopted at UN Conference on Human Settlements (Habitat II) in 1996

⁵⁰ Governments are enjoined, within the overall context of an enabling approach, to take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing

humanitarian, refugee and national standards. The term *restitution*⁵¹ refers to an equitable remedy (or a form of restorative justice) by which individuals or groups of persons who suffer loss or injury are returned as far as possible to their original pre-loss or pre-injury position. Restitution should, whenever possible, restore the victim to the original situation before the gross violations of human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship; return to one's place of residence, restoration of employment and return of property." This has been accompanied by an understanding that return without restitution can only ever provide an incomplete durable solution to displacement⁵².

It must be recognized that the right to return – whether for refugees or displaced persons – is not an obligation to return. Return cannot be restricted, and conversely it cannot be imposed. The right to housing and property restitution should not be made conditional on the physical return of someone who has been displaced from their home or place of habitual residence, and that these rights remain valid notwithstanding whether return actually takes place. In some settings, return may be impossible, irresponsible or illegal due to the security situation or potential threats, but a person with a restitution right may wish to exercise rights over that property without physically returning there⁵³.

Given the primacy of restitution rights, unless displaced persons wish explicitly to receive compensation in lieu of return, compensation is only viewed as an acceptable substitute for the physical recovery of original homes and lands when three key conditions are met:

- (i) When the restoration of housing, land or property rights is *factually impossible*;
- (ii) When those possessing restitution rights voluntarily prefer compensation-based solutions; and even then, and;
- (iii) Only following a determination to this effect by an independent and impartial tribunal or some legitimate and competent body without vested interests in the matters concerned.

While the return to, recovery of and repossession of one's original home should remain the core objective of any restitution process, in practice restitution can take different forms depending on local circumstances. A particular restitution process may involve a combination of return, facilitated sales of properties to which refugees voluntarily did not wish to return but which they retained rights over, and where appropriate forms and amounts of compensation were provided.

In more recent years, the idea of voluntary repatriation and return have expanded into concepts involving not simply the return to one's country for refugees or one's city or region for IDPs, but the return to and re-assertion of control over one's *original home, land or property*; the process of housing and property restitution. This historic change in emphasis from what were essentially humanitarian-driven responses to voluntary repatriation to more rights-based approaches to return are increasingly grounded in the principle of restorative justice and of restitution as a legal remedy which can support refugees and internally displaced persons in their choice of a durable solution (whether return, resettlement or local integration)⁵⁴.

⁵¹ As defined by the most recent authoritative statement of international standards, the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons

⁵² Pinheiro Principles, 2007

⁵³ UN Agencies, March, 2007

⁵⁴ UN Agencies, March, 2007

6. The African Charter on Human and People's Rights (ACHPR) of 1981

- Under Article 3, equality before the law and equal protection of the law for every individual is enshrined.
- Article 29(7) lays down the duty to preserve positive African cultural values in the spirit of tolerance, dialogue and consultation.

2.3 NATIONAL LEGAL FRAMEWORK

The Constitution

The Constitution of the Republic of Uganda was adopted in 1995. It contains one Chapter which provides extensive protection of human rights,⁵⁵ including: the right to equality and freedom from discrimination;⁵⁶ protection from deprivation of property;⁵⁷ right to privacy of person, home and other property;⁵⁸ right to a fair and public hearing,⁵⁹ freedom of movement and assembly;⁶⁰ right to marry and 'equal rights in marriage, during marriage and at its dissolution';⁶¹ and a right to just and fair treatment in administrative decisions.⁶² All of these rights, which are in line with international human rights standards, could have a potential bearing on land rights.

The Constitution also provides for 'affirmative action in favor of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.'⁶³ It states that: 'Women shall be accorded full and equal dignity of the person with men. Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities. Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited.'⁶⁴ It guarantees children's rights and states that: 'the law shall accord special protection to orphans and other vulnerable children.'⁶⁵ It also upholds cultural rights, stating that: 'Every person has a right as applicable, to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others.'⁶⁶

The Constitution also contains a Chapter devoted to land and the environment.⁶⁷ This states that: 'Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution.'⁶⁸ Non-citizens are only permitted to lease land.⁶⁹ The Constitution also provides for a Uganda Land Commission,⁷⁰ District Land Boards⁷¹ and Land Tribunals,⁷² whose functions are described in more detail below.

⁵⁵ Constitution of the Republic of Uganda 1995, Chapter IV, Articles 20 – 58.

⁵⁶ *Ibid*, Article 21.

⁵⁷ *Ibid*, Article 26.

⁵⁸ *Ibid*, Article 27.

⁵⁹ *Ibid*, Article 28.

⁶⁰ *Ibid*, Article 29.

⁶¹ *Ibid*, Article 31.

⁶² *Ibid*, Article 42.

⁶³ *Ibid*, Article 32.

⁶⁴ *Ibid*, Article 33.

⁶⁵ *Ibid*, Article 34.

⁶⁶ *Ibid*, Article 37.

⁶⁷ *Ibid*, Chapter 15, Articles 237 – 245.

⁶⁸ *Ibid*, Article 237.

⁶⁹ *Ibid*, Article 237 (2)(c)

⁷⁰ *Ibid*, Article 238 – 239.

⁷¹ *Ibid*, Articles 240 – 241.

⁷² *Ibid*, Articles 243.

The Constitution sets out some quite detailed provisions in relation to land rights, while leaving other provisions to be determined by subsequent legislation. It permits the Government, or a local government body, to acquire land in the public interest, subject to the provisions of Article 26 of the Constitution, which protects people from being arbitrarily deprived of their property rights. It states that the conditions governing such acquisition shall be as prescribed by Parliament.⁷³

The Constitution restores the four land tenure systems that existed before the Land Reform Decree 1975, namely: (a) customary; (b) freehold; (c) mailo; and (d) leasehold.⁷⁴ It also states that: 'On the coming into force of this Constitution (a) all Uganda citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by Parliament; and (b) land under customary tenure may be converted to freehold land ownership by registration.'⁷⁵ The Constitution guarantees that 'the lawful or bona fide occupants of mailo land, freehold or leasehold land shall enjoy security of occupancy on the land'⁷⁶ until Parliament enacts an appropriate law regulating the relationship between the lawful or bona fide occupants of land and the registered owners of that land.⁷⁷ Such a law should be enacted 'within two years after the first sitting of Parliament elected under this Constitution.'⁷⁸

Land Laws

One of the complementary elements of the land justice system is the land laws. The land laws make provisions for the protection, regulation and enforcement of land/property rights. The certainty and clarity of land rights and the legitimacy and fairness of these laws make a big difference, especially with regard to land conflicts and disputes.

While the Land Reform Decree 1975 had sought to increase control over the land by central government and make tenure conditional on the land's development, the Land Act 1998 is part of a very different policy. It expressly limits government owned land to that which was being used by the Government when the Constitution of 1995 came into force.⁷⁹ It stipulates that if the Government requires additional land it must purchase this, either from a willing seller or through compulsory acquisition in accordance with the rights to private property contained in the Constitution.⁸⁰ An underlying assumption of the Act is that allowing a system of private individual ownership of land to develop in Uganda will boost the country's economic and social development.

The existing landlord-tenant relationship as enacted in the Land Act is a major contributor to the escalating land conflicts and land disputes in the country. The overlapping and conflicting land rights on one and the same piece of land have created a land use deadlock between the statutory tenants (lawful occupants and bonafide occupants i.e. bibanja holders) and the registered land owner (mailo /native freehold owner). The current provisions in the Land Act are not effective in resolving the land use deadlock; hence the rampant mass evictions by registered land owners. The other controversy surrounds nominal ground rent as provided for in the Land Act. The definition and rights accorded to bonafide occupants in the same act are also unpopular and lack legitimacy on the part of most landlords and this has resulted in massive forced evictions.

⁷³ Ibid, Article 237 (2)(a).

⁷⁴ Ibid, Article 237 (3).

⁷⁵ Ibid, Article 237 (4).

⁷⁶ Ibid, Article 237 (8).

⁷⁷ Ibid, Article 237 (9).

⁷⁸ Ibid.

⁷⁹ 22 September 1995.

⁸⁰ Land Act 1998, section 43.

There is currently a legal lacuna as far as compensation to lawful occupants and bonafide occupants are concerned. Prior to the 1995 Constitution, a registered land owner could apply to court to pay compensation would be adjudicated by the court and give a 3-month or 6-month quit notice to the tenant on payment of fair compensation. The statutory protection given to the lawful occupants and bonafide occupants under the Land Act leaves no room for compensation. The mutual agreement between the registered land owner and the occupant has failed to work, hence the rampant evictions.

The principal law on compensation, i.e. the Land Acquisition Act, 1965 is not only outdated, but it is also inconsistent with the provisions of the 1995 Constitution which demand for fair and adequate compensation payable prior to the compulsory acquisition of land/property. In the compensation laws (the Land Act, 1998 and the Land Acquisition Act, 1965), the basis of assessment of compensation is not provided for. The Land Act does not define 'adequate and fair compensation' and it does not outline what constitutes 'adequate and fair compensation'.

Land Justice and Gender

Analysis of the legal system shows that there exist inequalities due to discriminatory laws and gaps related to laws that are not gender responsive. Thus, defector, inequality is often not addressed by existing laws that on the surface may appear to be gender neutral. Such gender neutral laws include, in particular property and land laws, which prima-facie may not appear to be discriminatory but in effect enable defector discrimination against females to continue by failing to cater for women's gendered realities and experiences.

Specifically in relation to

- (i) physical accessibility to the agencies for administration and enforcement of the law
- (ii) the training and orientation of those responsible for administration and enforcement of the law.
- (iii) the degree of gender sensitivity of both technical and non-technical officers in the system.
- (iv) the degree of technicality involved in the justice system (the language and technicalities involved may prove a barrier to access to justice for the poor women and men who have none or very limited education and who may not be able to engage the services of a lawyer.
- (v) confidence in the justice delivery system as impartial and transparent
- (vi) delayed delivery of justice

Within the community where disputes occur

- (i) the role of culture and the patriarchal system (the patriarchal cultural value system that prevails in our society, creating unequal power relations right from the basic unit of society – the family to the larger community, resulting in unequal power relations at the household level.
- (ii) the popularity of community-based dispute resolution fora, which are not always gender responsive (the community-based dispute resolution mechanisms begin at family level, with power centralized in the head of the household who is invariably male; then there are family elders and finally clan heads who are male
- (iii) apart from a male dominated profile, the community-based mechanisms apply customary norms which in a patriarchal setting favor the male, sometimes even exhibited by the attitudes of officers responsible for administration of justice and in cultural / religious overtones.

- (iv) the LCCs as a community-based dispute resolution mechanism have been critiqued for the lack of gender sensitivity and basic legal rights in their operations.

In Uganda, women's low status and general lack of power and control over decision-making is widespread. Legal constraints range from the immediate, such as the foreign language of the court system, to the structural, such as institutional bias in administration of justice. Enforcement of the law can also perpetuate subordination of women. Thus, even where positive legislation exists that protects the rights of women, these laws are not always implemented (e.g. the consent clause in the Land Act). Poor implementation is often due to negative attitudes and gender bias, emanating from socio-cultural norms and beliefs, which may be found in the general public or in the law enforcement agents leading to biased interpretation or administration of the law.

2.4 INSTITUTIONS AND PROCESSES IN ADMINISTRATION OF JUSTICE

In most countries, land constitutes one of household's most important assets. However, the value of this asset and its economic usefulness is often jeopardized by insecurity of property rights that can arise from three main factors, namely (i) inappropriate or unclear legislation; (ii) non-existent or ambiguous land records; or (iii) the inability to enforce existing land rights. Improving property records, known as land information, are the starting point to secure property rights.

One other important element of the land justice system are the support institutions which include JLOS institutions, the legal aid service providers, the land administration system and institutions, the traditional/customary land dispute resolution institutions. Recent surveys indicate that although most people are aware of the existence of the Land Act and some of its provisions, there is relatively little awareness of land sector institutions and procedures. Knowledge of the practical mechanisms necessary to uphold people's land rights is generally limited and confused.

Land administration can be defined as a system of judicious process, laws, and institutions that operate to regulate, allocate and control access to and use of land. It is mainly about the mechanisms of land delivery services, the regulation of land access relations among the land consumers, and conflict resolution.

With the above conceptual framework of a land administration system, which controls the stated four distinct processes, the linkage between land justice (as earlier on conceptualized for this study) and the land administration institutions which run the system should become very clear. It ought to be stressed once again that the land justice system should become very clear. It ought to be stressed once again that the land justice system should operate to protect, regulate and enforce land/property rights, security of tenure, and use of land for economic development and empowerment.

(a) The Land Registry

The Land Registry is one of the cornerstones in the Ugandan Land Administration system and contains information on land ownership and other rights necessary for the State to be able to uphold law and order and safeguard security of tenure to the benefit of the citizens for social and economic development. But the Land Registry is in a poor state. A study by D.W. Greenwood in 1990 identified the incompleteness and rapid deterioration of the land and cadastral records as one of the main problems of the land administration sector. The Review of the Status of the Land Information Systems in Uganda in 2003 by Si VEST identified the problems in the Land Registry as being: poor physical condition of land records, lack of updating, loss of information due to damages

and theft, increased systematic frauds, lack of funding and lack of professional and support staff.

According to the Baseline Evaluation Report (2007), the Land Registry's main problems revolve around:-

- (i) Fraudulent and back-door practices which lead to the losses of the property by rightful owners, undermine public confidence to the state registration system, affect the land tenure security, makes the transactions of the property uncertain and has tragic consequences for many families that suffer from such practices.
- (ii) Fake land titles circulating in the market, which create additional uncertainty in the market.
- (iii) The existing registration system and procedures are too disorganized and practically ineffective to prevent such cases and properly resolve the issues.
- (iv) The cumbersome procedures degraded registry environment and damaged and outdated land records leave a little chance to the genuine owners and clients to protect themselves or get reliable information about the property.
- (v) A great majority of the title records in registry strong rooms are in very dilapidated and sorry state, and they continue to deteriorate, with consequent loss of information and strategic data sets.
- (vi) Inappropriate systems are still predominantly used in the land records management and archiving system; the manual system results in wear and tear, loss of documents and consequent loss of information.

Some efforts on rehabilitation of land records and updating of these records are under way, and this has three dimensions:-

- (i) rehabilitation of the physical conditions of the records and transferring them to the document management system;
- (ii) restoration of missing titles; and
- (iii) updating of registers-getting the information of the records up-to-date which include registration of unregistered transactions.

(b) The Uganda Land Commission

This is charged with managing land vested in or acquired by the State according to the 1995 Constitution. It has power to purchase land or other interests in land, erect or demolish buildings, sell or lease land held by it, survey government-owned land and carry out other activities as necessary. The Government Minister responsible for land rights may issue policy directives to the Commission. The Commission is also responsible for administering the Land Fund.⁸¹

(c) District Land Boards

The 1995 Constitution provides for the establishment of a land board for every district in Uganda.⁸² The Land Act 1998 specifies their membership, qualification and experience (including that at least a third of the members must be women) as well as their general functions.⁸³ The Boards are deemed to own all land within a district which does not belong to anyone else and are given the sole power to sell, lease or otherwise deal with such land. The Boards are also charged with facilitating the registration and transfer of issuance of land in their district, surveying and valuing the land and issuing certificates related to it. The District Land Boards are independent of both the Uganda Land Commission and the local district council.

⁸¹ Ibid. section 50. See also Constitution of the Republic of Uganda 1995, Article 239.

⁸² Constitution of the Republic of Uganda 1995, Articles 240 - 241.

⁸³ Land Act 1998, sections 57 – 60.

(d) Land Committees

The Land Act 1998 provides for the appointment of Land Committees in each parish, gazetted urban area and city division.⁸⁴ These were intended to comprise four people (at least one of whom should be a woman) drawn from the locality and with some knowledge of local land matters. The main function of each committee is to determine, verify and mark the boundaries of customary land within the locality when an application for a CCO is made. The committee is expected to carry out its tasks in collaboration with traditional institutions and also to advise members of the district land board on the applicable customary law in the area.

The area land committees have never been formed because the district councils which are supposed to pay them say they have no funds. The land recorders (responsible for all transactions on customary land as well as transactions in certificates of occupancy) who are supposed to be at sub-county level are not functioning at all, although the sub county chiefs who are supposed to perform the functions of the Recorder are in place with other duties, they do not even know that they are supposed to act as recorders or what their role entails.

(e) Land Tribunals and the Land Division of the High Court

The creation of Land Tribunals is also provided for in both the 1995 Constitution and the Land Act 1998. The District Land Tribunal's were set out to be the highest authority for appeal in the District after which cases can be taken to the High Court in Kampala. Cases worth over 50 million shillings could be brought directly to the District Land Tribunal. Although the Land Tribunals have powers equivalent to a court of law, the Land Act 1998 envisaged that they would follow different rules of procedure from ordinary courts. It was hoped that by being less formal and legalistic these tribunals could make themselves more accessible to ordinary people and bring justice closer to the community. By the time the mandate for the land tribunals expired in November 2006, there were 6000 land cases pending.⁸⁵ The Chief Justice directed Magistrates Courts to take over the cases pending a decision by the Cabinet and Parliament on the fate of the tribunals. By the time the land tribunals closed, they had developed complex jurisdiction and litigation procedures which are usually associated with ordinary courts of law. The 2006 Baseline Survey revealed that the Land Tribunal was ranked very low. Land tribunals were indicated as expensive and extremely ineffective.

(f) Local Council Courts

A baseline survey on the operations of the Local Council Courts (LCCs) conducted in 1998 found that over 80% of the population utilizes LCCs to settle disputes. The 1998 Baseline Survey found that the LCCs were accessible in both physical and technical terms, affordable, user friendly, participatory and effective because their judgments are enforceable in comparison to the more formal justice system. Furthermore, people had confidence in them as administrators of justice that the people understand and identified with. This was confirmed by the Criminal Justice Baseline Survey (2001/2) which also found that LCCs provide an alternative to the procedurally complex, less accessible and expensive formal courts especially with regard to the majority of the rural poor.

The Joint Survey on Local Courts and Legal Aid Services in Uganda (2006) found that:

- (i) Land and family justice are major challenges within communities. The existing system for land justice is not only expensive but also seriously ineffective. LCCs are partially filling the vacuum and in respect of land, are

⁸⁴ Ibid, section 65

⁸⁵ This is in addition to 2768 land cases which were reported still pending in the High Court as at 30/4/2007 (JLOS Progress Report Presented to the Twelfth Joint GOU/Donor Review, June 2007)

doing so outside their mandate. Majority of land disputes continue to be reported to and handled by LCCs.

- (ii) LCCs are the most appealing among dispute resolution fora, followed by the police, traditional leaders, probation office and then the formal courts. Most users indicated that they conclude their matters through LCCs, and where this does not happen, they try to exhaust all other possible avenues before trying the formal courts if at all.
- (iii) Overall LCCs were positively evaluated. They have ensured access to justice in terms of speed, cost, simplicity, accessibility, and reconciliation. The users, LCCs possess many positive attributes that outweigh their negative aspects and as well as implications of utilizing other dispute resolution mechanisms.
- (iv) Ratings of LCCs' adherence to principles of human rights, ethical conduct, natural justice and gender sensitivity were rather poor. Appreciation of the value of record keeping and the need for accountability were also reflected as weaknesses in the work of the LCCs.
- (v) Lack of motivation of LC officials presents opportunities for abuse of office and exploitation of users. All respondents highly rated LCs as corrupt and engaging in bribery. All categories, women, men, and youth found LCCVs biased against vulnerable groups and promoting nepotism.
- (vi) Although land disputes are among the most prevalent,⁸⁶ the available mechanism for land dispute resolution – the Land Tribunal is largely disregarded in the community.

Reasons for ranking of dispute resolution fora were given as below:-

Table 11: Ranking of Dispute resolution foras

Positive attributes of LCCs	Other dispute resolution fora
<ul style="list-style-type: none"> • They are our first contact with government • They live within the community and are accessible • They are conciliatory leaving both parties satisfied • They are convenient and not complicated • They have background information • They are cheaper • They are faster 	<ul style="list-style-type: none"> • They will always require evidence that you have been to the LC first • Far from the users in terms of distance • They are adversarial and the conflict never really ends • The process is cumbersome, "causes fatigue" • It depends on who argues better and has a better lawyer • More expensive • They delay cases and never end

Challenges encountered by LCCs were ranked in the following order. Lack of remuneration; lack of offices and court rooms; backlash; lack of reference materials, poor working relationship with the Police; personal safety; limited enforcement mechanisms; low jurisdiction; limited or lack of capacity; very demanding; communication and co-ordination; lack of quorum; undue influence and political interference.

A baseline survey carried out in 2002 by K2 Consult (U) and commissioned by the Justice Law and Order Sector (JLOS) under the Ministry of Justice and Constitutional Affairs, shows that land and property disputes rank second highest (15%) among the cases received in 1998 in the table below.

⁸⁶ According to the study, the most prevalent disputes are three: land, thefts/burglary, equally indicated in 34 sub-counties and domestic violence/marital violence indicated in 33 sub-counties. These are followed by defilement, simple fights/assaults, animal trespass, contractual debts and child neglect.

Table 12: Distribution of Cases Received (1998)

Category of Cases	Percentage
Land dispute and property dispute	14.8
Administration of estates	8.2
Labour claims/unlawful dismissals & small debts claim	9.0
Child maintenance & custody	28.1
Domestic / marital problems	7.4
Defilement & child abuse	1.9
Divorce & separation	1.7
Legal advice	3.6
Criminal cases	3.8
Accident claims & compensation	2.5
Human rights/illegal arrest & detention	1.9
Court representation	2.3
Breach of agreement	1.5
Property rights	0.3
Wrongful eviction	0.8
Other civil cases	0.8
Assault & battery	1.6
Counseling	1.2
Succession matters	1.7
Theft	0.1
Others	6.9
Total %age	100.0
Number of Cases	3,382

Source: MOJ Criminal Justice Baseline Survey, 2002

The findings from the Joint Survey on Local Council Courts and Legal Aid Services in Uganda found out that land disputes ranked also highest (16%) of the disputes reported at the LC level and this finding closely matches with findings from Criminal Justice Baseline Survey, 2002 (Table 4 below). According to the survey, land disputes were mainly related to boundary markings, encroachment (particularly in Kibale district), eviction of 'bibanja' holders, sale without spouse's consent, demand for access-ways, double selling, arising upon separation and divorce and inheritance matters. The LC Courts have been found to be the most utilized dispute resolution for a particularly in the rural communities where the majority of Uganda's population reside (LCC/Legal Aid Baseline Survey, 2006). The LCC can therefore easily deal with some types of land ownership especially the customary because these require natives of the village to identify land boundaries.

Table 13: Prevalence of Disputes as Reported by LC Officials

Land dispute	15.6
Theft/burglary	15.6
Domestic violence	15.1
Defilement	10.6
Simple fights/assaults	9.2
Animal trespass	7.3
Contractual debts	7.3
Child neglect	4.6
Rape	3.2
Misdemeanors (Rumors)	1.4
Witchcrafts	1.4
Robbery	1.4
Child abuse	1.4
Arson	1.4
Adultery	0.9

Accidents	0.9
Others	4.8
Total %age	100.0
Number of Cases	218

Source: MOJ LCC/Legal Aid Baseline Survey, 2006

(g) The Legal Aid Service Providers

The LCC/Legal Aid Baseline Survey (2006) found that:

- (i) There are 2 types of legal aid available: primary (legal representation of individuals in court; public interest litigation; the state brief scheme; diversion; legal advice and counseling (by legal aid organizations, Probation office); and secondary (legal literacy; through awareness sessions, booklets, posters and radio programmes), paralegal programmes, community activities and research/advocacy initiatives)
- (ii) The most common disputes which Legal aid service providers handle relate to land disputes, family justice and contractual debts as civil matters; while in criminal, it is mainly criminal defense for serious crimes.
- (iii) Land disputes include boundary disputes, unlawful sale of land, eviction of bibanja (plot) holders and succession.
- (iv) Although they have a large potential to ensure access to justice, legal aid providers have constraints that limit their effectiveness.
 - (a) Legal aid service providers are not visible, audible or accessible to many people in the community.
 - (b) Legal aid providers are affected by delays in the formal justice system which in effect increases the costs of their operations and further compromise access to justice for the poor persons they represent.
 - (c) Legal aid service providers are constrained by the lack of an enforcement mechanism particularly on cases that are resolved through mediation.
- (v) Mediation and other forms of ADR are the key methods used by the legal aid providers in response to the high cost of litigation as well as delays.
- (vi) Given the high and almost prohibitive costs of litigation, it is more efficient to handle strategic litigation and class actions so that a big lump sum is spent to achieve maximum results and far reaching impact.

(h) Customary / Traditional Institutions

The Land Act 1998 specifically recognized the role of customary law in dispute settlement and mediation in relation to land held under customary law.⁸⁷ The Act states that at the commencement of a case, or at any time during a hearing, if the land tribunal is of the view that, because of the nature of the dispute, it ought to be dealt with by traditional mediation, it may advise the parties to attempt to resolve the dispute through this mechanism. The tribunal may adjourn its proceedings for up to three months in such circumstances to give the parties time to try and reach agreement. Both parties are free to resume formal proceedings if either is not satisfied with the outcome of this process.

The Act also makes provision for the appointment of mediators, on an *ad hoc* basis, in an attempt to resolve land disputes.⁸⁸ A mediator is not required to hold any formal professional qualifications and his or her main role is envisaged as attempting to 'narrow any difference between the two parties.'⁸⁹ The Act specifies that the services of a

⁸⁷ Ibid, section 89.

⁸⁸ Ibid, section 90.

⁸⁹ Quote from Minister of Land during the parliamentary debate on the Act, Hansard, 28 June 1998, p.4352, cited in Mugambwa, 2006, p.46.

mediator may be used in negotiations between landowners and tenants who are either seeking to gain occupancy rights or conduct a transaction relating to the land in question.

As stated above, it is important to note that many of the above provisions have never been implemented. There are very few, if any, Land Committees in existence. The District Land Boards, where they exist, are extremely weak and the District Land Offices, which were supposed to support their work are grossly under-resourced. Although some Land Tribunals were created, there were never enough to cover the entire country and so those that did exist soon built up a massive back-log of cases. The administration of the tribunals was subsequently shifted from the Ministry of Lands to the Ministry of Justice and their work was formally suspended in November 2006. The handling of land cases has effectively been handed back to the courts. Many of the reforms envisaged by the Land Act 1998, such as the surveying of land and the issuing of Certificates of Customary Ownership have not taken place and a lack of resources has meant that the Land Fund has never actually become operational. This has led to the emergence of a huge gap between how land rights are theoretically dealt with in Uganda and how the system actually functions in practice.

2.5 INITIATIVES IN ACCESS TO LAND JUSTICE

(a) Private Sector Competitiveness Project (PSCP II)

Private Sector Foundation under the Second Private Sector Competitiveness project is to create sustainable conditions for enterprise creation and growth in order for the private sector to respond better to potential market opportunities through measures to ensure minimum infrastructure requirements and improved financial services; expand access of enterprises, especially MSMEs to skills training, technology, and business development services; and improve the business environment and the public-private dialogue. By working with coordinating and support institutions within the framework of the Medium-Term Competitiveness Strategy (MTCS), it will help build a more integrated public-private approach to private sector development. As a result of the project, enterprises in Uganda will have a lower cost business environment and be in a position to increase investment, production, and employment⁹⁰.

Under the Second Private Sector Competitiveness Project (PSCP II) there is a subcomponent on the Land Registration Sector (under Component 3: Improving Business Environment) which aims to help increase the effectiveness of public land institutions so as to make it easier to obtain and transfer evidence of land ownership. This will improve tenure security, investment incentives, gender equity, and governance and will facilitate the use of land titles as collateral for credit. The sub-component includes three activities:

- (i) Rehabilitation of existing land records and upgrading of un-surveyed mailo titles.
- (ii) Establishing a land information system (LIS) and expanding the coverage of land information nation wide.
- (iii) Strengthening the capacity of public institutions.

This project addresses critical issues in the business environment, including: (i) improvements in the land registry and survey training school; (ii) improvements to the business registration service; and (iii) support to the Uganda Law Reform Commission and revision of key legislation, in particular, legislation relating to exports. Although

⁹⁰ Private Sector Foundation, 2005 Project documents for PSCP II, Volume 1 and Volume 2, World Bank Website.

some progress has been made in defining the agenda for reforming the laws and regulations key areas need to be accelerated⁹¹.

The implementation will help modernize the commercial legal environment, reduce the time and cost to register businesses, restore the integrity of the land registry, and improve the efficiency trade-related services leading to a more efficient value chain. This component involves close collaboration between the private sector and the public sector agencies such as the Uganda National Bureau of Standards, the Business Registrar, the Ministry of Justice and Constitutional Affairs, and the Law Reform Commission.

In addition, PSCP II also deals with;

- (i) *Rehabilitation of existing land records and upgrading of un-surveyed mailo titles* to help resolve disputes on the 15 percent of Uganda's land area currently covered by the registry. It also helps survey, adjudicate, and issue documents to un surveyed mailo titles in order to close a loophole that is currently creating market distortions and unnecessary boundary disputes, undermining the integrity of the land register through duplication of certificates, forgeries etc.
- (ii) *Establishing a LIS and expanding the coverage of land information:* establish the infrastructure (software and hardware) for a nationwide LIS that will be capable of storing land registry information for all types of land in Uganda and making such information available quickly and at low cost to interested parties. It will generate the scope to scale up processes of systematic demarcation that have already been piloted by the Ministry of Water, Lands, and Environment (MWLE) using its own funds, thereby improving tenure security for those who have traditionally not had access to tenure security.
- (iii) *Strengthening the capacity of public institutions.* This includes the rehabilitation of nineteen existing land registry offices to secure the land records, the decentralization of responsibilities to these offices, capacity building, and the rehabilitation and retooling of a survey school, to be governed by a Board comprised of land professionals in the private sector, MWLE, and the Ministry of Education and Sports.

(b) Systematic Demarcation

Discussions on customary tenure in Uganda often revolve around whether or not it facilitates or impedes development⁹², because of the multiple and often conflicting rights embedded therein. Customary rights are typically of many different kinds, specific to particular activities (such as gardening or hunting) and contingent on membership of particular groups of people, mostly defined in terms of kinship. Transfers of customary land were traditionally limited to particular categories of people for specific purposes, and the land often reverted to the landowning group after use. Systematic demarcation aims to fix, and give legal effect to these customary rights and relationships. It involves investigation, adjudication, survey and demarcation as well as the creation of cadastral maps. It is partly a process of extending the reach of legislation to include new places, and new objects. It is also a process of discovery and recognition of the extralegal arrangements already existing, not to be superseded, or ripped off.

Traditional landowners are assumed—rightly or wrongly—to know where their boundaries are. It is a matter of demarcating them, and issuing customary certificates of ownership, allowing them the freedom to pursue a title if they so wish. Countries can and do devise their own systems of recording customary land rights. The main objects of systematic demarcation and adjudication, is to protect property rights, to facilitate transactions in land, and to enable land to be used as collateral for loans. It is important

⁹¹ Private Sector Foundation, 2005

⁹² Geshberg, 1971; Obol-Ochola, 1971; Chango Machyo, 1984; World Bank, 1962; Brock, 1968

that any system of land registration should be simple, reliable, prompt, affordable and well suited to the society it serves, for a system to be successful, appropriate legislation and institutions, and sufficient financial and human resources for its implementation and maintenance

An early attempt to individualize customary tenure in Uganda during the 1950's was prompted by the East Africa Royal Commission's recommendations concerning the modernization of peasant agriculture and the desirability of creating a middle class in the run up to independence. The land tenure proposals were met with hostility as it was assumed that the British Protectorate at the time had a hidden agenda to colonize and grab land. However, in 1958, the first pilot scheme was undertaken in Ruzhumbura County, Nyakaina Parish, after Kigezi District Council embraced the land tenure proposals followed by Ankole and Bugisu. After the Nyakaina-Ruzhumbura pilot, three other pilots were undertaken respectively; the Sheema Pilot Scheme (1959) in Ankole District in which Kagango and Shuku sub counties were adjudicated; the Bubirabi Pilot Scheme (1960) in Bugisu District; and the Bufumbira Pilot Consolidation Scheme (1959) in Kigezi District.

Renewed efforts to carry out systematic demarcation gained strength and momentum from the Constitution of the Republic of Uganda, 1995. It is envisaged that systematic demarcation will deliver tenure security, as well as land information, where the aggregated land information is developed from individual forms or records of 'who' holds 'what' land 'where'. The pilots were initially undertaken in four districts of Ntungamo (Rukarango), Masaka (Kabiige), Soroti (Amnit) and Iganga (Bulowooza). This process is currently extended to Mbale and Kibaale districts.

In the evaluation studies for Rukarango pilot and evidence from research⁹³ show that systematic demarcation leads to significant decreases in land disputes. The most occurring types of land disputes with potential to erupt into social strife are either boundary related (30%) and / or encroachment based (26%). Whereas these disputes may not necessarily limit household production and investment, they are a recipe for social tensions, the provision of documentary evidence to a parcel of land, is necessary to curtail disputes and deter conflict. These results⁹⁴ indicate an overall reduction of 16% in the rate of occurrence of land disputes from 22% before demarcation to 6% after demarcation. A dispute reduction rate of 16% and a resurgence rate of only 5% are a colossal achievement considering the socio-economic effects of land disputes on households and communities. It is important that the achievements realized in land disputes reduction, are nurtured carefully. Validity of the local data bank also plays a role as a point of reference for consensus that has to be reached in resolution of land disputes, especially boundary disputes.

(c) Institutional reforms for Dispute Resolution

The Land Act Cap 227 and the Constitution 1995, established an elaborate structure of quasi judicial institutions baptized tribunals under a decentralized framework. Initially, the Land (Amendment) Act, 2001 was enacted to enable Magistrates' Courts and Local Council Courts to continue handling land disputes until the land tribunals as dispute resolution institutions were established. However, the proposed framework proved costly to implement, an adoptive concept of circuiting District Land Tribunals based in 18 regional centres, supported at the base by Local Council III and Local Council II as court of first instance was put in place on pilot basis. The tribunals were initially set up under

⁹³ Abby Sebina-Zziwa, Richard Kibombo and Herbert Kamusiime (2003) pg. 30, Land Dispute Resolution Mechanisms: What works in the rural settings? MISR, Kampala.

⁹⁴ Kamusiime and Rugadya, 2005, Evaluating the Impact of the Systematic Demarcation, Associates for Development

the Ministry responsible for Land but later transferred to the Judiciary, at the time of writing this report, Tribunals have been closed Magistrate Courts have taken over due to lack of resources. Tribunals were conceived because the conventional system was not delivering land justice, however, by the time of their closure, they were a duplication of the Magistrates Court imbued with all kinds of bureaucracies and procedures that they intended to avoid⁹⁵ and failing to achieve a move closer to alternative dispute resolution allowing individuals opportunity to state their cases without recourse to formalities. The concept of tribunal circuits, even if the funds were available creates further problems, the tribunals cover too large an area⁹⁶, this has caused backlog.

(d) Legal reforms in the Land Sector

1. The Land (Amendment) Act 2004

It was enacted to streamline the administrative structures of the land administration system. The salient issues in this Amendment Act were:

- The Local Council II courts are the courts of first instance to replace the sub county Land Tribunals
- Area Land Committees replace the Parish/ ward Land Committees
- Security of Occupancy of spouses on Family land
- Ground Rent for tenants on registered land

Local Council II as a court of first instance on land matters are not operational, instead land disputes are filed in the Local Council I court, appeals then follow to local council II and III. This raises the question of which LC level should be the court of first instance. In law, the Land Act cap 227 places the jurisdiction at LC11, however in practice, this level is far from the people and is not on ground, because of ignorance of the law which is reflective of an information gap, they often refer parties back to LC1 as the starting point, hence a need to popularize the 2004 Land (Amendment) Act, which granted them the powers to tackle land issues as courts of first instance, this arrangement seems to be functioning smoothly leading the research team to conclude that, it would be ideal to grant jurisdiction to LC1 as court of first instance and strengthen their capacity on land matters.

2. Land Act (Amendment Bill) 2007

There are four key issues that the Land Amendment Bill 2007 is attempting to address. First, the Constitution 1995 and the Land Act 1998 created permanent occupancy interests on registered land for the *kibanja* holders; hence a land use deadlock between the statutory tenants (lawful occupants and bonafide occupants i.e. *bibanja* holders) and the registered land owner (mailo, native freehold, leasehold owner).

Second the government is saddled with a dilemma; the existing landlord-tenant relationship as enacted in the Land Act Cap 227 served to escalate land conflicts and evictions by personifying overlapping and conflicting land rights on one and the same piece of land; the definition and rights accorded to bonafide occupants in the same act are unpopular and lack legitimacy on the part of most landlords, the landlords feel cheated because the law (Land Act 1998) legalized an illegitimate acquisition process, one that did not involve the owners consent, for purposes of clarity a tenancy is supposed to exist with consent of the land owner.

Thirdly, the other controversy surrounds nominal ground rent as provided for in the Land Act Cap 227 that not only served to devalue the titleholder's property but sent their

⁹⁵ rules of procedure allow lawyers in tribunal proceeding to litigation for parties

⁹⁶ For example the Soroti Circuit covers six districts of Soroti, Kumi, Kaberamaido, Katakwi, Amuria, Bukedea.

minds thinking creatively on how to re-inject the values in their properties, in order not to lose consumer value, desperate landlords have sold to those individuals with the political backing, appropriate legal muscle and the economic ability to massively evict tenants.

Lastly, there is a legal lacuna as far as compensation to lawful occupants and *bonafide* occupants are concerned. Prior to the 1995 Constitution, a registered land owner could apply to court to pay compensation would be adjudicated by the court and give a 3-month or 6-month quit notice to the tenant on payment of fair compensation. The statutory protection given to the lawful occupants and *bonafide* occupants under the Land Act leaves no room for compensation. The mutual agreement proposed between the registered land owner and the occupant has failed to work, hence the rampant evictions.

It is now accepted that the current provisions in the Land Act Cap 227 are not effective in resolving the deadlock; hence the rampant mass evictions by registered land owners or their agents or purchasers. So, the proposals of the Land Amendment Bill 2007, seeks to nip the problem in the bud, by deterring the well to do buyers, from purchasing tenanted titled land from desperate landlords, through criminalizing the evictions and setting punitive measures of up to seven years imprisonment for whoever assists or participates in the process.

3. *Mortgage Bill 2007*⁹⁷

The Mortgage Bill 2007 aims to consolidate Ugandan mortgage law now scattered between the Mortgage Act, Registration of Titles Act and Land Act. It is of crucial importance that law on mortgage is consolidated; in addition it proposes a number of salient changes;

- (i) It extends mortgages to land held under customary tenure. Legal mortgages are currently restricted to land registered under the Registration of Titles Act. With customary tenure as the most common form of land holding in the agricultural areas, this proposal will bring a number of informal mortgage arrangement under the realm of legality and formality
- (ii) The Land Act gives every spouse security of occupancy on family land and requires prior spousal consent for dealings with family land, rather vaguely defined as land on which is situated the ordinary residence of a family and from which the family derives sustenance; which the family voluntarily agrees shall be treated as such; or which is treated as family land according to the norms, culture, customs, traditions or religion of the family. The Bill has instead imposed a blanket requirement for consent for their married borrowers.
- (iii) However, it seeks to restrict spousal consent to the matrimonial home defined as a building or part of a building in which a husband and wife (or wives), and their children, if any, ordinarily reside together. Unfortunately the Bill does not repeal the Land Act provisions on spousal consent.
- (iv) The Bill provides for the transfer of mortgages by both the mortgagor and importantly the mortgagee. Hopefully this will pave the way for securitization to take our finance industry to another level. The tax implications of this are not addressed.
- (v) The Bill makes express provision for tacking of mortgages, allowing the lender to increase or decrease the amounts under a mortgage. Tax implications are again not addressed and the mechanics of this process are unclear.

⁹⁷ Drawn from article by Philip Karugaba at the legislation guide; middle East and Africa website <http://www.iflr1000.com/default.asp?page=38&CH=3&Index=2&CountryID=164> on 3rd May 2008

- (vi) The Bill underscores the equity of redemption and criminalizes the current practice of non-bank lenders requiring the execution of a transfer deed alongside a mortgage.

Philip Karugaba, 2007 highlights the following shortcomings in the Bill's proposals;

- (i) To curb industry abuses, the Bill makes void any sale of mortgaged property at a price "25% or more below the average price at which comparable interests in the land of the same character and quality are being sold in the open market". With Uganda's overly customized developments it is difficult to establish an average price even in the same neighbourhood. Restricted time periods for sale naturally produce greatly depressed prices. True the ill exists, but the prescription is wrong. The focus should be on ensuring that the property is widely advertised, preferably with a picture in a newspaper of wide circulation. The market will then speak for itself. The mortgagor remains at liberty to sue the mortgagee for undervalue sales while the purchaser of the security is allowed quiet possession.
- (ii) The Bill provides for 15 working days' notice, to be served personally on the borrower, of any change of interest rates under a mortgage. Market practice has been to peg the interest rate to the bank's base lending rate and to advertise any changes in the base rate, coupled with provisions in the mortgage deed giving validity to these interest rate changes. The proposed requirement may prove expensive and onerous.
- (iii) From a 30-day default notice period, the Bill now prescribes 21 working days coupled with five to 15 working days' additional notice depending on the remedy pursued by the mortgagee. No provision is made for the period of advertising in the event of sale of the mortgaged property. The current convention has been a 30-day advertising period for immovable property.
- (iv) The Bill provides for various notices to be in the form prescribed. The schedule to the Bill however does not contain these forms. Also missing is the form of a mortgage deed currently prescribed in the 11th Schedule of the Registration of Titles Act.
- (v) The Bill places the lender under a duty to explain to a mortgagor the terms of the mortgage. While this is welcome given Uganda's high illiteracy and the complexity of mortgage deeds, the troubling feature here is the vague requirement for "genuine" and informed spousal consent. Does a wife anxious to please her debt-ridden husband give "genuine" consent?

3. FAMILY JUSTICE

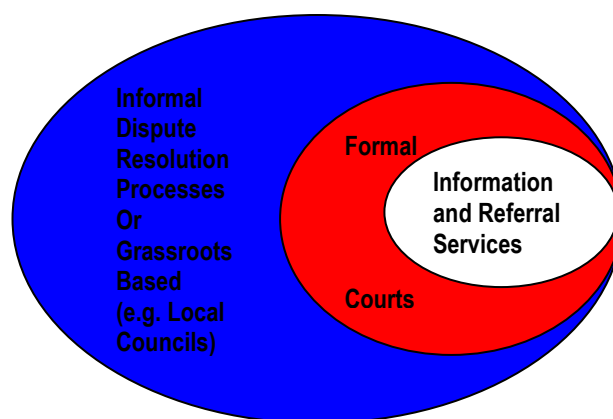
3.1 CONCEPTUAL FRAMEWORK

Family rights refers to the compendium of rights that accrue to individuals and persons as part of a family unit including the right to food, maintenance, clothing, property and the right to a home. The term “family justice system” broadly refers to

- a) public and private services that help families with a wide range of issues arising out of separation, divorce or child protection;
- b) public institutions such as the courts, government ministries, and the Legal Services Society (LSS); and
- c) individual professionals, including lawyers, mediators, social workers, psychologists and counsellors who work in these areas.

It is the totality of structures, processes and institutions which are responsible for protection of family rights, enforcement of these rights and the resolution of family disputes. These structures, processes and institutions are both formal/statutory and informal/traditional⁹⁸. The statutory framework for protecting family rights is vested in the Constitution (1995), Children Act 1995 and the compendium of laws that stakeholders have sought to harmonize under the Domestic Relations Bill (DRB). The formal judicial system formal is one element of the family justice system, complimented by the family protection, probation and child welfare professionals who man the family sector and lawyers who are always the entry point into the formal land justice system. These work on the basis of laws including the Constitution, the Children Act, and the compendium of laws being consolidated under the Domestic Relations Bill and other relevant laws. The legal aid service providers avail vital information and referral services which merit the dedication of significant attention and resources. The traditional/customary family dispute resolution institutions, especially clans etc. and formal alternative dispute resolution forum, informal dispute resolution systems and their systems of operation are another element especially in the promotion of mediation⁹⁹ and other “alternative dispute resolution” (ADR) options, which if made available, people would recognize their advantages and seek out, rather than choose to go to court, perhaps only as last resort, normally after other options have been exhausted.

Figure 14: Components of a Family Justice system



Adopted from A new Justice System for Families and Children and modified for the study

⁹⁸ The terminology applied is varying – depending on the author; the word is about “informal”, “primary”, “traditional”, or “customary” types of justice. What matters is that they are *alternative* to the “formal” (codified and institutionally enshrined) justice system.

⁹⁹ Mediation is a way for people to resolve a dispute with the help of a neutral third party facilitator—the mediator—who has no decision making power. Unlike litigation, it is a private process that is both informal and flexible. The people themselves, and not the mediator, decide the terms of the agreement.

3.2 INTERNATIONAL LEGAL AND HUMAN RIGHTS INSTRUMENTS

International Human Rights Instruments for Family Justice

Uganda has ratified several treaties that express its commitment to observe human rights. The treaties include:

- (i) The Convention on the Elimination of all forms of Discrimination, (CEDAW), entered into force on September 3, 1981 and was ratified by Uganda on July 22 1985.
- (ii) The International Covenant on Civil and Political Rights entered into force on March 323, 1976 and was ratified by Uganda on September 21, 1995.
- (iii) The International Covenant on Economic, Social and Cultural rights entered into force on January 3 1976 and was ratified by Uganda on April 21, 1987.
- (iv) Convention on the Rights of the Child, entered into force on September 2 1990, and was ratified by Uganda on September 21, 1995.
- (v) African Charter on Human and People's Rights entered into force on October 21, 1986.

By ratifying these international treaties Uganda commits to uphold the principles and practices that ensure justice for the family especially vulnerable members within this unit of society. In all the conventions the following principles in relation to family justice are promoted and upheld (annex 2 for details): *Principle 1: Equity and Equality of Persons, Principle 2: Protection of Family Property, Principle 3: Institutions for family justice.*

Principle 1: Equity and Equality of Persons

Initially articulated in;

- (a) *The Universal Declaration of Human Right (1948)*
 - Article 16 provides that men and women are entitled to equal rights at marriage, during and upon dissolution.
 - Article 17 that every person has the right to own property alone and in association with others.
- (b) *The International Covenant on Civil and Political Rights:*
 - Article 26 "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.
 - Article 23(4) provides that" States parties to the present Convention shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution'.
 - Article 14 (10) All persons shall be equal before the courts and tribunals.
- (c) *Convention on the Elimination of all forms of Discrimination, (CEDAW):*
 - Article 10 of CEDAW provides for equality of men and women before, during and after marriage.
 - Article 15 CEDAW, States parties shall accord to women equality with men before the law.
 - Article 16 (1) (a), (c), h, of CEDAW enjoins states parties to provide same rights for both spouses to enter into marriage, during marriage, and at the dissolution of marriage.
- (d) *African Charter on Human and People's Rights*

Article 2 guarantees rights and freedoms without distinction as to sex. Article 18 (3) addresses the rights of women" The State shall ensure the elimination of every

discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions”

(e) *Convention on the Rights of the Child*

- Article 2 (1) requires States to respect the rights set forth in the convention without discrimination based on sex of either the child or the child's parent.
- Article 18 provides that State parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.
- Article 34 prohibits sexual exploitation ,
- Article 35 prohibits sale, trafficking and abduction,
- Article 39 prohibits Rehabilitation and care, Article 37 prohibits torture and deprivation of liberty.

(f) *The ILO Convention 182* – on worst forms of Child Labour was ratified by Uganda. This form of labor includes practices similar to slavery such as sale and trafficking of children, child prostitution debt bondage and recruitment of children in armed conflict.

In response, to this principle, the 1995 Constitution of Uganda:

- In articles 21, (1) to (5) outlaws discrimination of persons before and under the law, in all spheres of political, economic, social and cultural life.
- In article 31 (1) to (6) protects the rights of the family including marriage and the children out of the marriage are dealt with.
- In articles 32 (1) to (5) provides for affirmative action to enhance welfare and dignity of the women and the establishment of an equal opportunities commission.
- In articles 33(1) to (6) upholds the dignity of women is accorded in equality to that of a men including opportunities and consideration of their natural maternal functions
- In article 34(1) to (7) upholds the rights of children and their interests within a home and the by family are upheld especially the right to education, health, special social position in society and the recognition of orphans and other vulnerable children.
- Article 126(2) provides that justice shall be done to all irrespective of their social or economic status.

Principle 2: Protection of Family Property

(a) CEDAW:

- Article 15(2) which Uganda ratified without reservations, states that in civil matters women have the capacity, identical to men to conclude contracts and to administer property.
- Article 16 enjoins states parties to provide same rights for both spouses in respect of ownership, acquisition management, administration enjoyment and disposition of property whether free of charge or for valuable consideration.
- Article 16 (h) provides to spouses the same respect of ownership, acquisition management, administration enjoyment and disposition of property whether free of charge or for valuable consideration
- Article 17 provides that every person has the right to own property alone and in association with others

(b) African Charter on Human and People's Rights:
Article 14 guarantees the right to property. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with though provisions of appropriate laws'.

(c) ICCPR:

- Article 17 (1) provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence
- 17(2) every one has the right to protection of the law against such interference or attacks.

In response, the 1995 Uganda Constitution in:

- Article 26, provides for a right to own property either individually or in association with others, and where property is compulsorily acquired, there has to be fair and adequate compensation prior to the taking of the property or its acquisition
- Article 27(2) provides that no person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property
- Article 31(2) enjoins Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children.
- Article 34(7) the law shall accord special protection to orphans and other vulnerable children.

Principle 3: Institutions for family justice

(a) Convention on the Elimination of all Forms against Women (CEDAW)

- Article 2(c), which requires Uganda, "...to ensure through competent national tribunals and other public institutions the effective protection of women against any acts of discrimination."

(b) The International Covenant on Civil and Political Rights in

- Article 2(3) requires parties to ensure that any person claiming such a remedy (against human rights abuse) shall have their rights thereto determined by competent judicial, administrative or legislative authorities..." and to ensure that competent authorities shall enforce such remedies when granted.
- Article 23(4) demands courts to ensure that married women enjoy equal rights in ownership and administration of property "whether common property or property in the sole ownership of either spouse.

(c) CEDAW

Articles 2 "state parties condemn discrimination against women in all its forms , agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against woman and, to this end undertake:

- (c) to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.
- (e) to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.

In response, the 1995 Constitution in

- Article 126 (1) provides judicial powers to be exercised by the courts established under the Constitution

- Article 129 provides for the courts of Judicature as: Supreme Court, the Court of Appeal, the High Court, and subordinate courts as may be established by law including Quadhis courts for marriage, divorce, inheritance of property, and guardianship as may be prescribed by parliament.

3.3 NATIONAL LEGAL FRAMEWORK

The statutory framework for protecting family rights is vested in the Constitution (1995) which articulates the principles upon which GoU shall construct the mechanism for governance and improved personal safety, security and access to justice, Children Act 1995 and the compendium of laws that stakeholders have sought to harmonize under the Domestic Relations Bill (DRB) and the Code of Conduct for Law Enforcement Officials 34/169 (December, 1979).

The national objectives and directive principles of state policy in the Constitution include comprehensive commitments to guarantee and respect institutions which are charged by the State with the responsibility for protecting and promoting human rights, empowerment of marginalized and vulnerable groups and ensuring accountability among others.¹⁰⁰

Laws and Regulations

This review of laws and regulation is thematically done according to the key areas of focus in family justice.

(a) Succession

Despite having articulate constitutional principles there are discriminatory sections which still exist on the statute books, such as section 31(1) of the Succession Act which provides that “no wife or husband of an intestate shall take any interest in the estate of the intestate, if at the death of the intestate he or she was separated from the intestate as a member of the same household.” It implies that for spouses living in separation at the time of death of an intestate person, who is a member of the same household from taking any interest in his or her estate. Exceptions to this, is if a spouse has been sent on an approved study or if the court decides otherwise. This is discriminatory because it disregards any contribution that a spouse may have made towards the acquisition or preservation of the estate of the deceased.

Under section 270 of the Succession Act, Executors or Administrators have power to dispose of any property forming part of the estate they are administering, either wholly or in part, in such manner as they may think fit (with the exception of the residential holding in the case of the Administrator). There is no requirement under the Act that the Executor or Administrator must act in the interest of the estate or the beneficiaries. The powers provided under that Act are therefore too broad and leave room for abuse by Executors/Administrators hindering access to justice. The Administrator general is under no obligation to account to the beneficiaries of the estates, the assts under his care plus the income which come under his jurisdiction, which leaves room for abuse to the detriment of the rights of the beneficiaries.

Under the Administrator General’s Act it is an offence to interfere with the property of the deceased without the authority of the Court or Administrator General except for the preservation of the property of the deceased¹⁰¹. Despite this specific provision police has been reluctant to charge intermeddlers even when given specific instructions to do so by the office of the Administrator General, in addition if intermeddling or grabbing

¹⁰⁰ Constitution of the Republic of Uganda 1995, National Objectives & Directive Principles of State Policy

¹⁰¹ Section 11 (1) of the Administrator Generals Act

occurs in rural areas it may not come to the attention of the Kampala-based Office of the Administrator General.

In Succession matters, section 201 of the Administrator General's Act provides that administration of estate shall be granted to the person who is entitled to the greatest proportion of the estate who in most cases is the widow. In practice however this has not happened due to ignorance. In *Nyendwoha vs. Nyendwoha Robert (Civil Suit No. 1068 H.C. 1983)*, the court granted the letters of administration to the widow, who together with the minor children had the greatest percentage of the estate instead of the hostile relatives. In *Akullo vs. Lilega (Administration Cause No. 10 of 1990)*, the court relied on section 201 and held that letters of administration must be granted to the widow unless there was cause to exclude her on the ground of her personal disqualification or when she had no interest to administer the estate of her deceased husband.

The law reform process has been frustratingly slow as parliament has been unable to enact the appropriate laws which will enable the majority of people to attain family justice. If, in the event a complainant is excluded from the will, the Court is empowered after inquiry into the circumstances surrounding the exclusion to make the necessary adjustments in the will. In practice, however, the Courts often place undo weight on documents that may not even adhere to the legal requirements of a will so long as the intention of the deceased appears to be clear, thus relying on the beneficiary's supposed consent to the scheme of distribution.

According to a 2000 report of the Uganda Law Reform Commission¹⁰², the Commission concluded that: there is an apparent failure of the laws to adequately prevent the commission of offences. Some of the contributing factors identified for this failure include sheer upsurge in violence and aggression, ignorance of the law especially with respect to the age of consent to sexual intercourse and cultures that encourage early marriage. Others include the death penalty, which is viewed as excessively harsh, thus discouraging victims from reporting capital offences such as rape and defilement. Victims of such offences or their relatives fear the wrath of the relatives of the accused person in case that person is executed.

A study by the Uganda Law Reform Commission found that the practice of will writing is not known and knowledge of statutory will making is limited and other problems of ignorance illiteracy and superstition affect the prevalence of will writing. Oral wills are made by most people. In *Vincent Mitala (1980)* the oral will of a dying man was accepted as a will. This was in recognition of the customary practice of making oral wills during ailment. Many people in the communities do not write Wills as they believe that they will die there immediately there after¹⁰³. Matters of inheritance in the communities are handled by the clan elders and in a few instances the LCs who as stated earlier do not know the law as stated in the law books. Thus, it is the customary practices and traditions regarding inheritance that dominate property distribution and negatively affect the rights of women and children.

(b) Child Trafficking

Trafficking in children violates the right to life, liberty, and freedom from slavery. The children are deceived tricked or bribed and they have to deal with hazardous forms of labor including commercial sex, drug trafficking, street children, fishing, commercial agriculture, mining, sacrifice and arranged marriages¹⁰⁴. The war in the northern Uganda had between 25,000-30,000 children recruited by the Lord Resistance Army

¹⁰² A Study Report on Rape, Defilement and Other Sexual Offences

¹⁰³ Law and Advocacy for Women in Uganda Research 2006

¹⁰⁴ ECPAT: Brochure on END Child prostitution, pornography and trafficking of children for sexual purposes.

since 1990 to do different work in the struggle¹⁰⁵. There are many orphans due HIV/AIDS who are trafficked from the rural to urban centers in search of employment.

Use of the children in war is a violation of Article 4 (3) (c) of the Protocol 11 of the Geneva Convention of 1949 which relates to the protection of victims of Non-International Armed Conflicts. Also this is in violation of the Convention of the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict and the African Charter on the Rights and Welfare of the Child, and the Rome Statute of the International Criminal Court. The Constitution of Uganda enshrines the rights of children in article 34(4) protects children under the age of 16 years from social or economic exploitation. They must not be employed in hazardous work which will be harmful to their health.

There are no policies to combat child trafficking and there is no specific law to address trafficking in children except, scattered sections in the Penal Code Act (Cap 120). This is a challenge to the police which charges the offenders with offences like, abduction and kidnapping under S. 126 (a) and (b) of the Penal Code. The section is limited in scope prescribes the same punishment for unlawfully taking a person under the age of eighteen years out of custody of his or her parents or any person having lawful charge over that person regardless of intent. This section leaves children vulnerable to being sold by their guardians to traffickers or to being trafficked by their own family members.

The JLOS Institutions should be trained in investigations, prosecutions and protection of victims of trafficking. There is need to raise awareness about trafficking in human among the JLOS institutions the Labour departments, the immigration officers, local authorities and finally the communities as this is where the human trafficked are obtained from. The awareness about trafficking should specifically target the communities in the areas of conflict.

(c) Custody

Article 34 of the Constitution provides the fundamental rights of the child which include, the right to be cared for by their parents or those entitled by law to bring them up, basic education, protection by their parents, medical treatment, education, protection from social economic exploitation and protection and abuse. The parental responsibility of a child under this article falls on the parents and guardians as provided by Section 5 of the Children Act Cap 59. The Children Act obligates every member of the community to report infringement of a child's right to the local council of the area for action and also to report to the local government council any parent, person having custody of the child or guardian who fails in their duty to provide the child with necessities of life (Section 11).

Regarding customary law, children belong to the husband due to the patrilineal system. This custodial right has been affirmed by the courts in Uganda. In Nakagwa v Kiggundu 1978 HCB 139, the court considered 'the father's natural and superior right to the custody of the child against the mother. Where bride price is not returned in a customary marriage, custody of the children will be awarded to the husband. This was the case in Karuru v Nyeri Civil Appeal No. 138 of 1967 in Kenya which is of persuasive authority. Under Islam, the Koran recognizes the father's superior right to custody of the children¹⁰⁶. Consequently jurists have deduced that children should revert to the father. Interpretation of the Koran determines which parent is entitled to custody and for how long.

¹⁰⁵ Allen T, Personal communication, UNICEF/USAID research on re integration

¹⁰⁶ Asher Al Engineer, the Rights of Women in Islam (1992) at 1

The law gives chance to every parent to have access to his or her child but still this may not be possible especially where one of the parties who have custody of the child is married to another partner. *In Tendo V. Muguluma (1978) HCB 12*, the judge stated that ‘In my opinion the mother should be free to visit her children as often as she pleases and it would be improper to tie her down to definite dates and hours’ this view may be good but it may not be practicable especially where the man has already married another women, this would create domestic violence. Likewise it would not work out if the man would also be free to visit the children when their mother is the one who has custody and is already married to another man.

(d) *Adoption and Guardianship*

The distinction between guardianship and adoption is that, the adopted child becomes a member of the family for all purposes as the devolution and acquisition of property¹⁰⁷. When granted an adoption order, the adopters of the child legally become the parents of the adopted child and natural parents of the child cease to be the parents of the adopted child. Their consent must be obtained prior the award of the adoption order. The purpose of the consent is to emphasize the right of the parent over the child and his parental rights should be discarded in the interest and welfare of the child.

In adoption cases the welfare principle is applied by the courts¹⁰⁸. Applications are supported by evidence from the Social Welfare and Probation Officer; however these are not adequately facilitated and find it hard to fulfill their obligations under the Children Act. The Court has to act as ‘a wise parent’ when considering cases involving infants and when applying the welfare principle in cases where guardianship is applied for. The principle stretches beyond the material needs of the child.

Other considerations such as the mental, psychological and emotional interest of the child must be addresses¹⁰⁹. The High Court has interpreted this principle *in the matter of Sarah Mirembe (an infant) Misc Application No. 58 of 1992*, the court held that the full impact of this principle is that the court will be inclined to grant guardianship if to do so will be beneficial to the child. The Court has to bear in mind the interests of the child as it is placed in a position of a wise parent in guardianship matters. Welfare of the child does not only include the material welfare, psychological welfare more so when it has been shown that the mother is not callous and irresponsible woman.

The process of adoption is also tedious for non Ugandans at the time of making this law the three years stay of the non Uganda was considered to be in the best interest of the child for the prospective adopter to know more about the child¹¹⁰. However, the court has made some exceptions to the three year stay rule and has exercised discretion in approving legal guardianship decrees, which permit the child to emigrate for full and final adoption abroad in those cases where the applicants do not meet the requirements for adoption.

Research has revealed that some of the adopters do not complete the three years but instead bribe some Probation and Welfare Officers to make good recommendations for them. Some of the foreigners adopt these children with the aims of trafficking them or some other dubious dealings¹¹¹. The Children’s Act does not address specifically provide for jurisdiction issues in respect of adoption, fostering, adoption by relatives, the

¹⁰⁷ In the Matter of the Children Statute No. 6 of 1996 and In the Matter of Michael Lumu Adoption Cause No. 8 of 2000

¹⁰⁸ Adoption cause 4/1994- Adomati Chris vs. R Akware

¹⁰⁹ See Misc. Application No. 21 of 2003; Re K (Minors) (Children Care and Control) [1977] 1 All E.R. 577

¹¹⁰ Uganda Law Reform Commission: Reform of the Children Act cap 59 , Concept Paper October 2006

¹¹¹ Children and HIV/AIDS in Uganda by: Zai Ndugwa, Jonothan Kimoga, Regina Mutyaba 2005

adoption process and guardianship. There are many relatives who do not know about the process of adoption of children and the few who know are not provided for the law.

The gap in the law is the procedure of acquiring guardianship, thus the need to reform the law to provide for guardianship specifically. Guardianship is not described under the Children Act leaving intending applicants as guardian in doubt as to the extent of their parental role. There is no specific law under which guardianship is applied for in Uganda despite the provisions in the Constitution.

(e) Marriage

There is absence of specific provisions in the law regarding property within marriage plus the monetary and non monetary contribution towards the acquisition of property. However according to case law, property acquired during marriage is marital property if it is jointly acquired. In Sasira v. Mutegeki¹¹² it was held that although title to the property at issue was held exclusively by the defendant husband, the plaintiff wife has a contributory interest in the property and as the occupant of the property had a right to possession of the property to the exclusion of the defendant who may not alienate the property.

The direct contributions of a housewife have been taken further and settled by the Court of Appeal of Tanzania in the case of Hawa Mohammed vs. Allysefu¹¹³ where domestic services of a housewife were taken to constitute a contribution in the acquisition of matrimonial property.” The law in Uganda does not recognize partners who are cohabiting despite the presence of such unions, which may cohabit for a long time, accumulate wealth and deaths occur. Both parties contribute the accumulation of the property but all the property including separate property of the female partner is assumed to be for the male partner which is contrary to Article 26 of the Constitution¹¹⁴. The female partner will not get any property under intestacy and thereby depriving her of family property.

(f) Registration of Births and Deaths

The right of every citizen to an identity is a fundamental human right to identity and subsequent human rights available to an individual. Birth and death registration is a State's official recognition of a person's existence, enabling the right to a name, nationality and family relations. It is a passport to citizenship and participation in society, and the foundation for the realization of many other human rights integral to a child's development and well-being. Birth registration helps prevent under-age recruitment and child labour and aids the fight against trafficking and sale of children. Without registration hence proof of age, children are vulnerable to such abuses such as defilement, early marriages, recruitment into armed forces and child labour. Without birth certificates abusers cannot be pinned and sometimes they collude with parents and local leaders to perpetuate child abuse

Although Uganda has a law that requires mandatory registration of all births and deaths are registered (Birth and Death Registrations Act, CAP 309), however there is not enough incentive and sanctions to ensure compliance with this law. In addition there is no explicit policy for birth and death registration with define defined priorities and strategies. Results from UHDS, 2002 revealed that about 4% of births are registered and of these only 1% have birth certificates, with a general lack of awareness on birth and death registration. The Children's Act Cap. 590 section 72 asserts that a declaration of parentage by a court shall the effect of establishing a blood relationship of

¹¹²Civil Suit No. 0828 (Uganda High Court 1994)

¹¹³ Civil Appeal No. 9 of 1983 (unreported)

¹¹⁴ Report of National Association of Women Judges

a father and child or a mother and child and accordingly, the child shall be in the same legal position towards the father or mother as a child actually born in lawful wedlock.

The Convention on the Rights of the Child (CRC) recognizes the right of the child to be registered at birth, provisions of other international human rights instruments such as article 24 of the International Covenant on Civil and Political Rights (ICCPR), according to which “every child shall be registered immediately after birth and shall have a name”. At the regional level, the African Charter on the Rights and Welfare of the Child, article 6, recognizes that, “every child shall have the rights from his birth to a name...shall be registered immediately after birth... has the right to acquire a nationality”.

3.4 INSTITUTIONS AND PROCESSES IN ADMINISTRATION OF JUSTICE

The challenge of protection and enforcement of family justice in Uganda is often compounded by the gender-related barriers at different levels of society, lack of substantive laws and their poor administration, problems associated with enforcement of the court orders, breakdown of the formal court system in the areas of conflict, economic barriers like poverty, application of cultural and religious norms which are disadvantageous to women and the girl child by the informal structures, ignorance of the law and where to go for redress, the poor attitudes of communities where disputes occur.

Family justice can be accessed from the formal structures which include the Courts of Judicature as provided for under article 129 (1) of the Constitution, “the judicial power of Uganda shall be exercised by the Courts of Judicature...” and the legally established tribunals and the local council courts, the legal aid services which are provided by the non government organizations, and informal means such as the clans and religious leaders and family members. The vulnerable groups therefore face a lot of injustices arising out of the inaccessibility of the institutions which are mandated to administer justice and there is need to reduce the injustices that they face at the local level.

(a) Courts of Judicature: these include the Supreme Court of Uganda which is the final Court of Appeal from the decisions of the Court of Appeal and its decision binds all subordinate courts on questions of law.

(i) The Court of Appeal determines cases which involve the interpretation of the Constitution like the petitions which challenged the biased provisions in the Succession, Divorce and Criminal adultery in the Penal code. The Court is obliged to hear to hear all the petitions of this nature as soon as possible and is mandated by the Constitution to suspend any other matter pending before it in order to hear and determine these petitions. The court has been able to petitions filed very fast and the judgments are being used by the users of courts as a means to family justice particularly where there have been gender biased laws. This court is only accessible by a limited number of our population and requires hiring advocates to argue out the cases. In addition the procedure of filing the petitions is costly in that there have to more than five sets consisting of all the authorities to be relied upon plus the court documents.

(ii) High Court of Uganda: This has unlimited jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or other law. In the High Court there is the Family Division which deals with matters which include succession, adoption, divorce etc. This Court is facing a lot of back log of cases; alternative dispute resolution like reaching an amicable settlement is being encouraged as one avenue to reduce the back log.

- (iii) Family and Children's Court. This is a specialized court for the family and children. It handles cases which include complaints relating to custody for children, and maintenance and the trial of children in conflict with the law. There are difficulties regarding enforcement of the orders of court for example attachment of the salaries and sale of property in order to maintain a child as many people against whom the order is made are unemployed consequently, there is no salary to attach.

The challenges faced by the Court include: the majority of children who are granted bail do not return to court, there are no remand homes in the districts so there are no places where children can be incarcerated for capital offences by and against children take long to completed thereby affecting justice to children. Government should expedite the establishment of Grade 1 magistrate courts at every sub county level and facilitate courts in all magisterial areas to establish the Family and Children courts.

- (iv) Magistrate Courts, handle both criminal and civil cases which impact on family justice. These include, matters involving succession, divorce, adoption of children where the parties are all citizens of Uganda. Criminal cases like assault and occasioning bodily harm. These courts are more spread out in various areas in the country and are accessible to more people than the High Court.
- (v) LC Courts: It is an established fact that Local Council courts provide services to more than 80% of population¹¹⁵ and are more easily accessible, open all hours of the day, the fees charged are affordable, and the views of the local council officials directly correspond to community perceptions, their judgments are quick compared to the ones in the formal courts. The jurisdiction of the Local council Courts has been increased to handle matters concerning marriage, marital status, separation, divorce, or parentage of children by the Local Council Courts Act 2006.

The most glaring shortcoming amongst LC courts is the lack of legal knowledge and due process that is impacting on access to justice. The Uganda Law Reform Commission found the LCs "wanting in their knowledge of the law". In the execution of their duties local council courts violate human rights of the users of the courts (for example they can sanction a mob justice of alleged witches). Furthermore, the Local Councils and the clan leaders were found to routinely try criminal cases, "their lack of jurisdiction notwithstanding" thus violating the rights of the users. In cases where the officials of the LC Courts are related to the parties the decisions made are biased in some cases where they have an interest, they cause unnecessary delays in the administration of justice. Conflict of interest arises regarding judicial and administrative functions of the LC courts for instance where the Chairperson of the LC is involved in the sale of land and when disputes arises he is the one who preside over the disputes.¹¹⁶

LC court officials are not equipped to handle issues in their communities which concern persons living with or affected by HIV/AIDS. They are not remunerated, and there is interference in their work by officers at the Resident District Commissioner and the District Internal Security regarding land matters.¹¹⁷ There is limited supervision of the LC courts by the Chief Magistrates who hear appeals

¹¹⁵ Study on LCC/Legal Aid Baseline Survey at p.20

¹¹⁶ Uganda Law Reform Commission Report

¹¹⁷ Uganda Law Reform Commission Report

from the LC courts and very limited collaboration with the LC courts. LC courts refer complex land matters to land tribunals which are currently suspended.

(b) Probation Offices

They are responsible for the welfare of the children and the family in the different areas. They give advice to the users of their offices on matters regarding children and they are responsible for providing reports about the welfare of the children to be adopted in adoption cases. At the district level, the probation is charged with ensuring family justice, however in some districts, it is either nonexistent or where it exists it is understaffed.

The Probation and Social Welfare Officers are understaffed and require more resources which they do not currently have, to enable them to carry out their mandate under the Children Act like monitoring the juveniles on remand, being present in court when children are appearing in Court. The staffing and funding of the Probation officers be increased, and they should be trained in the relevant skills¹¹⁸. Their offices need to be adequately facilitated to enable them to do their work. The offices should be established in those areas of the country where they do not exist.

(c) Uganda's Directorate of Public Prosecutions

It is charged with prosecuting offenders in Court. However, understaffing, lack of resources and "interference" from Local Council's hamper efforts at prosecution. The Resident State Attorney office is understaffed and there are delays in prosecuting the cases, and leads to the complainant to settle the cases out of court. There are delays in handling the cases, gender insensitivity; of the officials and low representation of women in the institutions all prevents access to family justice.¹¹⁹

Furthermore, findings of the Law Reform Commission¹²⁰ suggest that male prosecutors are insensitive to victims and lack specialized training in sexual assault prosecutions. Magistrate courts, Family and Children's Courts and the High Court all have jurisdiction to hear cases of sexual assault.¹²¹ But again, problems of implementation exist at the judicial level. Few cases are heard by these courts because of lack of facilities, and shortages of Judges and Magistrates. Often, cases are dismissed because of "lack of sufficient evidence, lost files, and witnesses who abstain from giving evidence or just disappear."

(d) Administrator General's Office

Established under the Administrator General's Act Cap 157, and Administration of Estates (Small Estates) (Special Provisions) Act Cap 156 to administer all the estates in the country of intestate persons in order to protect the beneficiaries of the deceased, except where it has issued a letter of no objection. The Administrator General's Office is out of reach of many of the aggrieved parties some are not aware of its existence and its role in handling inheritance matters. The decentralization of the Administrator General's Office to regional Offices is still far from the reach of many people. Those who are able to reach find it very hard to retrieve the information as the system is outmoded and is in some cases corrupt¹²².

Under the Administrator General's Act it is an offence to interfere with the property of the deceased without the authority of the Court or Administrator General except for the

¹¹⁸ Effectiveness of the Juvenile Justice System: Lessons For the Future: Richard Talagwa June 26th 2007

¹¹⁹ Uganda Law Reform Commission Report

¹²⁰ Uganda Law Reform Commission Report

¹²¹ Uganda Law Reform Commission Report

¹²² A study report on the reform of the law of Domestic Relations: Uganda Law Reform Commission Publication No. 2, 2002

preservation of the property of the deceased. Section 11(1) prohibits intermeddling with the property of the deceased. Intermeddling in the estates of deceased persons by relatives or clan leaders is very common regardless of whether there is a will. Police have been reluctant to charge intermeddlers even when given specific instructions to do so by the office of the Administrator General. Therefore, despite some clear protections outlined in Ugandan law, cases of property grabbing by relatives or clansmen, and eviction of widow/orphans are rampant. In rural areas cases of property grabbing may not come to the attention of the Kampala-based Office of the Administrator General.

Under section 270 of the Succession Act, Executors or Administrators have power to dispose of any property forming part of the estate they are administering, either wholly or in part, in such manner as they may think fit (with the exception of the residential holding in the case of the Administrator). There is no requirement under the Act that the Executor or Administrator must act in the interest of the estate or the beneficiaries. The powers provided under that Act are therefore too broad and leave room for abuse by Executors/Administrators.

(e) Uganda Registration Services Bureau

Commonly referred to as the Company Registry, hosts the department of Registrar General which is mandated to ensure the registration of every birth, death, marriage and death as per the provisions of the Constitution of Uganda and the Birth and Death Registration Act Cap 309. Efforts to strengthen the URSB have been geared at ensuring that the Bureau becomes fully autonomous as required by the URSB Act Cap 309. There has been increased computerization and all key staff have been trained in computer use and basic records management. The Bureau has revised its user fees that until 2005 were inordinately low in many respects. As a result, there has been an increase in the Non Tax revenue (NTR) collected by the Bureau. Performance standards in rendering Bureau services have significantly improved as a result of improvements in URA revenue collection.

However, sine registration of vital events and civil registration is a state function and government's obligation; it cannot be made fully commercial for cost recovery. One of the major challenges of URSB is the limited funding received from budget support under the Ministry of Justice, it therefore becomes imperative to mobilise and realise bi-lateral and multi-lateral assistance through systematic development of either budget support or coordinated programmes to support the registration of births and death within a decentralized system of service delivery that is already in place.

(f) Uganda Human Rights Commission

The UHRC is the body that has been charged with the responsibility of monitoring government's policies, plans, programmes as well as laws to assess the extent to which they are human rights compliant. The UHRC produces annual reports on the human rights situation in the country. They have a department responsible for child abuse and neglect and it has already prosecuted some cases of abuse. Since 2004, the annual reports of the Commission have extensively dealt with the issues and abuses of human rights related to family and on land issues highlighting different concerns in law reform and implementation of law. The UHRC also sensitizes the community on human rights.

(g) Informal Institutions

Family matters are referred to clan and family members who will in most cases apply either the religious or customary practices which are disadvantageous to women. Elders and traditional leaders advise on the cases involving family and clan matters. Clan leaders, family elders, handle family matters concerning marriage and divorce, succession matters and distribution of the property of the dead members of the clan. In order to promote family justice, they should be taught the rudiments of human rights and

should be discouraged from relying on customs and religious beliefs which are disadvantageous to women.

3.5 INITIATIVES IN ACCESS TO FAMILY JUSTICE

The review singles out initiatives and best practice by the state or civil society intended to improve access to family justice.

Strategic Litigation

The Divorce Act and the Succession Act have been subject to strategic litigation mainly by coalitions of civil society organization focusing on the rights of women in Uganda.

(a) Divorce Act Petition

The Constitutional Court was petitioned by the Uganda Association of Women Lawyers (FIDA)¹²³:

- (i) Under article 137 of the Constitution to hear cases which are inconsistent with the Constitution.
- (ii) Under article 274 has the specific duty to bring legislation enacted before 1995 into conformity with the new Constitution.
- (iii) Under article 50(2) to consider claims of human rights violations raised by organizations on behalf of individuals or groups.

It was argued by the petitioners that the law relating to divorce and the offence of adultery was discriminatory in nature against women and therefore was contrary to the principles of equality and equality upon, during and at the dissolution of marriage as provided in:

- (i) Article 21 (1)(2), & (3) of the Constitution which states “that all persons are equal in every respect before the law, and shall enjoy the equal protection of the law and shall not be discriminated against on the basis of sex; between sexes and;
- (ii) Article 31(1) & (2) which states that men and women aged eighteen and above have the right to marry and are entitled to equal rights in marriage, during marriage and at its dissolution.

The Divorce Act provided different grounds of divorce for the wife and husband in:

- (i) Section 4, a husband petitioning for divorce could make the alleged adulterer a correspondent whereas a wife could not.
- (ii) Section 5, husband could claim damages from any person who committed adultery with his wife.
- (iii) section 21(1), costs of the proceedings can be paid by a correspondent who commits adultery with the wife of the petitioner,
- (iv) section 22, a wife can apply for alimony whereas a husband cannot,
- (v) section 23, settlement of a wife’s property is made in the favor of her husband or the children where a decree of dissolution of marriage is made on account of her adultery,
- (vi) Section 26, the court had discretion to deny only women a right to property in case of a divorce or judicial separation as a result of their adultery.

In all the sections, above it was argued that the gender inequity is apparent, in as far as what is applicable to women, not men. The ruling declared all the discriminatory sections in the Divorce Act null and void; the ruling was considered a landmark because;

- (i) The court asserted that men and women must be treated equally in determining property distribution, which is a constitutional right.

¹²³ Constitutional Petition No. 2 of 2003 : Uganda Association of Women Lawyers & others Vs the Attorney General

- (ii) Both parties especially women can obtain divorce more quickly without being burdened to prove several grounds. After this judgment Divorce in the courts is now granted on the basis of one ground, and can be granted by consent of the parties based on the pleadings filed¹²⁴. However, some Hon. Judges are interpreting the case to mean that the grounds of divorce are applicable to both men and women who wish to apply for divorce basing it on the minority judgment.¹²⁵
- (iii) The Uganda Law Reform Commission has to ensure that the impugned provisions are removed from the statute books and
- (iv) Parliament has to enact a law to operationalize the decision.

(b) *Succession Act Petition*

The Constitutional Court was petitioned by the Law and Advocacy for Women in Uganda¹²⁶:

- (i) Under article 137 of the Constitution to hear cases which are inconsistent with the Constitution.
- (ii) Under article 274 where the Court has the specific duty to bring legislation enacted before 1995 into conformity with the new Constitution.
- (iii) Under article 50(2) to consider claims of human rights violations raised by organizations on behalf of individuals or groups.

The petitioners argued that the Succession Act imposes a discriminatory scheme based on sex on all citizens who die intestate which is a contravention of the Constitution and Uganda's obligations under international law. Especially with regard to:

- (i) Article 21 on the right to equal protection of the law,
- (ii) Article 31 (3) the entitlement to equal rights at the dissolution of marriage and the right of widowers to inherit their spouse's estate and to enjoy parental rights over children
- (iii) Article 26, on the right to property
- (iv) Article 27 on the right to be free from interference with the privacy of one's home and property and
- (v) Article 33 on the right of women to equal treatment with men.

It was highlighted that section 26 and 29 of the Succession Act, and Rules 1,7,8, and 9 of the Second Schedule to the Succession Act violate the Constitution insofar as a man, in practice, assumes full ownership of the matrimonial home on the death of his wife, whereas a woman does not. Instead she receives limited rights of occupancy burdened by numerous covenants-among which is a termination of occupancy of the matrimonial home upon remarrying by evicting her from her home, while, no such penalty exists for a widower who chooses to remarry. The law denies a wife a right to housing which includes legal security of tenure and deprives her of the ability to earn a living and maintain adequate standard of living for herself and her family.

It was further argued that, the limited occupancy rights undermine a widow's ability to provide for herself and her family and impede the maintenance of a secure home environment by granting the legal heir rights to interfere with the family home. The definition of 'legal heir'¹²⁷ contained in section 2(n) (i) and (ii) prefers male ancestors to

¹²⁴ Irene Mulyagonja Kakooza: Report on Background Study for Re-Strategizing for the Enactment of an equitable family law for Uganda : Domestic Bill Coalition (2006)

¹²⁵ Report on Workshop on strategic Litigation by Law and Advocacy for Women in Uganda 2007

¹²⁶ Constitutional Petition Nos. 13/05 & 06 :Law and Advocacy for Women in Uganda Vs the Attorney General

¹²⁷ It should be noted that a "customary heir is defined as "the person recognized by rites and customs of the tribe or community of a deceased person as being the customary heir of that person" and "legal heir"

female who ultimately takes over the matrimonial home in case the widow remarries. Contribution in the property over the course of the marriage is ignored. Furthermore, the section terminates a daughter's right to occupancy upon marriage but impose no such limitation on a son's occupancy.

The petition also challenged:

- (i) Sections 43-46 of the Succession Act which grant only the father and not a mother the right to appoint a guardian for his children and if no guardian has been appointed this diminishes parental rights of widowed mothers and not widowed fathers by requiring widowed mothers to share authority over their children with guardians.
- (ii) Section 27(3) of the Succession Act gives legal recognition to customary and Islamic law *arrangements*, which in most cases, provides for distribution of property on the death of a male intestate, and grants a wife or wives with only 15% of the property accumulated jointly with their husband over the course of their marriage, while granting the widower the entirety of his and his wife's joint property. In effect the distribution scheme denies the wives property which they have contributed to during the subsistence of the marriage; it is silent on the distribution of the property of a *wife* who dies intestate. The Act only refers to surviving "wife," not "husband," "spouse", or "cohabitant" are static and discriminate against women.
- (iii) Sections 14 and 15 of the Succession Act, a woman is automatically deemed to have the domicile of her husband, while a man's domicile does not depend on his wife undermining her authority. This legal provision demonstrates the intrusive manner in which the laws inserts itself into the most private spheres of a woman's life and violates her right to dignity in contravention of Articles 33(4) and (6) of he Constitution.

All the sections referred to above and Rules 1, 7, 8 and 9 of the Schedule 2 to the Succession Act were declared null and void by Constitutional Court. These the court ruled contravened articles 20, 21, 24, 26, 31, 33 and 44 of the Constitution. In the same Petition, the Constitutional Court declared section 154¹²⁸ of the Penal Code of no legal consequence. Since the law did not penalize a married man who has sexual intercourse with an unmarried women, but penalized a married woman who had sexual intercourse with any man. The penalties for the offence upon conviction were different for a man and for a woman. The law also treated a married woman whose husband has committed adultery differently from a married woman.

Legislative Reform

(a) *The Domestic Relations Bill (DRB)*

The DRB lapsed with the seventh parliament is another effort made to get rid of the obsolete laws governing divorce and marriages, whose object is to reform and consolidate the law relating to marriage, separation, and divorce in Uganda. The Uganda Law Reform Commission prepared a draft to consolidate and replace all the family laws namely:

means the living relative nearest in degree to an intestate... a paternal ancestor shall be preferred to a maternal ancestor... a male shall be preferred to a female (Succession Act, Section 3).

¹²⁸ 154 (1) provides that any man who has sexual intercourse with any married women not being his wife commits adultery and is liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding 200 shillings and in addition the court shall order any such man on first conviction to pay the aggrieved party compensation of 600 shillings and on subsequent conviction compensation not exceeding 1200 shillings as may be so ordered. 154 (2) Any married women who has sexual intercourse with any man not being her husband commits adultery and is liable on the first conviction to a caution by court and on subsequent conviction to imprisonment for a term not exceeding 6 months.

- (i) the Customary Marriage (Registration) Cap 248,
- (ii) the Divorce Act (Cap 249) ,
- (iii) the Hindu Marriage and Divorce Act (Cap 250) ,
- (iv) the Marriage Act (Cap 251),
- (v) the Marriage and Divorce of Mohammedans Act (Cap 252) and
- (vi) the Marriage of Africans Act (Cap 253).

The DRB specially undertakes the following in relation to family justice:

- (i) defines 'Matrimonial Property' in section 65 to include the matrimonial home or homes, household property in them any property that spouses describe as such, or any jointly owned property. This overcomes ambiguity, uncertainty, misrepresentations and inconsistency that are currently in law.
- (ii) defines categories of property and interest in each i.e. property acquired before marriage, capacity to acquire property separately and jointly during marriage, the interest acquired by another through indirect contributions and the interest of parties in a polygamous union which begun to run at the time of the marriage. This proposal is an incentive for accumulation of property since each party knows what rights they have and overcomes cultural biased definitions that exclude woman from ownership.
- (iii) provides for 'co-ownership of property', recognizes the contributions whether monetary or not which a spouse makes towards improvement of property which is not matrimonial property acquired before or during marriage. Presently non-monetary contributions like labor, or maintenance are not considered, any considerations have had to rely on courts consideration.¹²⁹
- (iv) provides for matrimonial property in a polygamous marriage and the capacity of any spouse to acquire his or her own separate property during the subsistence of the marriage.
- (v) provides for non-refund of marriage gifts. Customary divorces follow the practices of customary marriages meaning that upon divorce, there may be the "refund" of the bride price. The DRB forbids the return of marriage gifts which are not by custom considered to constitute bride price, hence failing to resolve the lacuna.
- (vi) forbids widow inheritance, any body who wishes to marry his dead relative's widow should do so through the process of the recognized marriages. In recognition of the right of a widow to marry freely and can contribute to the spread of HIV/AIDS in cases where the dead husband dies of HIV/AIDS. However, marital rape is not dealt with.

(b) The Penal Code Act 2007

This law reform amended section 129 of the Penal Code Act which was biased against the boy child, in relation to defilement and introduced a new offence known as 'aggravated defilement' which seeks to punish those who defile others who are below the age of 14 years who on conviction by the High Court shall suffer death. It also sought to deal with the jurisdiction of Chief Magistrates to reduce the back log of defilement cases and compensation to the victims of defilement. In addition, mandatory testing for HIV/AIDS for all suspects of defilement cases was introduced.

(c) The Advocates (Amendment) Act 27 2002

Mandated all licensed advocates in Uganda to provide pro-bono services or make a payment in lieu. Pro- bono services means professional services of an advocate given

¹²⁹ In *Edita Nakiyingi (1978) HCB 107*, the court relied on the principle of equity and common law. In that case the woman made only contributions in the form of housework. In *Mayambala v Mayambala Divorce Case No. of 1988* (unreported) the court in reaching its decision, relied on the financial contributions made by the wife.

to the public good to indigent persons without charge. The amendment addresses the overwhelming demand for legal aid services in the country and this will increase the number of people who access justice. It should be noted that the number of licensed advocates increased yearly. This program will increase the number of people who access justice.

Other legislative reforms that directly impact on family justice include;

- (i) *The Equal Opportunities Commission Act 2007*, this was pursuant to Article 32(3) and 32(4) and other relevant articles in the Constitution to eliminate discrimination and inequalities against any individual or group of persons and to take affirmative action in favor of groups marginalized on the basis of gender, age, disability or any other reason created by history for purposes of redressing imbalances which exist against them.
- (ii) *Succession (Amendment) Bill 2003* which attempts to emulate the principles of equality of sexes in matters of Succession¹³⁰. However, the Bill still does not address some of the informal or customary practices that impede women's rights. For example, a common practice exists whereby relatives of the late husband evict the widow from the home through force or coerced submission on the pretext that such action would benefit the children. The Bill does not address the issue of parties who are cohabiting and their right to property upon the death of a party to this relationship and is silent on the powers of the testamentary guardians yet these powers are provided for the executors and administrators.
- (iii) *Draft Domestic Violence Bill, 2006*
At the international level, Uganda ranks high in the prevalence of domestic violence. The delay in passing the law of domestic relations, absence of a national policy on domestic violence, a weak legislative framework and a slow disposal rate of family causes renders considerable injustice to the claimants particularly women. By November 2005, a total number of 1645 family causes remained pending with a total of 1043 cases registered while the Administrator General had a caseload of 2372 pending cases with a total of 1616 registered cases¹³¹. Violations of family rights are often hidden within the home and community setting and include domestic violence, lack of maintenance, child neglect, denial of inheritance.
- (iv) *The Sexual Offences (Miscellaneous Amendment) Bill 2000*

Case Law

Judicial activism which is the alternative way to uphold such principles of law is yet to be wholly embraced, however, a number of cases have demonstrated the ability and role of courts have made judgments which have exhibited family justice. The example below illustrates that according to the common custom in Uganda, women do not own land but

¹³⁰ Regarding the devolution of the matrimonial home the Bill provides that the widow or widower shall be entitled to one half of the matrimonial home normally occupied by the intestate prior to his/her death including the house hold chattels, (Clause 26) and where there are more than one wife, the wives shall share equally the one half of the matrimonial home.(Clause 26(1b)). The proposal removes the usufruct rights that the law gave to widows prior the Petition to the Constitutional court. The proposed amendment also provides that a widow or widow's right to the matrimonial home shall not be affected by his or her remarriage. Hence women who lose their husbands will be able to own the matrimonial home. According to clause 30(1) a separated spouse will be able to inherit/share property which was acquired during the period of marriage prior to separation and the welfare principle shall be paramount in determining the issues where minor children are involved(Clause 202A)

¹³¹ Justice Law and Order Sector (JLOS), 2007 Strategic Investment Plan II 2006/7- 2010/11

can use land for their livelihood. Ugandan society is patrilineal and patriarchal; hence land generally belongs to men. However, women who seek redress in courts of law, it can overcome practices repugnant to the Constitution. In Muwanga vs. Kintu, Divorce Appeal No. 135 (Uganda High Ct. 1997) it was held by the court that a wife who had been in a customary marriage was entitled to matrimonial property as she had earned an interest in the property by contributing to it.

“The property to which each spouse should be entitled is that property which the parties choose to call home and which they jointly contribute to”

This departed earlier cases where a wife had to present evidence to prove actual contribution to the property (as established in English common law see Falconer v. Falconer (1969) All ER 449). The Judge was persuaded by the view taken by the Kenyan Court of Appeal in the case of Kuviutu vs. Kuviutu Civil Appeal No. 26 of 1985 (C.A.) where it was held that “a wife does contribute to the family in a thousand other ways including child bearing, looking after the family etc.” Based on this case, wives in customary marriages have their right to the matrimonial property recognized. It was held that the earlier position deprives the women of family property and the customs are inconsistent with Articles 31(1), 31(3), 32(1), 33(1) & (6) and 37 of the 1995 Constitution which provides for equality of men and women.

4. ISSUES EMERGING FROM REVIEW OF LITERATURE

4.1 SOCIO-ECONOMIC CONTEXT FOR LAND AND FAMILY JUSTICE

JLOS SIP II bears a heightened focus on the poor and marginalized groups, a direction arising from the Sector's obligation to demonstrate results to the general public to whom it is ultimately accountable. It is recognized, chronically poor people "whose livelihood are essentially land based" are especially vulnerable to shocks and have not benefited from justice services. It is evident from review of literature that the alien nature of the legal system, the public's unfamiliarity with it, the adversarial nature of the litigation process and the technical nature of the law and its procedure combine to compound the problem of accessing family and land justice.

The challenge obvious to JLOS through SIP II has to do with innovative ways of embracing the poor, in terms of;

- (a) technical access; procedures and communication
- (b) physical access: spread and distance
- (c) affordability: proportion of household incomes spent in accessing land and family justice
- (d) competence of the family and land justice systems
- (e) confidence (balancing legitimacy and legality)
- (f) policy integration and planning
- (g) special programmes for conflict areas, HIV/AIDS and gender

Poverty fundamentally disempowers individuals by constraining their capacity to protect themselves from abuse; the poor are often powerless and entangled in the deprivation trap. Poverty is pivotal in creating a feeling of helplessness about the situation. However, there is need to have more empirical evidence relating to poverty, family disorder and family injustice because;

- (i) Access to justice is fundamental to breaking the deprivation trap.
- (ii) Poverty is a root cause of many social disorders in society.
- (iii) In general, poverty leads to vulnerability of the population.
- (iv) Recourse to justice is critical in overcoming helplessness
- (v) A sense of partnership between justice seeking public and the JLOS institutions builds confidence in the system.

Even though HIV/AIDS rates in Uganda have been declining in the last decade, recent results from the HIV Sero-survey 2005 show a stagnating rate of 6.4% with a lot of regional variations (with the northern region posting the highest rates).

- (i) The challenges posed by the HIV/AIDS pandemic affect the sector at two levels; internally for its staff and persons in conflict with the law such as prison inmates, and externally in relation to the public as prospective users of the justice delivery system.
- (ii) The HIV/AIDS pandemic negatively affects the rights to property as Persons living with HIV/AIDS continue to be discriminated against in succession to property of their late spouses/parents.
- (iii) Overall response to HIV/AIDS in the legislative reform and enforcement has been slow, there is need to study more the effects of HIV on land and family distortions.

In tackling access to justice, it is sometimes important to understand the dynamics of causal relations rather than focusing only on resolution issues. Domestic disputes are linked to polygamy, extra marital affairs, and quarrels over lack of maintenance, and violence due to drinking. Similarly the death of a spouse can result into property disputes. There is need to obtain quantitative facts about the link between dynamics of causal issues within families in relation to family justice and land justice.

Access to family and land justice in conflict affected areas and for internally displaced persons requires massive investments (which are not readily available) in infrastructure to reconstruct the broken down system (legal system) and an innovative harnessing of informal systems and grassroots institutions in a manner that promotes gender consideration and respects human rights. Though various actors in the formal and informal institutions charged with delivery of land and family justice are involved in processes that deliver the above aspirations, there is a need to enhance coordination, synergy and collaboration.

A JLOS study on Gender and access to Justice (2001) revealed that gender related barriers in accessing justice occur at different levels of substantive laws, the administration of law and the community where disputes occur¹³². These barriers are interlinked and should be responded to comprehensively. Uganda being a patriarchal society presents various challenges for equity and equality of the sexes, however biases aggravate and in some cases increase the hurdles that women must overcome in order to access justice. There is need therefore to explore the specific ways in which access to family and land justice can address gender-specific constraints in an innovative manner.

Corruption is a problem within the justice system and has adverse effects in accessing and efficiency of justice institutions. Survey reports indicate that the perception of corruption and real level of corruption in public offices in Uganda is still high. JLOS has a crucial responsibility in the fight against corruption to ensure that the problem is stemmed within justice delivery agencies, and to prosecute and punish perpetrators so that it does not continue with impunity. The failings in the land registration system have been identified as a significant barrier to investment and the development, a number of reforms are being undertaken whose capacity and ability to stem the practice need to be investigated.

The Land Sector Strategic Plan (LSSP) 2001-2010 focuses on protection of land rights of the marginalized groups and in particular the women and poor, improved access to land and tenure security. One of the priority areas under the LSSP is the rehabilitation and modernization of the land registry and implementation of the Land Information System to improve tenure security and facilitate land transactions in Uganda. Improvement of access to justice/dispute resolution is one other key priority under the LSSP. Under Pillar 2 of the PEAP on Enhancing Productivity and Competitiveness, the focus of land reforms is geared to clarifying land rights and strengthening rights of the poor.

The Strategic Investment Plan II (SIP II) of JLOS states that the key challenges to land justice in Uganda can be grouped under two general categories of (i) land administration and registration, and (ii) land dispute resolution. Under SIP II, JLOS sought to address issues of land justice through the Land Registry by endeavoring to strengthen its capacity for land registration and titling. This component will now be addressed directly under the LSSP (funded by the PSCP II) while JLOS in coordination with other stakeholders will focus on other key challenges including:

- (i) Multiplicity of dispute settlement forums/methods, which leads to “forum shopping”, delays in settlement of disputes and creates a backlog. Dispute forums include LCCs, Land Tribunals, Courts, informal dispute mechanisms e.g. clan elders, legal aid service providers, and the police. This also highlights issues of mandate, capacity, coordination, monitoring and supervision of land dispute settlement institutions.

¹³² Justice Law and Order Sector (JLOS), 2007 Strategic Investment Plan II 2006/7- 2010/11

- (ii) The rationale and efficacy of the Land Tribunals whose modus operandi of circuiting contributed to delays in settlement of disputes and increased case backlog.
- (iii) Low levels of land rights awareness among marginalized groups e.g. the Batwa of Western Uganda, Refugees, Internally Displaced Persons in conflict and post conflict affected areas of Northern and Northeastern Uganda.
- (iv) Protecting land rights in conflict affected areas of Karamoja, Northern and North-eastern Uganda.
- (v) Enforcing gender and land rights - "family land ownership and consent" clauses, and succession/inheritance rights especially for orphans and widows.
- (vi) Harmonization of all land laws and contribution to the emerging National Land Policy.

4.2 LAND JUSTICE

(a) *Legal Framework*

The main gaps in the legal framework for land justice are in regards to gender, customary institutions and compensation. The Land Act does not provide a sufficient framework by which to address these issues that have significant impact on land conflicts. One of the major sources of disputes is the existing landlord tenant relationship as enacted by the Land Act. The current provisions of the Land Act do not effectively resolve the land use deadlock leading to mass evictions. There is no clear legal framework that deals with compensation to lawful occupants and *bonafide* occupants. The Land Act does not address the issue of compensation and mutual agreement between registered landowners and occupants have failed leading to mass evictions. Additionally, the Land Act does not define the terms of compensation. The Land Acquisition Act, 1965, which is the principal guide for compensation is outdated and is inconsistent with provisions in the 1995 Constitution.

Secondly, land laws are not gender sensitive, though they are not discriminatory they inherently lead to discriminatory practices since they do not take into account the gendered environment and unequal gendered power dynamics under which land conflicts arise. One of the issues to contend with is the implementation of law in socio-cultural environments that are discriminatory towards women and the fact that community based resolution mechanisms themselves can be gender biased. The land laws do not adequately address this issue of power differentials and discrimination that occurs at the household as well institutional level. This is an important area of reform as women and children are the most vulnerable groups in cases of land conflict.

Thirdly, the Land Act does specifically recognize indigenous mechanisms of dispute processing or customary law as a normative framework for dispute resolution. There is a need to create differentiated frameworks by which to deal with land disputes held over land in customary tenure and those held in other regimes. Though there have been laws such as article 243 of the Constitution and the Land Act Cap 227 that established land tribunals to tackle the issue of customary institutions, they have not been able to fulfill their mandates.

(b) *Institutional Framework*

The Land Registry, which is one, the main components of Uganda's Land Administration system and a vital component in the prevention of many types of land disputes is rife with corruption and poor physical infrastructure. There are many instances of fraudulent titles being issued and the rules that govern the registry and disorganized and unclear. Additionally, the registry has a dilapidated system of record keeping leading losses of larger proportions of data. There is a great need for the computerization of record keeping, land delivery, adjudication, demarcation, registration, and cadastral mapping

procedures. Poor record keeping is endemic within land administration and justice institutions.

Many of the land administration institutions are weak or not functioning. Land Committees that are to be responsible for recording land boundaries on customary land and recording transactions of in certificates in occupancy at the local level have largely not been formed due to financial constraints. There is also a lack of knowledge on the part of the sub county chiefs that are supposed to perform the role of recorder to the level that they are not even aware of this particular responsibility. District Land Boards are also rare and District Land Offices that are supposed to support them are weak.

LCCs are the institutions that mainly deal with land conflicts but are often going beyond their legal mandates when dealing with land conflicts. LCC2 and LCC3 are the courts that are supposed to deal with land conflict but due to a lack of effective mechanisms it is the LCC1 that deals with land conflicts but LCC1 does not have the legal authority to do so. The surveys have found that people trust the LCCs as they are seen as accessible, fair, and uncomplicated. However, LCCs are far from perfect institutions and have problems with exploitation and nepotism. Vulnerable groups such as women and children are particularly prone to exploitation by the LCCs. They need gender sensitization as well as education campaigns on human rights.

Legal aid services are very poor and in dire need of reorganization. Legal aid providers are often not visible to communities and people often do not know how to access them. Additionally, the cost of services is often too high and legal aid providers have almost no enforcement mechanisms when it comes to issues of consensual resolution. There is also redundancy within the land dispute resolution institutions creating confusion over where to go for resources and help. One of the main institutions created in order to simplify procedures and make land justice more accessible has failed. Land Tribunals were created to provide an alternative to formal court proceedings but at the moment they have been shutdown.

(c) Additional Recommendations

The link between land justice and land administration system and institutions can further be articulated by examining the processes of recording and disseminating information about the ownership, value and use of land and its associated resources. Such processes include the determination (sometimes known as the “adjudication”) of rights and other attributes of the land, the survey and description of the land plots and their boundaries, their detailed documentation and registration and the provision of relevant information in support of land markets.

Lack of access to land and inefficient or corrupt systems of land administration have a negative impact on a country’s investment climate and also affect the most vulnerable groups of population. Well-functioning land institutions reducing the cost of accessing land and providing land tenure security facilitate the credits, contributing to the development of financial systems. If there is no functioning land administration, the land as the most important asset cannot be utilized by others than those who have power to enforce their will outside ordinary legal means. Transparent and efficient land administration system providing basic public services at an affordable cost for all groups of society not only facilitates the development of business but also contributes to the protection of the property rights of most vulnerable groups of society and increases food security and social peace. However, cumbersome and non-transparent procedures of land registration and corrupt practices of land administration can have opposite effects.

Further, land delivery, adjudication, demarcation, registration and record keeping, and survey and cadastral mapping procedures and processes are operated without the

benefit of computerization. In addition, most land rights administration services are spread over several departments and in regional and district offices. These malfunctions have tended to impede the development of the land sector and those other sectors with which it has intimate linkages. In particular, they have contributed to severe land right insecurity especially in the urban areas and the areas under freehold or mailo tenure, as a result, inter-alia, of lack of property record keeping, persistent inaccuracies in land registry information, and general mistrust of the land rights administration system. The land rights administration system. The land rights administration framework therefore needs urgent reform¹³³.

Article 243 of the Constitution establishes land tribunal as a decentralized system of land dispute resolution. The Land Act Cap 227 established an elaborate structure of tribunals (implemented under a circuiting model). The Act also provides for LC Courts and for the appointment of adhoc mediators in appropriate circumstances to assist the tribunals in resolving disputes. No specific recognition is given under the Act to indigenous mechanisms of dispute processing or customary law as a normative framework for the processing of disputes under customary land tenure. This has created overlaps and conflicts in the processing of land disputes. There is need therefore to restructure the land disputes management system in a manner that differentiates between disputes over land held under customary tenure and those held under other tenure regimes.

There is a multiplicity of land dispute resolution¹³⁴ fora which sometimes leads to forum shopping. There is a multiplicity of systems and institutions working in parallel. Uganda operates both the formal system as well as the informal system. It is also common for dispute resolution to be undertaken by the President's Officer (Director for Land Affairs), and the offices of Resident District Commissioners. The overlaps in dispute resolution institutions have resulted into confusion and fora shopping by aggrieved parties, without a clear hierarchy. The operations of tribunals have since been suspended by the judiciary, citing limited resources.

To crown it all, the state institutions that deal with land dispute resolution are no functioning as prescribed, nor are their duties being carried out by anyone else. The LC2 Courts and LC3 Courts have not been equipped to deal with land disputes. This means that the only recourse for land disputes is the LCI who has no legal authority to decide land matters (as the court of first instance in land matters is by law the LC2 Court) and no training to help him/her do so. The land disputes are on the increase and yet there is lack of or no capacity at all in the institutions charged with the adjudication and settlement of land disputes. These disputes often lead to high costs, deter investments and are a drain on resources of poor households and the economy. Land disputes have also resulted in public disorder and mob violence, leading to loss of lives especially in districts like Kibaale.

4.3 FAMILY JUSTICE

(a) Legal Framework

The legal framework provides equality in marriage and protection of women's and child's rights. However, the implementation of the legal framework is lacking and many discriminatory customary and traditional practices continue. Courts have not been very

¹³³ Drafting the National Land Policy, Working Draft 3, Ministry of Lands, Housing & Urban Development, 2007

¹³⁴ According to the LCCs/Legal Aid Baseline Survey (2006), the mechanisms for access to justice in Uganda include the formal justice system, the informal system with the LCCs, and the non-Government system involving legal aid service provision. The LCCs operate in 953 sub-counties, 5225 parishes and 44,402 villages

active in aligning laws to the Constitution. The Shadow Report of Uganda's First Periodic State Report to the African Commission on Human and People's Rights finds that courts have not been very active in applying article 274 of the Constitution where the laws are discriminatory. There are also low levels of judicial activism to uphold the principles enshrined in international conventions and the 1995 Constitution.

Secondly, some laws are obsolete or inadequate in addressing some of the modern tensions that arising. The report titled Adequacy of the Existing Legal and Policy Framework in Uganda with regard to HIV/AIDS Epidemic finds that there is continued conflict between customary and modern law as well as modern law and Islamic Law. There are three areas where existing law is lacking: Marriage, Child Rights and Child Trafficking. Marriage laws do not address the issue of co-habiting despite the presence of such unions that are times long term and upon death or separation lead to confusion and conflict over entitlement over accumulated wealth. The Children's Act does not address specifically provide for jurisdiction issues in respect of adoption, fostering, adoption by relatives, the adoption process and guardianship. There are many relatives who do not know about the process of adoption of children and the few who know are not provided for the law. Lastly, in terms of child trafficking there are no policies to combat trafficking, and there is no specific law to address trafficking of children except, scattered section in the Penal Code Act (Cap 120) that is now obsolete.

A number of laws under the compendium of family laws need to be reformed so that they are in conformity with the various principles that upheld justice in the 1995 Constitution. Most importantly previous studies have found that the Succession Act has been discriminatory towards women and children, particularly female children. The study Inheritance Law in Uganda: Plight of Widows and Children finds that the Succession Act dispossess the widow of her house and rights in other properties, separates mother and child, favors sons over daughters in distribution of property and prevents widows from managing the disposition of her husband's estate and permits relatives to disregard a widow's rights. The Shadow Report of Uganda's First Periodic State Report to the African Commission on Human and People's Rights also finds that the Succession is discriminatory to women.

However, the Report on Intestate Succession finds that the Succession Act's current provisions are appropriate; nonetheless the report does find that on the ground there is widespread gender discrimination in property inheritance. The amendment of the Succession Act is of particular importance as many studies have found that problems stemming from inheritance are of a major concern for particularly vulnerable groups of widows and children. The study titled Inheritance Law in Uganda: Plight of Widows and Children found that exploitative practices dominate inheritance matters in Uganda. Cultural and religious norms are used to strip widows and female children of their property including land.

The Report on Intestate Succession finds that in reality there is not much legal protection for the rights of widows to inherit property. Furthermore, the report finds that the type of legacy a child receives is dependent on age, sex or marital status of the parents and varies from community to community depending on customary practices. The majority of respondents in this survey stated that their domicile is mainly determined by custom. The plight of widows and children, particularly girls, is often compounded by the fact that majority of Ugandans don't write wills and thus matters relating to Succession are handled as intestate under customary practices and traditions. Another study, Women's Access to Justice in Conflict finds that IDP widows returning to their homes are denied the right to access and use their land because of cultural practices.

There are also gaps in the legal framework with respect to areas such as early marriage; the rights of children affected by armed conflict; juvenile justice; property inheritance and gender based violence.

Another major issue is that the institutional structures needed to ensure that the laws are implemented are often weak or even non-existent. For example, the law on child labour is progressive but over 2 million Ugandan children are currently in employment. The 1995 Constitution of Uganda provides that “*The Law shall accord special protection to orphans and other vulnerable children.*” No law was enacted to address this provision, and there are no legal definitions of what constitutes an “orphan” or a “vulnerable child.” Although Uganda has a law that requires mandatory registration of all births and deaths are registered (Birth and Death Registrations Act, CAP 309), however there is not enough incentive and sanctions to ensure compliance with this law. In addition there is no explicit policy for birth and death registration with define defined priorities and strategies. However, findings from literature stress the need for law to more adequately take into account, the norms on the ground that hinder the realization of many rights for women and children.

(b) Institutional Framework

The institutional framework is in need of strong capacity building in knowledge and physical sectors. As the discussion of legal framework has highlighted one of the major challenges of the law is to tackle existing norms in traditional and religious culture that are seen in opposition to formal law. Justice institutions need to not only externally but also internally tackle discriminatory norms and traditions. Additionally, the physical infrastructure as well as the accessibility to courts and other justice institutions needs to be improved.

Lack of awareness of the rights and the law is one of the major challenges faced by the poor and vulnerable groups to access justice¹³⁵ they are unable to use the available law to access Justice. Additionally, women and children have significant economic and social barriers in accessing justice. *Women’s Access to Justice in Conflict* finds that women fear to admit publicly to have suffered violence, particularly if the form of violence is culturally accepted such as marital rape or child marriage. Additionally, the study found that there were barriers posed by the attitudes of police and religious leaders who interpret religious scriptures in favor of men. *Inheritance Law in Uganda: Plight of Widows and Children* finds that women have virtually no voice or freedom choice, impacting their ability to access justice. For example, *Women’s Access to Justice in Conflict* finds that men do not perceive violence against women as a violation national laws or women’s rights. These findings once again highlight the tension between law and normative cultural practices that hinder women and children’s ability to access justice.

The *Joint Survey on Local Council Courts and Legal Aid Services in Uganda Report* finds that local councils lack the relevant knowledge in human rights and the law leading to violation of rights of users. The *Shadow Report of Uganda’s First Periodic State Report to the African Commission on Human and People’s Rights* finds that Family and Children Courts are not adequately facilitated and local councils also lack knowledge on human rights. There is a need for improved legal education and sensitization of LCCs and of family and children courts.

The issue of gender sensitization poses challenges to the external and internal workings of justice system institutions. *Women’s Access to Justice in Conflict* finds that there were barriers to accessing justice posed by the attitudes of police and religious leaders

¹³⁵ Report on Joint Survey on Local Council Courts and Legal Aid Services in Uganda July 2006

who interpret religious scriptures in favor of men. This study also found that LCCs were often biased against women as men often dominate them.

The Administrator General's Office is out of reach of many of the aggrieved parties some are not aware of its existence and its role in handling inheritance matters. The powers provided under that Act are therefore too broad and leave room for abuse by Executors/Administrators. Some of the challenges include long wait by users to have their matters solved, outmoded ways of doing work in these offices, the decentralization process has been slow, and the Administrator General's office is not accountable to the beneficiaries where it administers the estate.

Courts of Judicature: This court is only accessible by a limited number of our population and requires hiring advocates to argue out the cases. In addition the procedure of filing the petitions is costly in that there have to more than five sets consisting of all the authorities to be relied upon plus the court documents. Courts are seen as adversarial and not well suited for family conflict resolution; informal institutions are often accessed for family conflict resolution. Additionally, Court procedures especially swearing an oath and cross-examination are intimidating to victims. Children courts are not well facilitated and are non-existent in some areas in the country; the courts are under staffed, and lack equipment like computers¹³⁶.

"Family law is a low priority in the courts," and it remains today the poor cousin in the justice system. Criminal justice, with its public safety issues, easily attracts the interest of lawmakers and voters. Commercial and personal injury cases have repeat users including insurers, financial institutions and corporations that can press for reform. There is no such natural lobby group for family justice reform, no urgent claim on public attention and probably little political payoff to be earned. Still, it is the right thing to do.

(c) Additional Recommendations

The main recommendations that emerge from previous studies are to the need for sensitization campaigns of women's rights, economic empowerment of women, sensitization and education campaigns of laws and the constitution, amending the Succession Act and capacity building of LCs and legal aid provision.

In terms of inheritance rights the *Report on Intestate Succession* recommends that widows should be enabled to retain final decision-making power on what is best for home and children and that women should be give full rights to occupy matrimonial home and that even upon remarriage widows should continue to have the right to occupy the matrimonial home. The report also states that women should have the right to bequeath their property upon death. Many of the reports also state the need to educate women and children of their rights in order to address issues of inheritance.

In terms of improving the justice sector the *Joint Survey on Local Council Courts and Legal Aid Services in Uganda Report* and the report *Women's Access to Justice* recommends that LCS need to be educated about human rights and undergo gender sensitization campaigns. On this note they also recommend that more women should be within the LCs. Additionally, the Joint Survey also recommends employing and utilizing mediation methods, as mediation is commonly used tool by the people to address family conflict. The study also recommends the adoption of a National Policy on Legal Aid Services Provision and the committing of resources to enable partnerships with Civil Society Organizations in the provision of legal aid. The *Adequacy of the Existing Legal and Policy Framework in Uganda with regard to HIV/AIDS Epidemic* report recommends that the Administrator General's office should be decentralized and

¹³⁶ Shadow Report of Uganda's first periodic report to the African Commission on human rights, 2006

there should be a simplification of procedures in applying for probate or letters of administration, which will reduce the need to engage lawyers. It also recommends enforcing and tightening the laws governing executors/administrators. Additionally, there are recommendation to strengthen the Family Protection Unit and Police. In terms of the Succession Act, studies recommend amending the Act so that is more gender sensitive.

Thirdly, there needs to be greater public investment in mediation and other services, and a requirement that nearly all families try these services before resorting to litigation. Access to justice by disadvantaged people may require both formal and traditional systems; the way they enrich each other may vary in each context. Formal systems may sometimes need to be “in-formalized” to become user-friendly, while in certain circumstances, traditional systems need to be formally recognized and set under the oversight of the courts to ensure fair and impartial justice.

Fourthly, court procedures need to be simplified in order to provide better access to courts. Filing such petitions is costly and often difficult for lay people to do. Under article 247 of the Constitution, Parliament must establish an efficient, fair and expeditious machinery for the administration and management of the estates of deceased persons and must ensure that the services of the department or organization established for the purpose are decentralized and accessible to all persons who may reasonably require those services and that the interests of all beneficiaries are adequately protected.

VOLUME 2: FIELD SURVEY FINDINGS

1. INTRODUCTION

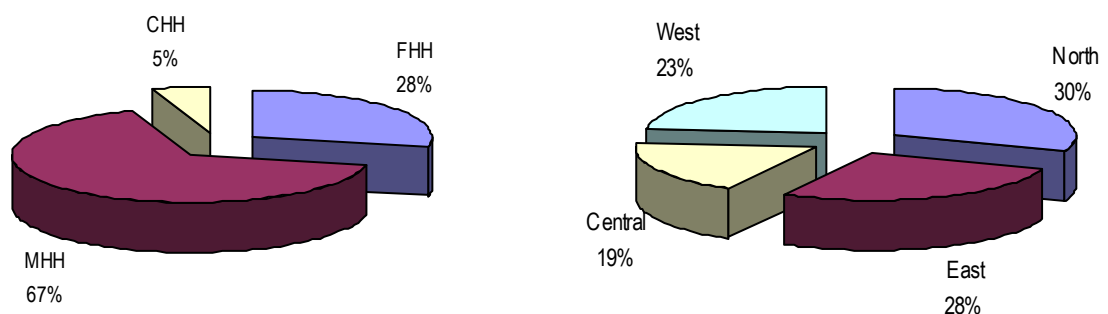
This volume of the report presents the findings of the field survey conducted in 18 districts of Uganda, in two chapters for family and land justice respectively. A total of 3,574 households were included in the survey (since in every household only one interview was undertaken). This presents a return rate of 84% given that a target (sample) of 4,268 households had been set in 20 districts. Distribution of the returns shows that 2,307 (65%) were rural while 1,260 (35%) were urban; 1,975 (55%) were male and 1,598 (45%) were female.

Figure 15: Household Composition:

Household strata	Each District
Total number of Households	214
Where husband and wife must be interviewed	56
Where widows are household heads and must be interviewed	28
Where separated/ divorced women are heads and must be interviewed	28
Any Other households	102

The distribution of the sample by household category and regions is shown in Figure 14 below.

Figure 16a: Distribution of Respondents by Region and Household Category



In terms of socio demographic characteristics male respondents were on average (median) 38 years while females were 36; while male respondents claimed to have 5 children, female respondents claimed they had 4 children on average; similarly, female respondents attested to smaller household sizes (6 persons) compared to their male counterparts (7 persons) as shown in Table 15 below.

Table 16b: Distribution of Respondents by Socio-Demographic Characteristics

			Maximum	Minimum	Mean	Median
Sex of Respondent	Male	Age of Respondent	90	16	39	38
		Number of children the Respondent has	28	1	5	5
		Times Respondent has been Married	12	1	1	1
		Household Size	32	1	7	7
	Female	Age of Respondent	86	16	38	36
		Number of children the Respondent has	18	1	5	4
		Times Respondent has been Married	12	1	1	1
		Household Size	25	1	6	6

With regard to education levels; more females attested to never being to school (29%) compared to males (16%) while more males attested to secondary education than females as shown in the distribution below by rural and urban dimensions.

Table 17: Distribution of Respondents by Education Level

Highest Level of Education	Location of Household											
	Rural						Urban				Total	
	Male		Female		Male		Female		Male	Female		
	n	Col%	n	Col%	n	Col%	n	Col%	n	Col%	n	Col%
Never Been to School	251	19.5	332	32.7	68	10.1	133	22.9	319	16.3	465	29.1
Lower Primary (P.1-P.4)	261	20.3	223	22.0	73	10.8	86	14.8	334	17.0	309	19.4
Upper Primary (P.5-P.6)	323	25.1	233	23.0	123	18.2	125	21.5	446	22.8	358	22.4
Tertiary	231	18.0	127	12.5	145	21.5	117	20.1	376	19.2	244	15.3
Secondary (O-level)	102	7.9	47	4.6	113	16.8	61	10.5	215	11.0	108	6.8
Secondary (A-level)	118	9.2	52	5.1	152	22.6	60	10.3	270	13.8	112	7.0
Total	1286	100.0	1014	100.0	674	100.0	582	100.0	1960	100.0	1596	100.0

The average household size is 7; 5 in CHHs, 7 in MHHs, and 6 in FHHs. The main source of income across households is agriculture with 43.7% of respondents stating that it is the main source of income.

Table 18: Approximate Income per HH

Approximate Income Per Month	Category of Household			Group Total
	FHH	MHH	CHH	
Mean	72422	93239	46708	84738
Median	35000	50000	30000	40000
Percentile 25	15000	20000	15000	20000

The average median income per month per household was 40,000/=. Within FHHs and CHHs petty trading is also a significant source of income at 22.1% and 19.5% respectively. 25.1 % of respondents have never been to school, 23.8% have been up to upper primary, and 17.2% have been up to tertiary. Smaller percentages of FHHs and CHHs have had education above upper primary than MHHs.

The most common type of marriage was customary at 66.1%. 28.4% of respondents stated that their relationships are multiple partnered with little differentiation between FHHs and MHHs. However, 100% CHHs, which had 16 responses to this question, stated that they were not in multiple partnered relationships. Respondents on average have 5 children, though in CHHs the average is 1 child. 80.4% of respondents stated that all of the children of the respondent belong to the current partner. The respondents on average have been married once.

Table 19: Types of Marriage

		Category of Household						Group Total	
		FHH		MHH		CHH		n	Col %
		n	Col %	n	Col %	n	Col %		
Type of Marriage Respondent is in	Christian	38	17.5	256	20.8	1	14.3	295	20.2
	Islamic	29	13.4	144	11.7	2	28.6	175	12.0
	Customary	148	68.2	811	65.8	4	57.1	963	66.1
	Civil	2	.9	14	1.1			16	1.1
	Others			8	.6			8	.5
Group Total		217	100.0	1233	100.0	7	100.0	1457	100.0
Married/Cohabiting:	Whether Yes	95	30.7	394	28.2			489	28.4
Relationship is Multiple Partnered	No	214	69.3	1001	71.8	16	100.0	1231	71.6
Group Total		309	100.0	1395	100.0	16	100.0	1720	100.0

Within marriages that are polygamous, 53.7% of respondents stated that each wife has her own piece of land with little variation in MHHs and FHHs. Additionally, within polygamous marriages, 72.1% of respondents stated that wives stay in separate homes with a higher proportion of MHHs (74.1%) stating so than FHHs (65.4%).

Focus group discussions were mobilized with the help of local council leaders in groups of about 12 including both women and men. Under prison conditions, the Officer in Charge would first give authorization and these were met in groups supervised by the prison wardens. In schools the head teachers were responsible for the mobilization and secondary schools were used. In these senior 2 and 3 students were engaged usually in a group of about 15 under class room conditions.

Table 20: Focus Group Discussions Respondents

CATEGORY OF RESPONDENTS	RURAL	URBAN	TOTAL
Traditional Authority, Religious leaders, Opinion Leaders	45	36	81
Local Councils I, II, III	46	40	80
Children	24	10	34
Convicts	8	6	14
TOTAL	117	92	209

Two focus group discussions were carried out in every district, one in the rural and one in the urban site selected

For key informant interviews to be undertaken, a letter of introduction of the team taken to CAO; the CAO would originate another letter to persons and officers within the district to accord the team assistance either by way of identifying suitable survey areas, key informant interview or participation in Focus Group Discussions. This Identification of KI, sampling frame developed prior to field work. This sampling frame alternated Key informants by adjacent district to enhance variety of information and ensure non duplication of similar information sources in the same region. These were essentially person to person interviews administrated using a guide with discussion themes. Respondents so far met are detailed in the table below;

Table 21: Key Informant Interviews Respondents

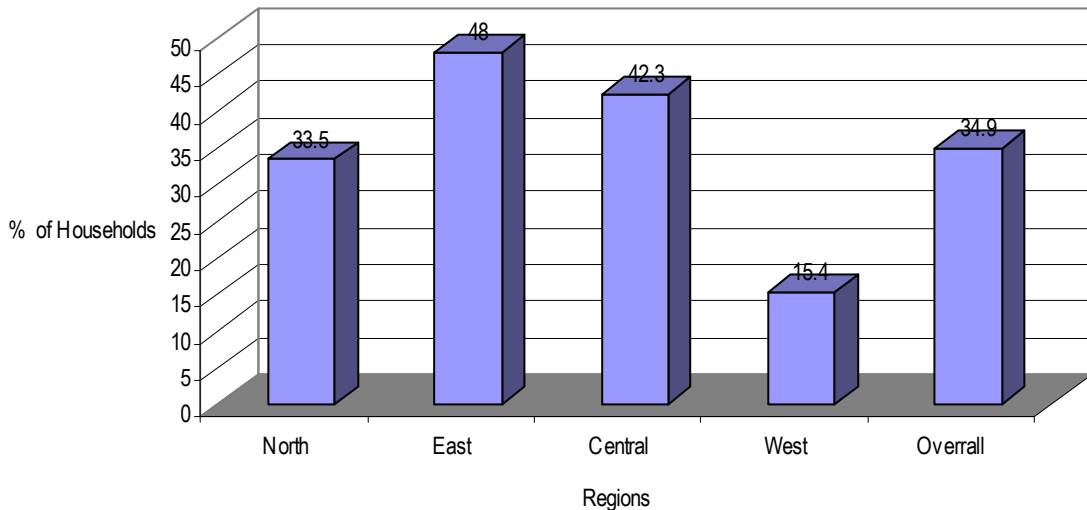
CATEGORY OF RESPONDENTS	MALE	FEMALE	TOTAL
Resident District Commissioner	8	0	8
Chief Administrative Officers	8	0	8
Community Development Officer	4	1	5
Probation Officers	3	2	5
Land Officers	4	1	5
Uganda Police Family Desk / Child Protection Unit	6	0	6
Legal Services CBO / NGO	2	0	2
Chief Magistrate	1	0	1
Magistrate Grade 1	2	0	2
Resident State Attorneys	3	0	3
Regional Offices (JLOS)	1	0	1
Officer in Charge Prisons	1	1	2
National Level KIs	17	5	22
Totals	56	10	86

2. LAND JUSTICE

2.1 NATURE AND OCCURRENCE OF LAND CONFLICTS

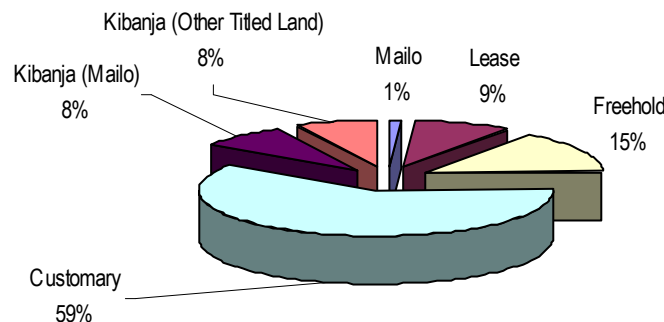
The known occurrence of land conflicts at sub county, parish and village/ cell level was one of the key considerations in choosing survey communities irrespective of whether this knowledge was anecdotal or empirical. According results of the survey, the prevalence of land conflicts was 34.9% amongst households in the sampled communities. This was highest in the east (48%) and lowest in the west (15.4%). The prevalence was slightly higher amongst rural households (36%) compared to rural households (33%).

Figure 22: Prevalence of Land Conflicts by Region



Child headed Households reported a comparatively higher prevalence of land conflicts (41.3%), which is a manifestation of the underlying social and economic vulnerability in this category of households. The other households, FHH and MHH exhibited prevalence levels of 34.8% and 34.4% respectively while analysis on the basis of gender showed that more male respondents (36.1%) reported experience of land conflicts compared to their female counterparts (33.4%). Further analysis to understand the type of land on which most conflicts were experienced shows customary tenure in the lead with 59% followed by Freehold (15%) and Kibanja either on Mailo land (8%) or other titled land (8%).

Figure 23: Overall National Distribution of Land Conflicts by Tenure



Analysis of conflict distribution within specific tenures shows that in the central region Kibanja on Mailo land has the highest prevalence of land conflicts rated at 30% while in

all the other regions customary tenure is most conflict prone accounting for 60% of conflicts as shown in Table 3.3.

Table 24: Distribution of Land Conflicts by Tenure and Region

Type Land with Conflict	Regions				Total
	North	East	Central	West	
	Col%	Col%	Col%	Col%	
Titled-Mailo			3.7		1
Titled-Lease	3.9	6	15.8	17	9.1
Titled-Freehold	10.6	11	20.5	23.2	14.6
Not Titled- Customary	83.3	77	15.8	47.3	59.8
Kibanja on Mailo			30.5	0	8
Kibanja on other Titled Land	2.3	6	13.8	12.5	7.6
Total	100	100	100	100	100

Overall the most commonly cited type of land conflict experienced by the households surveyed is 'boundary discrepancies' rated at 32.1% followed by disputed land ownership (18.8%) and inheritance and succession wrangles (15.5%) and illegal occupation rated at 12.3%. The significance of various conflicts by region is shown in Table 3.4.

Figure 25: Types of Land Conflicts by Region

Analysis of Multiple Responses		Regions				
		North	East	Central	West	Total
		Col%	Col%	Col%	Col%	Col%
Land Conflicts Experienced by Households	Boundary Discrepancies	30.0	37.3	25.6	33.6	32.1
	Inheritance/ Succession	11.8	16.5	18.1	18.4	15.5
	Land Ownership	22.5	14.7	21.4	16.1	18.8
	Illegal Occupation	12.2	11.5	12.0	15.2	12.3
	Trespass	17.0	7.6	9.3	12.9	11.7
	Fraudulent Land Transaction	6.4	11.3	13.0	3.7	9.0
	Others	.2	1.1	.6	.0	.5
	Total	100.0	100.0	100.0	100.0	100.0

The most commonly cited cause of land conflict overall was 'encroachment' at 29.5%, 'removal of boundary markers' at 25.9% and 'absence of proof of ownership' at 20.2%. Once again the distribution of cause of conflict across varied across regions. Within the northern region, the most commonly cited cause of land conflicts were 'encroachment' at 32.9%, followed by 'absence of proof of ownership' at 22.6%. In the eastern region, the most commonly cited two causes were removal of 'removal of boundary markers' at 31.3%, followed by 'encroachment' at 26.5% and 'absence of proof of ownership' at 15.8%. In the central region, apart from encroachment the other leading causes of land conflicts were removal of boundary markers (20.2%) and absence of proof of ownership (28.6%) while in the western region removal of boundary markers (30.5%) is the leading cause followed by encroachment (28.1%) and absence of a will (15.3%) as shown in Table 3.5.

Table 26: Causes of Land Conflicts

Causes of Conflict Situations on Land	Regions									
	North		East		Central		West		Total	
	n	Col%	N	Col%	n	Col%	n	Col%	n	Col%
Divorce/ Separation	6	1.2	8	1.4	3	1.0	3	1.5	20	1.3
Absence of a Will	63	12.7	75	13.3	31	10.4	31	15.3	200	12.8
Removal of Boundary Markers	106	21.4	177	31.3	60	20.2	62	30.5	405	25.9
Absence of Proof of Ownership	112	22.6	89	15.8	85	28.6	30	14.8	316	20.2
Encroachment	163	32.9	150	26.5	91	30.6	57	28.1	461	29.5
Death of a Spouse	41	8.3	54	9.6	27	9.1	18	8.9	140	9.0
Others	5	1.0	12	2.1	0	.0	2	1.0	19	1.2
Total	496	100.0	565	100.0	297	100.0	203	100.0	1561	100.0

The 'neighbor/ non related community member' is the most commonly cited other party involved in land conflict at 50.6% followed by 'natal relative' at 19.8%. Within regions these two are still the most significant actors in land conflicts. This is in tandem with the most prevalent typology of boundary discrepancies where neighbors are in disagreement and/ or persons belonging to the same family probably having inherited the land have disagreements triggered by removal of boundary markers.

Table 27: Parties in Land Conflicts

Other Party in the Land Conflict	Regions				
	North	East	Central	West	Total
	Col%	Col%	Col%	Col%	Col%
Marital Relatives (In-laws)	17.0	12.2	8.2	12.1	12.9
Natal Relative (brothers/ sisters)	25.1	17.5	14.4	22.1	19.8
My Spouse	4.5	3.7	3.8	10.0	4.6
My Child/ Children	7.6	2.9	1.0	7.1	4.5
Neighbour/ Other Community Member	41.7	55.2	58.4	46.4	50.6
Land lord	3.8	5.5	13.1	.7	6.1
Other	.2	2.9	1.0	1.4	1.5
Total	100.0	100.0	100.0	100.0	100.0

Analysis of what happens whenever a land conflict occurs shows that amongst the respondents, 47% had experienced imprisonment, 23% were unable to access their land and 11.7% had experienced violence while a dismal proportion 4.3% who immediately sought the help of authorities to have the conflict resolved. Insights from the respondents on what happened to other parties in the conflicts shows two outstanding issues, summons by the authorities (28.8) and taking over of land (21.1%) occurrences that clearly point to access to land justice.

Key issues for Access to Land Justice arising from the nature of Land Conflicts include:

- The prevalence of land conflicts at household level is high and warrants an intervention
- The most prevalent land conflicts point to lapses in tenure administration and management especially with regard to boundaries, ownership and its transmission, occupation, trespass and fraudulent transactions. This is reinforced by causes which essentially revolve around removal of boundary markers, absence of proof of ownership and encroachment and the nature of land on which most conflicts were reported; customary and secondary rights on titled land, both tenure regimes which have weak management and administrative structures.
- Most land conflicts are inter rather than intra household, involving mostly persons with neighboring plots of land (neighbor/ other community members) although a reasonable number involves natal relatives again also staying on adjacent parcels or squabbling over inheritance matters.
- Land conflicts are evidently disruptive to law and order as well as livelihoods, given that a reasonable proportion reported imprisonment and inability to access land under dispute which often heightens social tensions.

2.2 LAND JUSTICE OPTIONS AND FACTORS AFFECTING CHOICE

To gain insights into the existing land justice options, the processes and therefore land justice seeking behavior, the survey investigated options and factors affecting choice of options at two levels; first instance resolution options i.e. where land conflicts are usually reported first and other resolution options in the event that the first instance option failed to resolve the land conflict. The survey found that when land conflicts occur, the leading options of first instance are local councils 1 and 2 rated at a level of 57.7%, followed by Clan and other community leaders rated at 27.5%. At regional level, in the north the

most used first instance options are local councils (45.7%) followed by clan/ community leaders (42%); in the east local councils are used at a level of 57.6% followed by clan/ community leaders at 24.2%. In the central region, local councils are used at a rate of 74.9% while clan/ community leaders are used at a rate of 16.7%. The west is the only region that exhibited a relatively higher level of use of the formal court system at 14.4% although again local councils one and two were most used (55%) followed by clan/ community leaders (20.7%).

Table 28: First Instance Land Conflicts Resolution Options

		Regions				
		North	East	Central	West	Total
Analysis of Multiple Responses		Col%	Col%	Col%	Col%	Col%
Where Land Conflicts are Reported First	Clan/ Community Leader	42.0	24.2	16.7	20.7	27.5
	Family Member/ Parents	5.2	1.0	1.6	.0	2.3
	Local Councils (I&II)	45.7	57.6	74.9	55.0	57.7
	Formal Court	4.0	4.5	2.0	14.4	4.8
	Police	.9	5.8	3.2	4.5	3.6
	Land Tribunal	1.2	6.1	1.6	5.4	3.5
	Probation Officer	.9	.8	.0	.0	.6
	Total	100.0	100.0	100.0	100.0	100.0

The other options mentioned as first instance land conflict resolution options were land tribunals, probation office, formal court and family members/ parents; however, all these options had ratings below 5%, implying that they play a much smaller role as options to which land conflicts are reported to first. It's apparent that the land justice seeking behavior and choice of options at the first reporting level is strongly influenced by distance to the resolution option (22.9%), the understanding that it is 'legal requirement to go there' (21.3%) and familiarity with how the particular option actually works (18.9%). The other comparatively significant factors affecting choice at this level were found as cost (15.7%) and perception of fairness of the option was rated at 13.8%. By first instance resolution option, justice seeking behavior was influenced as shown in Table 3.8 below.

Table 29: Choice of Option a for Land Conflict Resolution

Factors that Influenced Choice of First Conflict Resolution Option	Where Land Conflicts are Reported First							
	Clan/ Community Leader	Family Member/ Parents	Local Councils (I&II)	Formal Court	Police	Land Tribunal	Probation Officer	Total
	Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%
Distance - was close	23.8	24.0	24.8	15.7	20.4	11.3	23.1	22.9
Cost - was cheap	18.7	8.0	16.2	10.1	9.3	5.7	15.4	15.7
Familiarity- know how it works	20.2	32.0	18.9	20.2	7.4	9.4	23.1	18.9
Its a fair option	17.2	12.0	10.8	25.8	14.8	20.8	7.7	13.8
Legal requirement to go there	11.6	12.0	23.2	20.2	35.2	49.1	15.4	21.3
Only option readily available	7.7	12.0	5.8	6.7	13.0	3.8	15.4	7.0
Other	.7	.0	.2	1.1	.0	.0	.0	.4
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

In instances where resolution of the land conflict is not attained at first attempt with the option of first instance, the survey found that there is stagnation in the resolution process; respondents reported that they often take time with the first instance option trying to have matters resolved. These attempts point to a case backlog situation and a strong possibility of 'forum shopping' where cases are moved between options and actually never get resolved at lower levels in the dispute resolution hierarchy, particularly at local councils 1 and 2, where second instance use was rated at 36.2% and clan/other community leaders with 15.5% of cases remaining at these levels. In

instances where cases progress up wards through the resolution hierarchy, the survey shows that most cases proceed to the formal court arena either at sub county or district (24.8%) followed by those proceeding to LC3 (14.8%). The other options that play a much smaller role at this later level of land dispute resolution include LC 5 (3.4%), police, legal aid service providers and the probation office all with a consolidated rating of 5.2%.

Table 30: Later Instance Land Conflict Resolution Options

		Regions				
		North	East	Central	West	Total
Analysis of Multiple Responses		Col%	Col%	Col%	Col%	Col%
Where else Respondent went to have Land Conflict Resolved	LC 1&2	41.4	44.3	23.7	26.1	36.2
	LC 3	22.7	10.9	11.1	11.4	14.8
	Clan/ other community leader	14.6	21.9	12.6	8.0	15.5
	LC5	3.5	1.0	5.2	5.7	3.4
	Formal Court	15.7	17.7	38.5	39.8	24.8
	Other (Probation Office/ Police/ Legal Aid	2.0	4.2	8.9	9.1	5.2
	Total	100.0	100.0	100.0	100.0	100.0

The choice of resolution options at this level was found to be influenced by factors similar to those at the first instance level; distance (15%), familiarity with how a particular option works (13.6%), perceived fairness of the option (17.2%) and the known legal hierarchy in the land conflict resolution process 35%. Synthesis of these factors by resolution of options shows that cases stagnate at LC 1&2 because of distances to other options (20%) and the understanding that these are the legal levels at which land cases should be resolved (35%).

Table 31: Choice Factors at Later Instance Land Conflict Resolution Options

Factors that Influenced Choice of Resolution Option at this Level	Where else Respondent went to have Land Conflict Resolved							Total Col%
	LC 1&2	LC 3	Clan	LC5	Formal Court	Other (Probation Office/ Police/ Legal Aid		
	Col%	Col%	Col%	Col%	Col%	Col%	Col%	
Distance - was close	20.4	24.8	20.0	23.1	7.5	7.7	14.3	
Cost - was cheap	12.0	14.9	16.3	15.4	4.4	5.1	8.9	
Familiarity- know how it works	10.7	9.9	16.3	11.5	9.7	5.1	12.0	
Its a fair option	14.4	12.4	17.0	7.7	20.8	25.6	17.7	
Its a legal requirement to go there	32.4	19.8	18.5	30.8	41.2	43.6	33.2	
Only option readily available	7.0	15.7	7.4	3.8	7.5	2.6	7.2	
Less corrupt	2.0	1.7	3.0	.0	5.8	7.7	4.3	
Promised Speedy Process	.7	.0	.7	7.7	2.7	2.6	1.8	
Other	.3	.8	.7	.0	.4	.0	.7	
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	

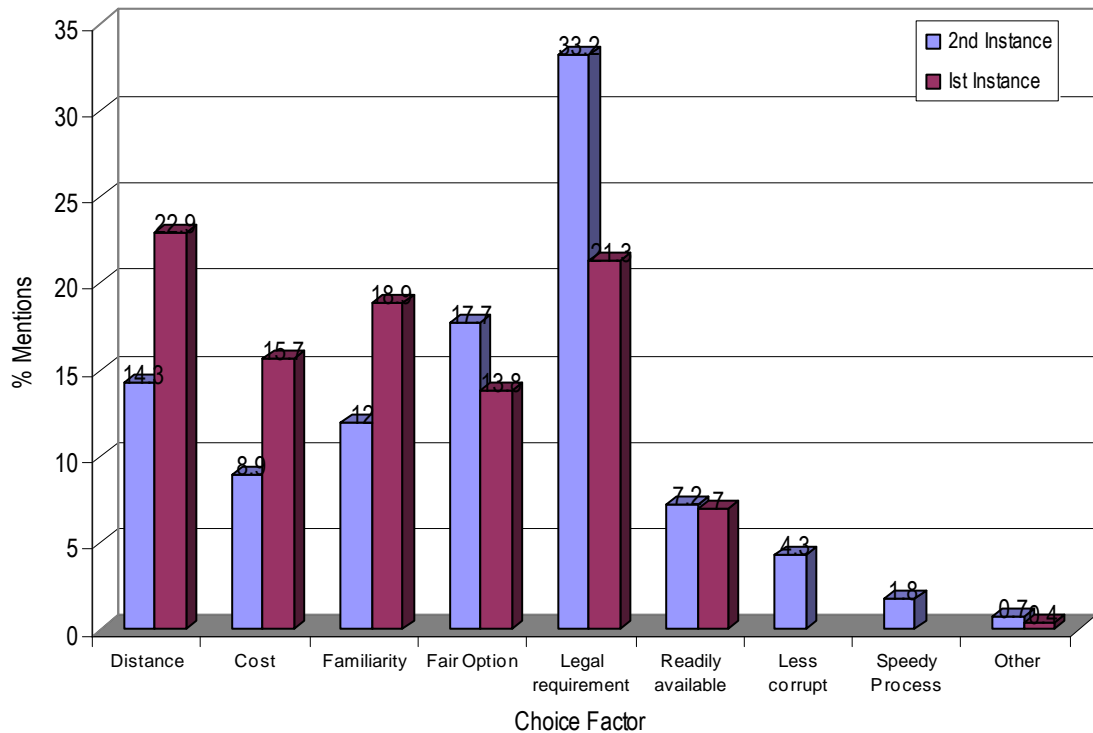
Analysis of these underlying issues in land justice seeking under rural and urban circumstances shows that the significance of factors considered is more or less the same. However, analysis of these underlying issues in land justice seeking under first instance and after failure of the first instance option to resolve the land conflict changes in considerations where factors like corruption, expectation of a speedy process coming on board and keen attention being paid to whether the next step taken is legally correct and concern over the fairness of the option and process becoming heightened as shown in figure 3.11 below.

Key issues for Access to Land Justice arising from the choice of options and factors underlying choices made show that:

- Land cases often stagnate with LCs and Clan/ Community Leaders
- Choice of conflict resolution is strongly influenced by distance and perceptions on legal stipulations in the hierarchy of dispute resolution.

- There are institutional, social and economic barriers to accessing land justice; these are essentially highlighted by the factors that determine choice of dispute resolution option either at first or later instance.
- At first instance, distance, cost and knowledge of how a particular option works underscore decisions in seeking land justice while at later instance especially after the first option has failed to resolve the conflict, concern shifts to fairness of the option, appropriateness in terms of legal hierarchy, ready availability, corruption and how speedy the process will be. This is remarkable and shows that once a conflict is not resolved at first instance, people are concerned about ability to sustain the case to conclusion.

Figure 32: Comparison of Factors Affecting Choice of Options



Unreported Land Conflicts and their Management

Results show that of all the land conflicts that were found to have occurred in the survey communities (n=1,647); a significant 20% had not been reported to any dispute resolution option. Given the manner in which land conflicts manifest especially in terms of severity, this proportion presents a precursor to social tensions that can be disruptive to law and order. Analysis shows that 63% of the unreported conflicts are in rural areas and the region with the largest proportion of conflicts not reported to any authority was the east (47%), followed by the north (39%) while the central and the west had 10% and 2% respectively. By household the distribution shows that unreported conflicts were mostly in MHH (59%), followed by FHH (28%) and then CHH (11%).

Synthesis of the factors behind not reporting shows three leading issues, preference for consensual resolution of the conflict (51.7%) followed by fear or expenses involved in pursuing the case under formal options (19.5%) and fear of probable repercussions especially the likelihood of imprisonment (13.8%). While all conflicts are not reported mainly due to preference for consensual resolution, the unique influencing factors are shown in Table 3.12 below by category of land conflict not reported.

Table 33: Reasons for Not Reporting Land Conflicts

Analysis of Multiple Responses Reasons Why these Conflicts are not Reported	Conflicts Situations on Land Respondents Choose not to Report							Total Col%
	Boundary Discrepancies	Inheritance/ Succession	Land Ownership	Illegal Occupation	Trespass	Fraudulent Transaction	Land	
	Col%	Col%	Col%	Col%	Col%	Col%	Col%	
Preferred Consensual Resolution	56.9	59.5	46.5	25.8	50.8	10.0		51.7
Lacked information/ Referral on Options	1.5	4.8	11.6	6.5	2.3	20.0		4.0
Was Prevailed Upon not to Report	3.8	2.4	11.6	9.7	9.4	10.0		7.1
Feared Expense Involved	23.1	11.9	16.3	38.7	18.0	20.0		19.5
Feared Repercussions	10.8	16.7	4.7	19.4	16.4	30.0		13.8
Considered it a minor issue	3.8	4.8	9.3	.0	3.1	10.0		4.0
Total	100.0	100.0	100.0	100.0	100.0	100.0		100.0

Further review at regional level shows that preference for consensual resolution is the main reason in all regions except the central region where of expenses involved in pursuing land justice is the most highly rated reason at 33.3%; lack of information/ referral service has most significance in the west at 13% while fear of repercussions was found significant in the central and the east rated at an average of 16% as shown in Table 3.13 below.

Table 34: Reasons for Not Reporting Land Conflicts by Region

Analysis of Multiple Responses Reasons Why these Conflicts are not Reported		Regions				
		North	East	Central	West	Total
		Col%	Col%	Col%	Col%	Col%
Preferred Consensual Resolution		52.8	54.9	25.0	56.5	51.8
Lacked information/ Referral on Options		8.3	3.8	11.1	13.0	6.7
Was Prevailed Upon not to Report		8.7	3.8	11.1	8.7	6.7
Feared Expense Involved		15.6	18.8	33.3	4.3	17.8
Feared Repercussions		11.0	16.0	16.7	8.7	13.5
Considered it a minor issue		3.7	2.8	2.8	8.7	3.5
Total		100.0	100.0	100.0	100.0	100.0

As shown above, preference of consensual resolution influences strongly influences the whether a land conflict is reported or not; further investigation into the consensual dispute resolution shows that the preference is driven by three main reasons cost, it is considered cheap (26.2%), it promotes conciliation (33.2%) and it is a relatively fast way of resolving conflicts (18.5%). Within regions however there was variation in the significance of reasons as to why consensual dispute was preferred especially in the west and central. In the west fear of repercussions in pursuing formal options was significant at 15.4% while in central community of this option compared to others was rated at 14.3% as shown in Table 3.14.

Table 35: Preference for Consensual Dispute Resolution

Why Consensual Resolution was Preferred	Regions				
	North	East	Central	West	Total
	Col %	Col %	Col %	Col %	Col %
Was cheap option available	30.5	24.4	14.3	7.7	26.2
The conflict was minor	3.1	10.6	.0	7.7	6.6
Feared repercussions	1.6	1.6	.0	15.4	2.2
Promotes Conciliation	35.2	25.2	71.4	69.2	33.2
Familiar with how it works	3.9	1.6	.0	.0	2.6
Usually a very fast Option	18.0	22.0	.0	.0	18.5
Was the Preference of Other Party	3.1	8.1	.0	.0	5.2
Commonest Option	4.7	6.5	14.3	.0	5.5
Total	100.0	100.0	100.0	100.0	100.0

The main actors in the process are neighbors who more often than not are unrelated community members (41%), followed by clan leaders (16.3%), natal relatives (13.6%) and family (10%). It is important to note that Local councils I, II and III were mentioned but their role rated low at only 6.6%. The reasons advanced for this preference were several but three were outstanding; this measure is opted for as many felt it the cheap option available to them (27.9%), the option tends to promote conciliation (29.5%) and the option usually acts fast on issues it has to attend to (19.9%).

The influence not to report land cases is mainly peddled by relatives in terms of spouse and children (31%) or natal relatives in terms of brothers and sisters (28.6%) although non related community members also play a role rated at 26.2%. Other actors reported to have prevailed upon respondents not to report cases were community/ clan leaders (9.5%) and marital relatives/ in laws (4.8%); the result by category of land conflict not reported is shown in Table 3.15 below.

Table 36: Influence not to Report Land Conflicts

Who Prevailed Upon Respondent not to Report Land Conflict	Conflicts Situations on Land Respondents Choose not to Report						
	Boundary Discrepancies	Inheritance/ Succession	Land Ownership	Illegal Occupation	Trespass	Fraudulent Transaction	Total
	Col %	Col %	Col %	Col %	Col %	Col %	Col %
Marital Relatives (In-laws)	.0	.0	14.3	.0	11.1	.0	4.8
Natal Relative (brothers/ sisters)	33.3	42.9	14.3	.0	11.1	50.0	28.6
Family (Spouse/ Children)	11.1	35.7	42.9	66.7	33.3	50.0	31.0
Unrelated Community Member	44.4	7.1	28.6	33.3	33.3	.0	26.2
Community/ Clan Leader	11.1	14.3	.0	.0	11.1	.0	9.5
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Although lack of information/ referral services on options was not amongst the leading issues highlighted by the beneficiary survey, the issues was highlighted by the literature review as fundamental to enhancing access to justice; investigations revealed that respondents lacked information on the mandate of the LCs and the Police (42%), their land rights (21.1%). It was also highlighted that they did lack guidance on dispute resolution (15.8%) and community leaders and elders alike were not empowered to respond to land conflicts (13.2%). Respondents were of the opinion that mechanisms preferred for this information to reach them should involve community leaders 30%, educating the community directly (30%) and use of educational radio programmes (40%).

Key lessons for Access to Land Justice arising from the land conflicts that are not reported and the underlying factors:

- Relatives either natal (brothers and sisters) and immediate family play the leading role in stopping land conflicts from being reported under the guise of preferring consensual dispute resolution.
- Consensual dispute resolution is largely informal facilitated mainly by unrelated community members and clan leaders; the option has a strong point of promoting conciliation which has a direct advantage of managing social tensions which are characteristic of land conflicts.
- Results show that knowledge of the mandates of various grass roots actors in land justice is critical in enhancing access through facilitating informed choices and decisions.
- It also clear that most grass roots options for land justice are not empowered to respond adequately to land conflict situations and cases.

2.3 QUALITY AND PERFORMANCE OF LAND JUSTICE

To gain insight into the quality and performance of land justice the survey investigated the rate of conflict resolution at first instance resolution option; results show respondents reporting a resolution rate of 59.9% at first instance; with an average dissatisfaction rate of only 13.3% for decisions made by various land conflict resolution options they had approached. The survey found an average (40.9%) rating for the fairness of the land justice system.

Table 37: Rate of Resolution of Land Conflicts at First Instance

		Where Land Conflicts are Reported First							Total Col%
		Clan/ Community Leader	Family Member/ Parents	Local Councils (I&II)	Formal Court	Police	Land Tribunal	Probation Officer	
		Col%	Col%	Col%	Col%	Col%	Col%	Col%	
Case was Resolved at the First Option	Yes	65.8	56.5	56.4	65.3	54.3	84.2	50.0	59.9
Satisfied with decision	No	9.4	8.3	14.5	15.8	21.1	9.7	25.0	13.3

At later instance, results show that the proportion of respondents reporting pending land cases was 42.9% and instances of respondents reporting abandoned cases 'just gave up' were 7.7%. Further investigations showed respondents reporting pending cases with Sub County and district courts (50.7%), LC III (46.7%) and LC I (39.3%).

Table 38: Rate of Resolution of Land Conflicts at Later Instance

Whether the Conflict was Finally Resolved	Where else Respondent went to have Land Conflict Resolved							Total Col%
	LC 1&2	LC 3	Clan	LC5	Formal Court	Other (Probation Office/ Police/ Legal Aid)		
	Col%	Col%	Col%	Col%	Col%	Col%		
Yes	54.4	48.9	57.7	25.0	40.4	35.5	49.4	
No, pending	39.3	46.6	33.3	62.5	50.7	58.1	42.9	
No, just gave on resolution process	6.3	4.5	9.0	12.5	8.9	6.5	7.7	
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	

The most mentioned reason as to why the case was pending was that the resolution option is slow (29.7%), demands for money which the respondents claimed they could not meet (18%) and yet were rendering the resolution process expensive (15%); interestingly not knowing the reason why the case was still pending was rated at 23.8%; an observation that high a lapse in the land justice feed back mechanism.

Table 39: Reasons for Pending Land Cases at Later Instance

Why Case is Still Pending	Where else Respondent went to have Land Conflict Resolved							Total Col %
	LC 1&2	LC 3	Clan	LC5	Formal Court	Other (Probation Office/ Police/ Legal Aid)		
	Col %	Col %	Col %	Col %	Col %	Col %		
Option is/ was Slow	30.9	30.4	36.8	28.6	25.0	30.0	29.7	
Do not know	27.3	28.3	31.6	28.6	21.9	20.0	23.8	
They want money	18.2	21.7	5.3	14.3	19.8	13.3	18.0	
Process is expensive	11.8	10.9	7.9	14.3	21.9	16.7	15.1	
Was frustrated	5.5	2.2	5.3	14.3	8.3	6.7	7.1	
Other Party Refused to honour summons	5.5	2.2	13.2	.0	3.1	10.0	5.0	
LCs refused to give letters	.9	2.2	.0	.0	.0	.0	.4	
War affected the system	.0	2.2	.0	.0	.0	3.3	.8	
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	

On the other hand where respondents had claimed that they just gave up on the resolution process, the leading reasons were demands for money they could not satisfy (27.9%), these had in turn rendered the process expensive (34.9%) and caused frustration (14%) amidst the resolution options often being slow (9.3%). It is important to

note that refusal to honor summons is a significant reason in impeding the process of justice at a ranking of 11.6%. With regard to institutions finally resolved the land conflict. LC 1 was rated higher than other levels at 39.3% followed by consensual option (20.2%) and formal court either at Sub County or district at 14.6%. The effective resolution ratings by typology of land conflict are shown in Table 3.18 below.

Table 40: which Institution resolved the conflict?

Option that Finally Resolved the Land Conflict	Land Conflicts Experienced by Households								Total Col %
	Boundary Discrepancies	Inheritance/ Succession	Land Ownership	Illegal Occupation	Trespass	Fraudulent Transaction	Others		
	Col %	Col %	Col %	Col %	Col %	Col %	Col %	Col %	
LC 1	41.5	33.6	37.5	33.3	45.6	29.8	100.0	39.3	
LC 2	12.2	13.1	17.1	5.3	15.6	21.1	.0	11.5	
LC 3	4.4	12.3	12.5	13.3	2.2	12.3	.0	8.9	
Consensual Options (Clan/ Family	21.4	20.5	17.8	10.7	17.8	10.5	.0	20.2	
Other (LC5/ Police/ Legal Aid	3.5	4.1	.0	5.3	2.2	3.5	.0	3.5	
Formal Court	15.7	12.3	13.8	28.0	15.6	22.8	.0	14.6	
Probation Office	1.3	4.1	1.3	4.0	1.1	.0	.0	1.9	

Key lessons for Access to Land Justice arising from the quality and performance of land justice options:

- The legally mandated option of first instance (LCII) is not used compared to the lower level of LCI.
- Resolution options are generally slow and are marred with illegitimate demands for money which are holding their performance hostage.

2.4 BARRIERS TO ACCESSING LAND JUSTICE

The preceding sections on access to land justice highlight various factors that determine justice seeking in the event of a land conflict; this section groups and discusses these factors at institutional, household and personal levels in terms of cost, decision making in choice of options, literacy, distance and efficacy of options .

Results show that land conflict resolution options make demands before cases are heard/ conflicts are resolved at a rate of 56.8%. These demands are essentially in form of money (79.8%) irrespective of conflict resolution option. Interestingly formal courts demanded for stationary at a rate of 13.8

Table 41: Demands Made Before Cases are heard

Demands Made before Case could be Heard/ Resolved	Where Land Conflicts are Reported First							Total Col %
	Clan/ Community Leader	Family Member/ Parents	Local Councils (I&II)	Formal Court	Police	Land Tribunal	Probation Officer	
	Col %	Col %	Col %	Col %	Col %	Col %	Col %	
Money	65.2	70.0	86.2	55.2	93.5	81.8	100.0	79.8
Nothing	16.7	20.0	7.4	6.9	.0	6.1	.0	9.5
Food/ Drinks/ transport	14.5	10.0	4.5	17.2	3.2	6.1	.0	7.2
Stationary	3.6	.0	1.8	13.8	.0	3.0	.0	2.9
Evidence	.0	.0	.0	6.9	3.2	3.0	.0	.6
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

%. Given that the average (mean) monthly income was reported as 84,738/= yet the average (mean) payment often made was reported as 19,150/= then the expense is 22.6% of monthly income. Interestingly however, amongst respondents attesting that money was demanded (61.7%), 86% reported that the money paid was not receipted.

This augmented by the discussion on the management of unreported conflicts where preference for consensual resolution is driven by association with little or no cost towards the resolution process at a rating of 27.9%.

Table 42: Whether Money paid was receipted

		Where Land Conflicts are Reported First								
		Clan/ Community Leader	Family Member/ Parents	Local Councils (I&II)	Formal Court	Police	Land Tribunal	Probation Officer	Total	
		Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%	
Whether	the Yes	9.3	.0	11.6	28.6	17.2	42.9	.0	14.4	
Money Paid	was No	90.7	100.0	88.4	71.4	82.8	57.1	100.0	85.6	
Receipted	Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	

The average (mean) distance to first instance land resolution option was indicated as 3 Kilometers with a general range of 50 Kilometers. In the discussion of factors that determined the choice of land conflict resolution option at first instance, distance was rated 22.4% although at this level, resolutions accessed were reported to be with in the same community as the respondent while at a later instance it (distance) was rated at 15.4% although at this stage concerns over capacity to sustain the dispute resolution process sets in. These distances are not small and imply a cost in addition to direct monetary demands as exemplified by fear of expense involved being rated second with 19.6% as a reason why land conflict cases were not reported at all.

Table 43: Cost and Distances in Accessing Land Justice Options

Where Land Conflicts were Reported First	How much Money (Ug.Shs) was Paid		Distance (Kms) from Household to First Resolution Option	
	Median	Mean	Median	Mean
Clan/ Community Leader	6,000	26,319	1	2
Family Member/ Parents	52,500	52,500	3	6
Local Councils (I&II)	5,000	15,759	1	3
Formal Court (at sub country and District)	40,000	37,857	4	3
Police	15,000	19,550	3	4
Land Tribunal	22,500	25,500	6	8
Probation Office			2	2
Table Total	5,000	19,150	1	3

There is a strong perception in communities that formal justice options are largely punitive and do not promote conciliation; thus fear of repercussions of reporting was rated at 14% as reason that prevented reporting of land conflicts. Access to land justice is also limited by social and societal issues; relatives followed by clan leaders are shown to play a leading role in prevailing upon complainants not to report cases especially where family members are involved. The mandate of the LCs and the Police (42%) is not known. Individuals and communities alike do not know heir land rights (21.1%). And most importantly there is a general lack of guidance on dispute resolution options (15.8%).

Strategic Interventions to Enhance Land Justice

At household level the leading suggestion in enhancing access to land justice emerged as empowering local councils and elders/ community leaders with appropriate skills to rise up to the challenges of conflict resolution rated at 32.5%, this was followed by sensitization on land rights and the existence and suitability of various options for varying typologies of land conflicts rated at 14.9% and promotion of boundary demarcation and certification of land ownership rated at 11.1%. Other suggestions were the placement of paralegals and courts at village level (9.7%), putting in place a mechanism to enforce court decisions (7.9%) and punishment of corrupt court officials

along side enhanced supervision of courts and court processes rated at 7.4%; the other issues are shown in Table 3.22 below.

Table 44: Interventions Needed

		n	Col %
What should be done to	Promote Consensual Dispute Resolution	130	5.2
	Make Land Justice	199	7.9
Faster and Fairer	Put in Place an Mechanism to Enforce Court Decisions	35	1.4
	Use Parish & Sub County Chiefs to enforce decisions	78	3.1
	Little/ on fees should be levied by Officials	278	11.1
	Gov't should demarcate Boundaries/ Provide Proof of Ownership	58	2.3
	Reform Land Registry	816	32.5
	Train/ Empower/ Motivate LCs and Elders	374	14.9
	Sensitize on Land Rights and Resolution Options	187	7.4
	Punish Corrupt Officials/ Supervise Options	52	2.1
	Define Mandate of Police in Land Disputes	243	9.7
	Put land Courts at Village level/ Provide Paralegals	26	1.0
	Promote Succession Planning	21	.8
	Increase Number of Judicial Officers	16	.6
	Make Resettlement a Gov't Responsibility		
	Total		2513

3. FAMILY JUSTICE

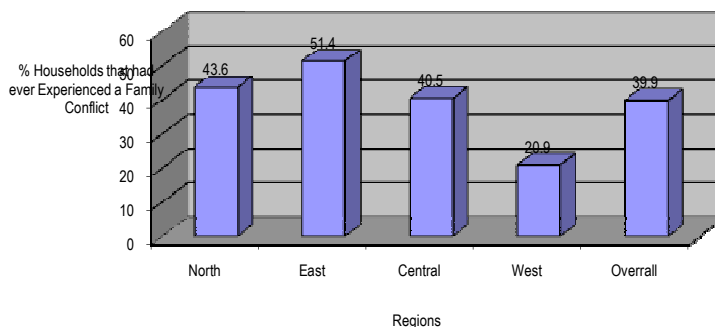
This section establishes the context within which access to family justice can be strengthened under JLOS and its related agencies through sector wide programming and interventions. This is a situation description/ statement with regard to prevalence, nature or types, causes of family conflicts, consequences or outcomes, parties involved in family conflicts and their implications on access to justice on the basis of survey results and focus group discussions. This contextualization is basic and instrumental in articulating determinants of choices in family justice seeking behavior. This is essential in crafting sector wide interventions aimed at enhancing access to family justice.

3.1 NATURE AND OCCURRENCE OF FAMILY CONFLICTS

Prevalence of Family Conflicts

From the survey, the occurrence or prevalence of family conflicts is the starting point for understanding and analyzing the need to focus on family justice. Results show that 39.9% of households (n= 3,574) included in the survey had ever experienced a family conflict. This prevalence was highest amongst FHH at a level of 42.2%; while CHH and MHH had an average family conflict prevalence of 39%. Synthesis by region showed that family conflicts were most prevalent in the eastern region at 51.4% and least in the west at 20.9%. Households in the North and Central had an average family conflict prevalence of 41%. Between rural and urban households, survey results show a more or less even distribution of the prevalence at 41% and 37.6% respectively.

Figure 45: Prevalence of Family Conflicts by Region



The prevalence of family conflicts across the households is a clear indication that JLOS under SIP II is responding to a real need for justice across households. The prevalence also underscores the need for an intervention to ensure social harmony and economic progression.

Types, Causes and Parties in Family Conflicts

Overall, domestic violence is the most significant type of family conflict with a prevalence of 25.7%; cited at rates of 22.9% in FHHs, 29% in MHHs and 6.3% in CHHs. However in CHHs the main type of family conflict is 'asset stripping/grabbing' rated at 34.1% while succession and inheritance conflicts in this category of household are rated at 22.2%. In aggregate terms, 'neglect of marital responsibilities' at 18.4% and adultery at 13% were the second and third major causes of family conflict respectively. At

regional level, the most significant family conflict category was still domestic violence highest in the central region (30.2%) followed by the northern region 28.7% and the eastern region (24.6%) as shown in Table below.

Table 46: Types of Family Conflicts

Types of Family Conflicts (Response Analysis)	Regions									
	North		East		Central		West		Total	
	n	Col%	n	Col%	n	Col%	n	Col%	n	Col%
Inheritance/ succession	48	7.0	48	6.3	15	3.8	24	10.7	135	6.6
Child Custody/ Guardianship	23	3.4	32	4.2	9	2.3	13	5.8	77	3.7
Asset Stripping/Grabbing	71	10.4	92	12.1	47	12.0	40	17.8	250	12.1
Neglect of Marital responsibilities	140	20.5	142	18.7	57	14.6	32	14.2	371	18.0
Child Abuse	76	11.1	104	13.7	46	11.8	38	16.9	264	12.8
Adultery	79	11.6	92	12.1	65	16.6	32	14.2	268	13.0
Divorce/Separation	50	7.3	63	8.3	34	8.7	19	8.4	166	8.1
Domestic Violence	196	28.7	187	24.6	118	30.2	27	12.0	528	25.6
Total	683	100.0	760	100.0	391	100.0	225	100.0	2059	100.0

The differentiated occurrence of conflict within households evidenced in the survey results above is a factor that needs to be considered when JLOS is designing programmes to enhance access to justice and is particularly related to vulnerabilities that reduce opportunities and capacities of such households to access justice in relation to cost of justice and income differentials. It is also apparent that a knowledge gap exists on relational obligations and rights within social unions especially marriages where (neglect of marital obligations and domestic violence) issues stand out as requiring specific responses in law defining norm and practices and setting obligatory norms for adherence within a legislative framework.

In order to design responses, entry points or target groups for ensuring enhanced access to family justice have to be defined, and these are drawn from the causal level by analyzing the parties involved. Overall, the spouse is the most cited family member involved in family conflicts at 53.7% (49.1% in FHHs, 59.5% in MHHs, and 7.7% in CHHs). However, there are significant gendered differences in these results, FHHs cite the involvement of a marital relative at a rate of 22.8% while MHHs only cite marital relatives at a rate of 8.5%. For CHHs, natal relatives are the main actors in family conflicts at 41.8% as family member's fight amongst themselves and unrelated community members at 18.7% as shown in the table below;

Table 47: Parties Involved in Family Conflicts

Parties Involved in Family Conflicts (Multiple Responses)	Category of Household							
	FHH		MHH		CHH		Total	
	n	Col%	n	Col%	n	Col%	n	Col%
Marital Relative (In law)	112	22.8	96	8.5	11	12.1	219	12.8
Natal Relative (Bothers/ sisters etc)	30	6.1	108	9.6	38	41.8	176	10.3
My spouse	241	49.1	669	59.5	7	7.7	917	53.7
My child/ children	36	7.3	60	5.3	1	1.1	97	5.7
Unrelated Community Member	42	8.6	110	9.8	17	18.7	169	9.9
LC Leader	10	2.0	29	2.6	3	3.3	42	2.5
Clan Leader	15	3.1	30	2.7	8	8.8	53	3.1
Other (Co-wives/ pastor)	5	1.0	23	2.0	6	6.6	34	2.0
Total	491	100.0	1125	100.0	91	100.0	1707	100.0

Co-relating the above results with the outcomes of focus group discussions shows that in terms of targeting, responses or programmes to enhance family justice must have spouses within marital relations as the ultimate beneficiaries since they are the major perpetrators of family conflicts, followed by in-laws and family members (brothers and

sisters) who are the other power holders on family matters in the absence of spouse, hence take over as the second major perpetrators of family conflicts. The community specifically through its leaders is also significant, as a regulator of family conflicts.

From the review of literature, it emerged that understanding the dynamics of relations in access to justice is significant and relevant both in quantitative and qualitative terms for determining the scale and nature of interventions that can be designed to improve access to family justice by the different social strata in society. From the survey, Alcoholism is cited the most as leading cause of family conflict at 18.4% closely followed by death of spouse at 16.8% and polygamy at 16.3%; bad morals involving rumours, insults and interference by relatives are significant at a rating of 14.6% while the role of 'non-payment of bride price' in fostering family conflicts is rated at 13.1%. Within FHHs and MHHs the ranking of the causes is very similar, with alcoholism at the top at 22% and 17.3% respectively followed by polygamy at 14.3% and 18.3% respectively, and non-payment of bride price at 11.4% and 14.1%. These findings re-affirm evidence available in literature from previous surveys carried out by UBOS¹³⁷ and MLHUD¹³⁸

Table 48: Causes of Family Conflicts

Causes of Family Conflicts (Multiple Responses)	Category of Household							
	FHH		MHH		CHH		Total	
	N	Col%	n	Col%	n	Col%	n	Col%
Alcoholism	106	22.0	173	17.3	6	8.2	285	18.4
Bad Morals (Rumours/ Insults/ interference of relatives)	70	14.6	155	15.5	1	1.4	226	14.6
Poverty (life of need)	36	7.5	94	9.4	2	2.7	132	8.5
Death (Parents/ spouse/ benefactor relative)	97	20.2	112	11.2	52	71.2	261	16.8
Polygamy	69	14.3	183	18.3	1	1.4	253	16.3
Non-Payment of Bride Price	55	11.4	141	14.1	8	11.0	204	13.1
Disability/ Bareness	3	.6	10	1.0	0	.0	13	.8
Distances Apart/ Levels of Education	4	.8	14	1.4	0	.0	18	1.2
HIV/AIDS/ Sickness	5	1.0	14	1.4	0	.0	19	1.2
Rape/ Defilement	6	1.2	11	1.1	1	1.4	18	1.2
Culture/ Religion	24	5.0	60	6.0	2	2.7	86	5.5
Divorce/ separation	1	.2	1	.1	0	.0	2	.1
Abandoned Responsibilities	5	1.0	30	3.0	0	.0	35	2.3
Total	481	100.0	998	100.0	73	100.0	1552	100.0

Once again CHHs face a different distribution with 'death of parents and/ or benefactor relatives' being cited the most at 71.2% as the cause of family conflict followed by non payment of bride price (11%) and alcoholism (8.2%). These results high the unique problems experienced by CHH, particularly vulnerability brought on by the death of a parent or guardian. It is important to note that FHH cite death as a cause of family conflict at a rate of 20.2% whereas it only cited at a rate of 11.2% within MHH. Once again the results highlight the particular circumstances and vulnerability differentials faced by CHHs and FHHs because of insecure property rights. It is interesting to note that overall bad morals were also cited widely as source of family conflict at 14.6%.

From Focus Group Discussions, the implications of the above findings are discussed in relation to the nature of responses needed at causal level, a two – pronged approach becomes clear;

- (a) responding to socio-economic contextual aspects that determine incomes (or poverty levels, alcoholism, polygamy, life of need etc) within families to address the major cause of alcoholism, which is a function of broader socio-economic policies or putting in place social – clinical measures that are beyond the mandate and spectrum of services offered by JLOS institutions.

¹³⁷ Uganda National Household Surveys, 2002, 2004, 2006 and the National Sero Survey, 2006

¹³⁸ Gender Baseline Monitoring Survey for LSSP, 2004

- (b) addressing the ascertainment of property rights within family, with particular emphasis on succession and inheritance since a combination of causes revolve around failure of both social institutions and processes to guarantee rights (asset stripping/ grabbing, death of spouse, polygamy and bride price, property etc) especially in FHH and CHH, and inadequate responses from formal mechanisms to enforce such rights when they are abused. This particular response falls squarely on the shoulders of JLOS institutions.

Consequences of Family Conflicts

Review of literature shows that the consequences or outcomes of family conflict are directly related to the justice seeking behaviors of individuals involved and on the power relations within households. The survey in investigating the consequences responds to need to re-align laws and justice access mechanisms to respond to situations pertaining on ground.

Results show that overall the most significant consequence on the respondent when family conflict occurs is 'sustained injuries' at 30.4 %, which is the obvious reiteration that instantaneous comes to the mind of spouses (since they are the major perpetrators of family conflicts), hence raising levels of violence. In terms of law, this is an area that the Penal Code addresses in general terms, without necessarily re-aligning it to its causes, it would be important that JLOS actions focus not only on criminalizing such an offence and putting in place measures that encourage spouses to seek other corrective actions especially those based on principles of co-sensuality and mediation.

Table 49: Consequences of Family Conflicts

Consequences of Family Conflicts (Multiple Responses)	Category of Household													
	FHH				MHH				CHH				Total	
	Male		Female		Male		Female		Male		Female			
n	Col%	n	Col%	n	Col%	n	Col%	n	Col%	n	Col%	n	Col%	
Sustained Injuries	14	33.3	97	29.5	136	29.2	94	35.9	6	14.6	8	30.8	355	30.4
Lacked necessities/ Deprived	0	0	10	3	5	1.1	3	1.1	2	4.9	1	3.8	21	1.8
Separated with Spouse	11	26.2	80	24.3	70	15	48	18.3	4	9.8	1	3.8	214	18.4
More HH Responsibilities	1	2.4	15	4.6	10	2.1	14	5.3	1	2.4	0	0	41	3.5
Lost (Children/ property)	2	4.8	18	5.5	21	4.5	14	5.3	5	12.2	3	11.5	63	5.4
Nothing Happened	7	16.7	21	6.4	50	10.7	16	6.1	1	2.4	1	3.8	96	8.2
Sought Justice	4	9.5	78	23.7	142	30.5	61	23.3	21	51.2	9	34.6	315	27
Became Disenfranchised	3	7.1	10	3	15	3.2	11	4.2	1	2.4	3	11.5	43	3.7
Was Arrested/ Imprisoned	0	0	0	0	17	3.6	1	0.4	0	0	0	0	18	1.5
Total	42	100	329	100	466	100	262	100	41	100	26	100	1166	100

The need for JLOS to focus on law reform and institutional re-alignment to respond to family conflicts is re-affirmed by 27 % of survey respondent whose immediate reaction on occurrence of a family conflict is to approach 'authorities to seek justice'; this is the second highest tally after "sustained injuries due to violence", the third most common consequence was 'separated from spouse' at 18.4% in both MHH and FHH. However both males and females in FHHs cite higher rates of 'separated with spouse,' 24.3% and 26.3% respectively, than males and females in MHHs (15% and 18.3% respectively). This response calls to question the institutional capacities and readiness of JLOS agencies to respond to the spectrum or nature of conflicts defined such as 'asset stripping', 'neglected marital responsibilities', child abuse, divorce or separation and

domestic violence which are highlighted as the most common types of family conflicts occurring.

Additionally, a higher percentage of both males (30.5%) and females (23.3%) in MHHs 'sought justice from the authorities' whereas it is only cited at a rate of 9.5% by males and 23.7% by females in FHHs; this was the only significant gendered difference in FHHs and MHHs responses. For child headed households on the other hand, there were significant gendered differences in the responses; whereas females in CHHs cite 'sustained injuries' at a rate of 30.8%, males in CHH only cite it a rate of 14.6%. Furthermore, males in CHHs cite 'sought justice' at a rate of 51.2% whereas females only cite it a rate of 34.6%. At the same time it is interesting to note that 'sought justice' is cited at a rate higher in CHHs (44.8%) than in MHHs (27.7%) and FHHs (22.1%). Also it is important to note that CHHs cite 'lost property' due to family conflict at a rate of 11.9%, the highest rate across households.

The results above clearly show the gendered nature of consequences of family conflict, which is a direct replay of power relations and responsibilities between males and females within households. Members within households are not uniformly affected, females across the board come off as the most affected, and however CHHs are unique because of their reliance on seeking justice from authorities which is outstanding. According to Focus Group Discussions, this is particularly true because family conflict in CHH comes to the fore when the social – cultural systems and safety nets have failed to protect the rights of children or have themselves become the perpetrators of conflicts, thus leaving the formal authority holders as the only viable sources of justice.

In terms of what happened to the other party at time of family conflict, the most common responses overall were 'sought justice from LC/Elders' at 28%, 'a change in marital status' at 21.1%, and 'nothing' at 21.9%. It is interesting to note that though violence/injury was a commonly cited effect of family conflict for the respondent, it only constituted 8.9% of the responses to the question of what happened to other party. Some of the other common responses were 'imprisoned' (6.7%) and 'family was abandoned' (5.3%) as shown in the table 2.6 below.

Table 50: Effect on second party involved in the Conflict

What Happened to the Other Party When Family Conflict Occurred	Category of Household							
	FHH		MHH		CHH		Total	
	n	Col%	n	Col%	n	Col%	n	Col%
Nothing	82	23.3	143	21.1	14	23.0	239	21.9
Lacked necessities/ Deprived	11	3.1	16	2.4	3	4.9	30	2.7
Family was Abandoned	24	6.8	27	4.0	7	11.5	58	5.3
Disposed off assets	14	4.0	9	1.3	2	3.3	25	2.3
Experienced Change in Marital Status	74	21.0	153	22.6	3	4.9	230	21.1
Experienced Violence	33	9.4	62	9.1	2	3.3	97	8.9
Imprisoned	34	9.7	32	4.7	7	11.5	73	6.7
Sought justice from LCs/ Elders	69	19.6	215	31.7	21	34.4	305	28.0
Death/ Sickness Occurred	11	3.1	21	3.1	2	3.3	34	3.1

These responses show what often happens to the other parties in family conflict; in FHHs the most common response are 'experienced change in marital status' at 21% and 'nothing' at 23.3%. In MHHs the most common responses are 'sought justice from LCs/ Elders' at 31.7% and 'experienced change in marital status' at 22.6%. In CHHs the main responses are 'sought justice from LCs/Elders' at 34.4% and 'nothing' at 23%. CHHs cited 'sought justice' at a much higher rate than FHHs and CHHs. This finding clearly illustrates the focal points for action as far as institutional re-alignment is concerned for enhancing family justice at household level are Local Councils and Elders

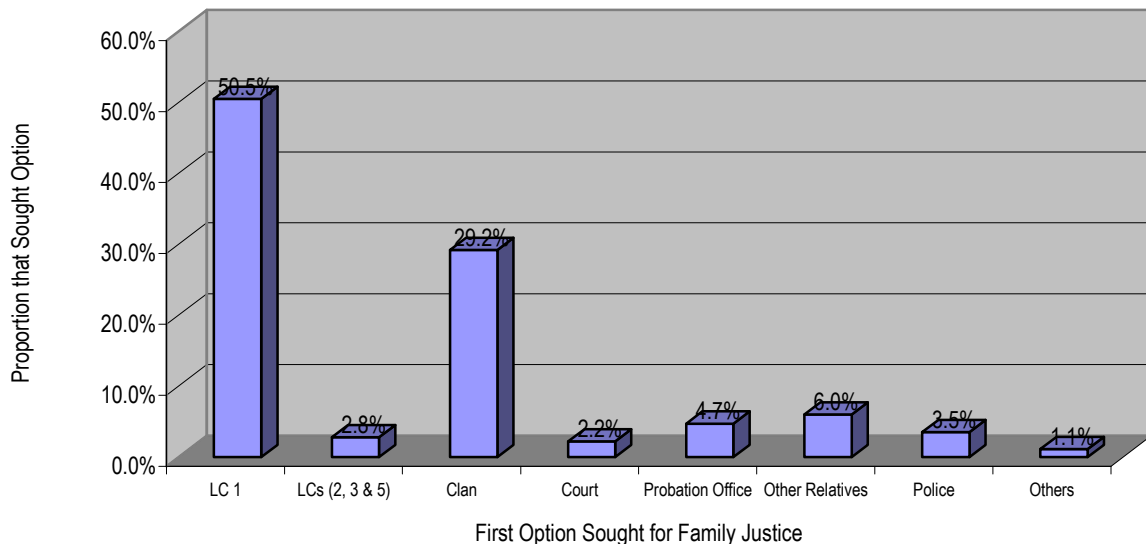
particularly those charged with responsibility over family matters such as inheritance, succession, and marriage.

3.2 FAMILY JUSTICE OPTIONS AND FACTORS AFFECTING CHOICE

The family justice seeking behaviors of households and individuals is of importance, especially as regards choice of institutions that are approached at local level. The survey sought to clarify physical access, technical processes and procedures as well cost of family justice and how these related to efficiency and effectiveness of institution in the delivery of family justice.

Overall, the analysis here sought to establish the tenets of justice seeking behaviour at first and later instances. At first instance, results show that local council (50.5%), clan (29.2%) and other relatives (6%) are the most common first instance options in justice seeking in as far as family conflicts are concerned. The other options like formal courts at Sub County and district, the probation office and local councils 2-5 enlisted low response levels (below 5%) implying that they are comparatively less used as first instance justice options.

Figure 51: First Instance Family Justice Options



Analyzing for choice of option reasons shows the main considerations as distance (21.7%), understanding of how the option works (20.3%), the perception that it is legal requirement to use that option as first instance (18%0 and trust of the option with regard to fairness (17.6%). The extent to which these and other factors interact to influence choice of various options at first instance is shown in Table 2.8 below.

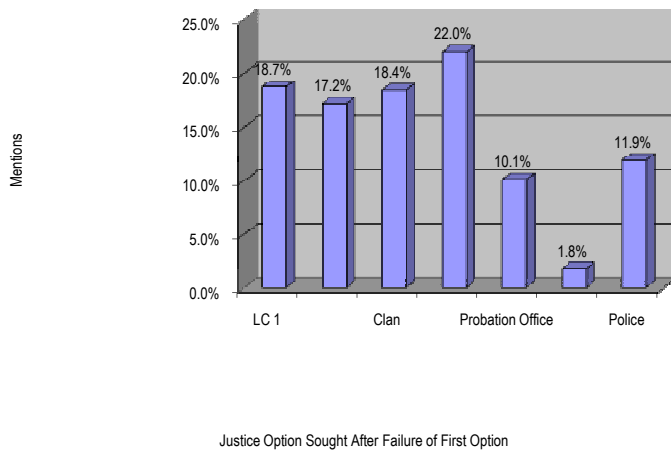
Table 52: Factors Influencing Choice of Option at First Instance

Why Report to these Options First	Where Family Conflicts are Usually Reported First (First Instance Options)								Total
	LC 1	LCs (2, 3 and 5)	Clan	Court (Sub County/ District)	Probation Office	Other Relatives	Police	Others (Church/ Legal Aid)	
	Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%	
Distance-	27.7	31.7	15.9	7.8	9.4	8.8	17.6	7.4	21.7
Cost-usually cheap	9.7	19	10.4	5.9	5.2	2.7	1.5	22.2	9.5
Familiarity-understand how it works	16.9	14.3	26.2	11.8	17.7	31.9	4.4	22.2	20.3
Fairness/- trust	14.6	15.9	22.3	29.4	16.7	20.4	10.3	40.7	17.6
Legal Requirement	22.6	9.5	7.2	17.6	31.3	23.9	42.6	3.7	18.0
only readily available	4.3	4.8	6.2	5.9	2.1	3.5	23.5	0	5.7
Less corrupt	3.4	3.2	9.5	21.6	15.6	8	0	3.7	6.0
speedy/ fast/ proactive	0.7	1.6	2.3	0	2.1	0.9	0	0	1.3
Total	100	100	100	100	100	100	100	100	100

However, these results indicate a lower level of confidence in formal justice institutions (with the exception of Local Council One which is quasi-judicial) of police and probation officers (on the basis of lack of understanding or comprehension of procedures and processes within which and with which these institutional operate) than in customary institutions in matters of family justice. In sum, though formal institutions are accessed, informal institutions such as clans and families play a vital role in family conflict resolution. Additionally, LC1s seem to play an effective role within family conflict resolution as places that are accessed as well as institutions capable of resolving family conflict. Domestic violence, which is one of the main types of family conflict, is mainly resolved within LC1 and clans. Indeed, clans play the most active role in resolving the many different types of conflict.

Additionally, though there is a considerable level of trust in the fairness of LC1 and Courts, there is a much higher level of trust in customary institutions such as clans. Institutions such as police and probation officers have relatively low levels of trust. Importantly, for those choosing to go LC1 the shortness of distance was major factor in the decision indicating perhaps that LC1 is easily physically accessible. The results indicate that the role of the clan in family conflict resolution is high, and both clans and LC1s are the institutions that would need targeting in order to improve family conflict resolution.

Figure 53: Second/ Later Instance Family Justice Options



In the event that the first option failed, respondents indicated that they very often pursue other options in the quest to have the disputes resolved. Results show that at later instance, formal courts at Sub County and district levels gain prominence in use as rated in 22% of the options that were pursued after failure of the first option. This was closely followed by Clans and Local Council 1 both rated at 18% and other local council levels (including LC 2, 3 & 5) were rated at 17%; other relatives and the police also featured as justice options approached after the failure of the first option. This result indicates that though most respondents go to formal institutions as sites of first reporting, the more informal institutions such as clans and relatives play a significant role in conflict resolution. This finding further re-affirms that the interventions to improve access to family justice will need to be institutionalized along LC 1 with the involvement of clans or elders as indicated in the literature.

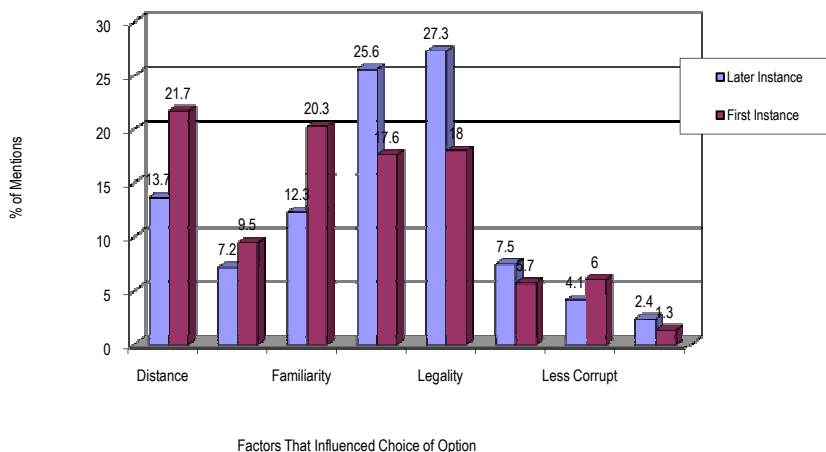
Further analysis of these options and the factors that influenced choice of option amongst the justice seeking public shows that after failure of the first option, persons seeking justice strongly consider whether the option chosen is legally mandated to handle the case (27.3%) and whether the option is trusted to exercise fairness (25.6%). The other significant considerations mentioned were distance (13.7%) and familiarity in terms of understanding how the option works rated at 12.3%. The subsequent result in Table 2.10 shows the options and the significance of specific reasons in influencing choice of that particular option.

Table 54: Factors Influencing Choice of Option at Second/ Later Instance

Factors that Influence Choice of Resolution Option after First Option Failed (Analysis of Multiple Responses)	Other Options Pursued after Failure of First Option to Resolve Family Conflict							
	LC 1	LCs (2, 3 & 5)	Clan	Court County/ District)	Probation Office	Other Relatives	Police	Total
	Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%
Distance- closest option	16.7	29.4	14.3	5.3	10.3	.0	9.5	13.7
Cost-usually cheap	7.4	17.6	7.1	1.3	3.4	33.3	4.8	7.2
Familiarity-understand how it works	13.0	13.2	23.2	3.9	3.4	.0	16.7	12.3
Fairness- trust the option	16.7	10.3	33.9	34.2	34.5	.0	16.7	25.6
Legal Requirement-that where to go first	31.5	13.2	5.4	38.2	41.4	33.3	42.9	27.3
Availability- only readily available option	7.4	11.8	5.4	9.2	.0	.0	2.4	7.5
Less corrupt	3.7	4.4	8.9	6.6	6.9	33.3	.0	4.1
Usually speedy/ fast/ proactive	3.7	.0	1.8	1.3	.0	.0	7.1	2.4
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Comparatively, choice of options at first and later instance in seeking family justice is influenced by the same factors but at different levels of importance. Distance (21.7%) and knowledge of how the option works (20.3%) were indicated to be the strongest considerations at first instance while at later instance the they had a relatively diminished significance (below 15%) while trust that the option will be fair and the consideration that it was the legally correct option to handle the issue gained prominence in decision making at levels of 25.6% and 27.3% respectively as shown in Figure xx. These two factors though not in the forefront at first instance level, they still had a strong role in justice seeking decisions mad at that level with ratings of 17.6% and 18% respectively.

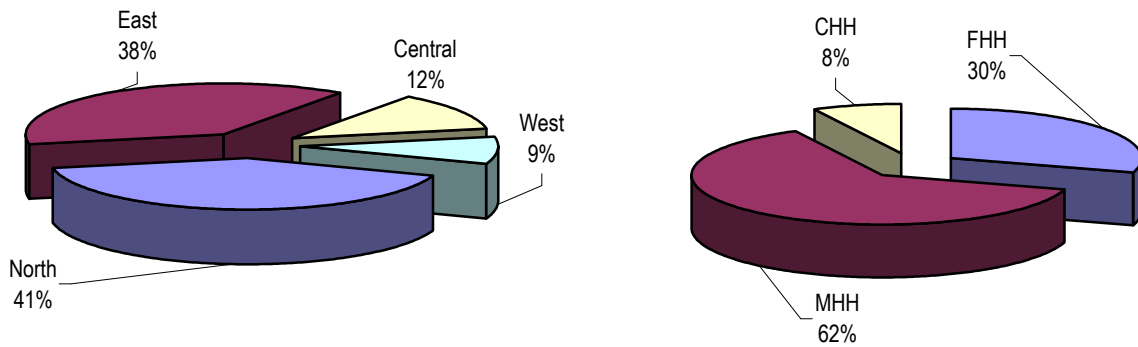
Figure 55: Comparison of Factors Influencing Choice of Family Justice Options



Unreported Family Conflict and their Management

Results show that 32.3% of all the family conflicts were found to have occurred in the survey (n=2,059) had not been reported to any dispute resolution option. Amongst the unreported family conflicts, domestic violence was ranked highest at 30.4% followed by adultery (21.5%), child abuse (20.4%), neglect of marital responsibilities especially in terms of various forms of withdrawal of economic support and abandonment (16.2%). It suffices to note that most of the unreported family conflicts (70%) were amongst rural households; by household category most were amongst male headed households (62%) while the northern region had the bulk of unreported cases (41%) followed by the east 38% as shown in the Figure 56 below.

Figure 56: Second/ Later Instance Family Justice Options



Further analysis shows that the most outstanding reasons for not reporting family conflicts is the preference for consensual resolution (47.4%) coupled with fear of repercussions (20.5%) reasons that are shown by the survey to have roots in the perpetrators of most family conflicts who are actually family members and/ or close relatives; fear of expenses involved (10.8%) and the fact that some persons are prevailed upon by others not to report family conflicts (13.8%) were the other significant mentions as shown in Table 57 below.

Table 57: Reasons Why Family Conflicts are not reported

Reasons Why Conflicts Were not Reported	Family Conflicts Not Reported								
	Inheritance/succession	Child Custody/Guardianship	Asset Stripping/Grabbing	Neglect of Marital responsibilities	Child Abuse	Adultery	Divorce/Separation	Domestic Violence	Total
Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%
Preferred consensual resolution	78.9	57.9	58.0	57.9	29.7	51.0	44.1	37.5	47.4
Lacked information/referral services	2.6	21.1	6.0	2.8	14.5	4.8	5.9	7.1	7.5
was prevailed upon not to report	7.9	10.5	12.0	13.1	13.8	14.3	5.9	16.7	13.8
Feared expense involved	5.3	5.3	10.0	5.6	17.2	8.2	17.6	14.6	10.8
Feared repercussions	5.3	5.3	14.0	20.6	24.8	21.8	26.5	24.2	20.5
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

In domestic violence induced conflicts, consensual resolution is cited at a rate of 37.5%, as the reason for not reporting the case. Furthermore, 'prevailed upon not to report' and 'feared repercussions' were rated 16.7% and 24.2%. In cases of child abuse the main reasons for non-reporting were preference for consensual resolution (29.7%) and 'feared repercussions' (24.8%); while fear expense in pursuing justice for this conflict was rated at 17.2%. These statistics are indicative of the inability of the most vulnerable

groups such as women and children to address conflicts that particularly affect them because of the adverse pressures placed upon them. This is clarified by the statistics in Table xx below. The distribution of responses amongst females is as follows: 41.2% preferred consensual resolution, 16% were prevailed upon not to report, 22.7% feared to report, and 11.2% feared expenses involved in reporting. Amongst males preferred consensual resolution was rated at 63.2%, 'feared repercussion' at 16.3%', and 'feared expenses' at 8.6%. Results also demonstrate a similar distribution of these reasons across households.

Table 58: Reasons Why Family Conflicts are not reported

Reasons Why Conflicts Were not Reported	Category of Household								Total	
	FHH		MHH		CHH		Male	Female	Male	Female
	Male Col%	Female Col%	Male Col%	Female Col%	Male Col%	Female Col%	Col%	Col%	Col%	Col%
Preferred consensual resolution	47.8	37.2	68.3	48.8	21.1	23.5	63.2	41.2		
Lacked information/ referral services	4.3	10.0	2.9	7.2	18.4	11.8	4.3	8.9		
was prevailed upon not to report	13.0	19.6	6.0	12.0	21.1	14.7	7.7	16.0		
Feared expense involved	8.7	13.6	7.1	5.7	23.7	26.5	8.6	11.2		
Feared repercussions	26.1	19.6	15.7	26.3	15.8	23.5	16.3	22.7		
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

The implication of these findings is that, to the extent possible it is ideal for JLOS to pursue and integrate consensual resolution of family disputes in all its programs for enhancing access to family justice. In this however, it will be pertinent to consider the gender differentials that are demonstrated in choice of how a family conflict should be resolved and the factors that deter vulnerable groups especially females from seeking out formal systems of dispute resolution, to extent possible these impact on the ability to access justice by the parties involved. Additionally, it is interesting to note that males rank 'preferred consensual resolution' higher than females. It might be the case that consensual resolution is biased towards the party that has more decision-making and economic power; which as shown underlay the decision to seek justice formally.

Results show that amongst respondents who had preferred consensual resolution of family conflicts; the influence and/ role of spouses was most imminent (33.7%) in facilitating the process; other important actors were natal relatives (19.5%), marital relatives (15.8%) and Clan Leaders (12.7%); aggregately the role of family members in consensual dispute resolution was found to stand at 72.4% while other actors including neighbors/ community members (11.7%) and clan leaders (12.1%). The role of the other actors was negligible. This underscores amongst matters of intimidation that women face in reporting family conflicts as shown in the literature review.

Thus though consensual resolutions are not inherently bad options for family conflicts, the results from key informant interviews and focus group discussions indicate that opting for consensual resolution is at times under coercion or inability to pursue other options by vulnerable groups, i.e. CHHs and women. This evidenced where spouses were reported to be prevailing upon their counter parts not to report family conflicts at a rate of 29.5% followed by natal relatives and unrelated community members both at 17.6% and marital relatives at 11.9%.

Furthermore, the findings on the parties involved in consensual resolution indicate that consensual resolution can perhaps be biased against women. The main person involved in consensual resolution is the spouse; however, church leaders/pastors do not seem to have a big role in consensual relations. Consensual resolution seems to for the most part include mainly family members including spouse, and members from the husband's family, indicating that consensual resolution is often a private and internal

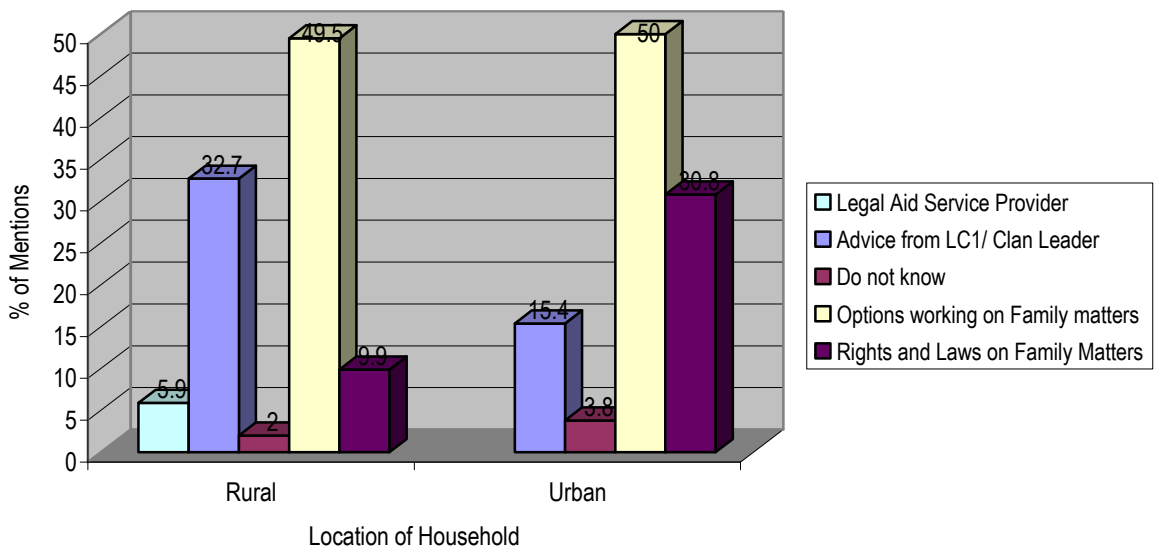
matter to families, which may or may not make it harder for vulnerable or disadvantaged parties to have their concerns adequately voiced. The lead factor in opting consensual dispute resolution was mentioned as the desire for privacy in handling the conflict which was rated at 73.2% followed by fear of costs that were likely in the event of opting for other avenues of resolving the conflict (12.3%), fear of repercussions (6.3%) and the need to emphasize conciliation (6.3%).

Table 59: Why Consensual Dispute Resolution is Preferred

Why Consensual Resolution Was Preferred	Category of Household							
	FHH		MHH		CHH		Total	
	Male Col%	Female Col%	Male Col%	Female Col%	Male Col%	Female Col%	Male Col%	Female Col%
Wanted Privacy	75.0	62.1	76.2	79.2	71.4	33.3	76.0	69.3
Fear of Repercussions of Other Options	12.5	10.5	3.1	10.9			3.3	10.2
Fear of Costs of Other Options		11.6	14.1	5.0	28.6	44.4	14.0	9.8
Wanted Conciliation		9.5	5.9	5.0		11.1	5.5	7.3
Was Influenced (spouse/ other party/ elders)	12.5	5.3	.8				1.1	2.4
Was Most Accessible Option		1.1				11.1		1.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

The importance of ranking ‘wanted privacy’ highly is that it indicates the need for more institutionalized approaches to resolution are perhaps considered not sensitive enough to certain subtleties or complexities of family conflicts. Considering that family conflicts such as domestic violence and child abuse with high levels of reoccurrence are cited to have high levels of consensual resolution, there maybe a need for sensitization on the effectiveness of consensual resolution versus reporting, or providing clarity within the systems for administration of justice clearly discerning at what point or clarifying which cases categorically qualify for consensual resolution and which ones require other forms of intervention. This calls for clear definition of and sensitization on mandates of different actors in family conflict resolution. Considering that conflicts such as domestic violence and child abuse, which have high levels of recurrence, are also cited as most often being resolved through consensual resolution, there is a need for sensitization on the effectiveness of consensual resolution versus reporting. These results indicate that formal mechanisms of family conflict resolution are not seen as adequate in resolving cases of conflict that have high levels of stigma attached to them such as domestic violence.

Figure 60: Information/ Referral Needs amongst Urban/ Rural Beneficiaries



In addition, survey results also show that the public needs more information in order to make better decisions on accessing family justice. Mandates of options and options working on family justice was ranked at 49.6%, followed by 'capacity of clan leaders and local council leaders to give guidance the legally correct guidance in event of a problem (29.1%) and access to information on rights within families and laws (14.2%). These needs indicate that there is little clarity of the mandates of justice institutions and actors. Additionally, it is interesting to note that the respondents have an interest of learning about the different resolution methods relating to family matters, substantiating the need to have legal aid and education on family justice.

Table 61: Information/ Referral Needs amongst Urban/ Rural Beneficiaries

How Information/ Referral Service should be Accessed/ Made Known	Regions										
	North		East		Central		West		Total		Total
	Rural	Urban	Rural	Urban	Rural	Urban	Rural	Urban	Rural	Urban	
Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%	
Radio	58.3		40	37.5		50			50.6	28	45.3
Do not use LCs	5							50	4.9		3.8
Put Info at the sub county	1.7	25							1.2	4	1.9
Community sensitization	35	50	53.3	56.3	75	50	50	100	40.7	60	45.3
Equip the Police		25	6.7	6.3	25				2.5	8	3.8
Total	100	100	100	100	100	100	100	100	100	100	100

In terms of how this information can be accessed respondents ranked the use of radio and use of direct community sensitization both at 45.3%. Between rural and urban households, these two options were still prominent though with variant significance; interestingly more rural households felt the need for radio as opposed to urban households that proposed direct community sensitization.

3.3 PERFORMANCE AND QUALITY OF FAMILY JUSTICE

The performance of family justice options was investigated at two levels; first instance and later instance in cases where respondents reported that the first option had failed to resolve the family conflict and/ or where one party felt dissatisfied and opted to pursue the issue further. Results show that at first instance, the rate of resolution of family conflicts was 76.9%; with an average dissatisfaction rate of only 16.4% for decisions made by various family justice options they had approached. Whereas the northern and eastern regions reported first instance resolution rates of 78.2% and 80.9%; the central and western regions had slightly lower rates of 67.8% and 69.4% respectively. With regard to dissatisfaction with decisions; the northern and western regions had lower rates of 13.4% and 12.7% while the east and central regions had comparatively higher rates averaging 18.3% respectively.

Table 62: Rate of Family Conflict Resolution and Satisfaction with Decisions

Rates of Resolution of Family Conflicts at First Instance and Rates of Satisfaction with Decisions of First Instance Resolution Options		Where Family Conflicts are Usually Reported First								Total
		LC 1	LCs (2, 3 and 5)	Clan	Court (Sub County/ District)	Probation Office	Other Relatives	Police	Others (Church Leader/ Legal Aid)	
		Col %	Col %	Col %	Col %	Col %	Col %	Col %	Col %	
Whether Family Conflicts was resolved at first option	Yes	75.4	75	81.3	76.2	64.6	69.1	71.4	100	76.9
Whether Respondent was Satisfied with decision	No	14.5	13	14.3	38.9	15.6	15.2	43.3	8.3	16.4

At latter instance; results show a relatively low resolution rate (69.2%); a case pending rate of 17.3% and instances of giving up pursuance of justice rated at 13.5%.

Noteworthy is that most pending cases are before court either at sub county/ district (27.9%) and the probation office (25%).

Table 63: Level of Pending Family Conflicts

Whether Conflict was finally resolved	Other Options Pursued after Failure of First Option to Resolve Family Conflict								Total Col %
	LC 1	LCs (2, 3 and 5)	Clan	Court County/ District)	(Sub	Probation Office	Other Relatives	Police	
	Col %	Col %	Col %	Col %	Col %	Col %	Col %	Col %	
Yes	67.3	78.4	81.8	64.7		62.5	40.0	68.4	69.2
No, pending before authority	15.4	13.7	7.3	27.9		25.0	20.0	13.2	17.3
No, just gave up	17.3	7.8	10.9	7.4		12.5	40.0	18.4	13.5
Total	100.0	100.0	100.0	100.0		100.0	100.0	100.0	100.0

At regional level, in the north most family cases were indicated to be pending before LC 1 (38.1%) while the other LC levels were indicated at a level of 14% along with clans also with the rating. In the East, most conflicts were pending in Court either at sub county/ district (34.1%) also followed by LC 1 (17.1%). In the central region LC 1 (36.4%) and Probation office (27.8%) while in the west Court either at sub county/ district (41.7%) and amongst relatives (25%) were indicated as options where most family conflict cases are pending. An investigation in the reasons as to why cases are pending reveals a shocking situation where 31.3% of the respondents attested that they did not know why their cases were pending while 22.4% indicated that there demands of money or various forms of facilitations that they could not afford.

Table 64: Reasons behind Pending Family Conflicts

Reasons Why Family Conflict is Still Pending	Option Where Family Conflict/ Case is Still Pending								
	LC 1	LCs (2, 3 and 5)	Clan	Court County/ District)	(Sub	Probation Office	Other Relatives	Police	Total
	Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%
Option is / was slow	35.7	25.0	50.0	45.0		40.0	.0	40.0	35.8
Do not Know	28.6	12.5	25.0	25.0		50.0	57.1	40.0	31.3
They want money	28.6	37.5	25.0	20.0		.0	28.6	20.0	22.4
Process is expensive	7.1	25.0	.0	10.0		10.0	14.3	.0	10.4
Total	100.0	100.0	100.0	100.0		100.0	100.0	100.0	100.0

As shown in the results below, respondents who gave up pursuing justice gave various reasons, leading amongst these was perception of the justice process as unfair rated at 34% followed by the process being expensive and marred by various demands particularly in form money (29.7%) that the prospective beneficiaries could not afford. It should be noted from the above result that more male respondents reported demands for money and the process being expensive (42.9%) than females (22.7%) and at the same time more females reported the process being unfair (36.4%) and fear of repercussions (22.7%) compared to 31.4% and 14.3% males. At regional level, an unfair family justice process was most reported in north (55%) and east (42%) regions while fear of repercussions was most prevalent in the central region (42.3%).

Table 65: Reasons Why Respondents Gave Up Pursuing Family Justice

Why Respondent Just Gave Pursuing Resolution of Conflict	Location of Household						
	Rural		Urban		Total		Total
	Male	Female	Male	Female	Male	Female	
	Col%	Col%	Col%	Col%	Col%	Col%	Col%
Option is / was slow	4.2	4.5	9.1	4.5	5.7	4.5	5.0
Didn't know how to proceed	4.2	9.1	9.1	22.7	5.7	13.6	10.9
Process expensive/ wanted money	45.8	25.0	36.4	18.2	42.9	22.7	29.7
Feared Repercussions	8.3	20.5	27.3	27.3	14.3	22.7	19.8
Process was unfair	37.5	40.9	18.2	27.3	31.4	36.4	34.7
Total	100	100	100	100	100	100	100

With regard to effective resolution of family conflicts, the most effective option was rated at clan (32.9%) closely followed by LC 1(31.6%) and other relatives (12.8%). The other options had ratings below 8%. With regard to specific typologies of conflicts, the options most effective were Clans and LC 1 except for child custody/ guardian ship and neglect of marital responsibilities where other relatives. It suffices to note that save for LC 1, formal institutions like courts at Sub County and district were shown to be less effective in dispensing family justice compared to non institutionalized options like clans and other relatives. It is important at this level to recognize that the jurisdiction of institutions on family justice needs to be redefined in light of the fact that LC1 and clans seem to taking on a hefty responsibility that they are not adequately prepared for; this is resulting in significant problems with the efficiency and effectiveness of the justice systems.

Table 66: Types of cases resolved by the different institutions

Family Conflicts									
If Family Conflict was Finally Resolved: Which Institution Finally Resolved	Inheritance/succession	Child Custody/Guardianship	Asset Stripping/Grabbing	Neglect of Marital responsibilities	Child Abuse	Adultery	Divorce/Separation	Domestic Violence	Total
LC 1	19.1	18.9	33.3	27.6	31.5	27.8	18.8	36.2	31.6
LCs (2, 3 and 5)	8.5	10.8	11.7	7.5	9.3	5.6	5.8	4.7	6.9
Clan	48.9	29.7	27.0	33.6	24.1	36.1	31.9	31.5	32.9
Court (Sub County/ District)	6.4	5.4	9.9	2.2	4.6	2.8	4.3	1.9	3.8
Probation Office	6.4	10.8	4.5	7.5	3.7	6.5	13.0	4.3	5.4
Other Relatives	4.3	21.6	5.4	17.9	14.8	14.8	10.1	14.0	12.8
Police	.0	2.7	.9	2.2	1.9	1.9	.0	1.6	1.3
Others (Church Leader/ Legal Aid	6.4	.0	7.2	1.5	10.2	4.6	15.9	5.8	5.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Overall, 51.5% of all the respondents surveyed felt the family justice system was fair; this was highest in the north 57.2%, followed by the east 55.4%, west 49.3% and least in the central region at 39.7%. This opinion was more or less evenly split between rural (51.8%) and urban (50.9%) respondents.

3.4 BARRIERS TO ACCESSING FAMILY JUSTICE

Social and Demographic Barriers

Poor literacy rates have adverse effects on people's ability to access the formal justice system. For example, the recordings of court proceedings are done in English though the vast majority of respondents have little working knowledge of English. Results show that less than half (44.4%) the respondents included in the survey could either read or write in English, yet English is the main medium of communication in formal dispute resolution options. Analysis interlinking proficiency in the use (Reading and Writing) of English with reasons why respondents abandoned pursuance of justice show that fear of the process and repercussions (23.7%) and ignorance of how to proceed with resolution of the family conflict (15.3%) were higher amongst those who did not have proficiency in the use of English compared those (15.8% and 5.3% respectively) with proficiency in the use of English. Results further show that this was a stronger problem amongst rural and female respondents. Thus, in spite of results showing that recordings of proceedings are made and ascertained, there was no correlation with the perception of fairness of the family justice system.

Another socio demographic issue with implications on the administration of justice was the level of registration of births, marriages and deaths. Results show only 24.8%

households attesting to their children being registered; 46.7% attesting to registered marriages although 27.7% reported incomplete payment of bride price and 21.1% reported no payment. With regard to registration of deaths only 13.7% attested. However, 49% claimed that they know where these registrations are supposed to take place. Thus this result points to an implementation/ compliance problem rather than policy. In addition, qualitative results revealed several initiatives civil society initiatives particularly by FIDA and Plan International in the registration of births and deaths; and, also the demand for birth certificates by UNEB to be having a profound effect in turning issues around. Although many mothers were also found to assume that immunization cards are birth certificates. Marriages on the other hand have no initiative to remedy the situation, except in specific districts like Hoima and Kibale where customary letters of recognition of exchange of bride price were being issued.

The structure of families was also an issue highlighted as a barrier to access family justice. The families generally big (mean size 7 persons) and although households are generally independent, they still live on plots of land adjacent to each other. In addition, 26.1% of the respondents who were either married and/ or cohabiting indicated that they were subsisting in multiple partnered relationships. In instances of polygamy, respondents indicated that in 27.4% of the co-wives stay in the same home. In the case of children, 18.7% of the time not all children belong to the current partner. These findings indicate fundamental problems with the basic family structure of most households which has adverse implications for the administration of family justice. These actually explain the strength of consensual dispute resolution. Family conflict situation turn out to be very complicated and embarrassing that people opt for the privacy of consensual dispute resolution options in spite of their pitfalls.

Economic Barriers

These essentially hinge on the cost of seeking dispute resolution vis-à-vis incomes; hence the economic choices that have to be made. The survey sought to establish the economic implications of accessing family justice in the context that literature review showed this as one of the major barriers to service provision, transparency in the justice processes and efficiency of JLOS institutions. From the perspective of beneficiaries, results show 42.8% attesting to various demands being made before their cases could be heard. The most outstanding demand is money rated at 74.1% while other demands include various forms of facilitation like transport, food and drinks which were rated at 23.5%.

Table 67: Demands Made Before Family Conflict Cases are heard

Demands that were Made Before Cases could be Heard	Where Family Conflicts are Usually Reported First									Total Col%
	LC 1	LCs (2, 3 and 5)	Clan	Court (Sub County/ District)	Probation Office	Other Relatives	Police	Others (Church Leader/ Legal Aid)		
	Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%	Col%	
Other Facilitation (drinks/ food/ transport)	15.0	21.4	48.4	25.0	12.5	33.3	3.7	100.0		23.5
Money	82.6	57.1	50.0	37.5	75.0	66.7	96.3	.0		74.1
Evidence	2.2	21.4	1.6	25.0	12.5	.0	.0	.0		2.0
Court fee	.3	.0	.0	12.5	.0	.0	.0	.0		.4
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

The result above shows that family justice seeking implies direct monetary expenses on often meager household incomes which often average (median) 60,000/=/ month; respondents indicated that payments averaged 8-14% of their monthly incomes. The contention however is whether these are legal payments or not. Further investigation showed this not to be the case; in 91.3% of the time these payments were not receipted.

Table 68: whether payment is received?

Where Family Conflicts are Usually Reported First									
Whether the Payment was Received	LC 1	LCs (2, 3 and 5)	Clan	Court (Sub County/District)	Probation Office	Other Relatives	Police	Others (Church Leader/ Legal Aid)	Total
	Col %	Col %	Col %	Col %	Col %	Col %	Col %	Col %	Col %
Yes	9.0	.0	7.7	33.3	25.0	13.0	11.1	.0	8.7
No	91.0	100.0	92.3	66.7	75.0	87.0	88.9	100.0	91.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

This finding elucidates the high perceptual levels of corruption and puts a reality figure on the level of corruption evident to the justice seeking public, which is the largest client of all JLOS institutions (both formal and informal). Focus group discussions show that the demands are made with impunity as if they were part of norms and expected actions before services are rendered. Given the income levels of households as show in the Uganda National Household Survey 2004 and 2006, the sums indicated above hemorrhage the meager household resources.

Inevitably the question of good governance arises and how JLOS is to strategize in either controlling or overcoming the effects of such practices, which not only cast doubt on efficiency and effectiveness of institutions. Review of literature alludes to the role of the office of Inspector General of Government, (IGG), whose reach at the moment is far flung given the fact that such evidence is emanating from the lowest of grassroots levels. This calls for a more innovative and structural approach that calls on the values of users themselves as a starting point in attempt to curtail the drain of household resources.

Procedural Barriers

Records of proceedings within the justice system are of key importance for keeping facts in a permanent form and for appeal purposes; it is one of the cornerstones for ensuring fairness in the system and a measure of capacity to dispense durable justice. 67.4% of respondents who had cases stated that their proceedings were recorded, while 72.5% ascertained the existence of a record of proceedings of their cases. Worrying however is the relatively high proportion that attested to not ascertaining the record of proceedings of their cases in court either at Sub County or District (30%) or at Local Councils higher than Local Council 1 (52.2%).

Table 69: Record of Case Proceedings

Where Family Conflicts are Usually Reported First												
			LC 1	LCs (2, 3 and 5)	Clan	Court (Sub County/District)	Probation Office	Other Relatives	Police	Others (Other Church/ Legal Aid)	Total	
			Col %	Col %	Col %	Col %	Col %	Col %	Col %	Col %	Col %	Col %
			Whether Proceedings of the Case were Recorded	Yes	72.0	69.2	58.5	81.0	86.7	54.8	90.2	70.0
	No	28.0	30.8	41.5	19.0	13.3	45.2	9.8	30.0	32.6		
	Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0		
Whether Respondent ascertained the Recordings	Yes	72.3	47.8	72.0	70.0	90.9	73.3	89.5	100.0	72.5		
	No	27.7	52.2	28.0	30.0	9.1	26.7	10.5	.0	27.5		
	Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0		

This finding indicates that record keeping (especially of case proceedings) is one of the major areas needed to strengthen of the family justice system and institutions especially the informal ones. According to Focus Group Discussions, all formal institutions (police, probation, etc) on family justice routinely embark on recording as a first step in the start of cases; the momentum is kept throughout the proceeding to conclusion of the cases. However Local Councils only register the nature of case reported and the parties involved, in some circumstances they may record the verdict of the council, but rarely are the proceedings recorded, the clan or family heads on the hand rely solely on their memory for record and rarely ever put facts, proceedings or verdicts into record forms, a

factor that literature review richly articulates. The manner in which records are kept renders them inadequate over the medium and long term.

The other issue with respect to economic barriers was the distances especially to the first dispute resolution option. The survey found that overall, average distance to the first dispute resolution option averages 1 to 2.5 Kms; however with a range of 50 Kms between the nearest and furthest family dispute resolution option. A return journey therefore averages 2 to 5 Kms. This result indicates family dispute resolution options especially the formal ones are not within ease of reach of households. And this has an economic implication on access and explains the reason most cited in giving up on the process of pursuing justice which was cited as the process is expensive. The result below shows the average distances by option.

Table 70: Distances to First Instance Family Conflict Resolution Options

Where Family Conflicts are Usually Reported First	Location of Household/ Distance to First Justice Option in Family Conflicts								
	Rural			Urban			Total		
	Mean	Median	Range	Mean	Median	Range	Mean	Median	Range
LC 1	2.0	1.0	34.0	1.6	1.0	20.9	1.9	1.0	34.0
LCs (2, 3 and 5)	2.2	2.0	7.8	1.9	1.3	5.5	2.1	2.0	7.8
Clan	2.0	1.2	15.9	4.1	2.0	49.9	2.6	1.7	49.9
Court (Sub County/ District)	3.5	1.5	12.9	4.5	1.0	16.6	3.8	1.5	16.9
Probation Office	5.3	3.5	19.5	2.7	2.0	5.8	4.2	3.0	19.8
Other Relatives	5.2	1.0	49.9	2.3	1.8	5.8	4.6	1.0	49.9
Police	3.1	2.0	11.0	2.7	3.0	5.0	2.9	2.0	11.0
Others (Church Leader/ Legal Aid	1.5	1.5	1.0	1.9	2.0	2.0	1.7	2.0	2.0
Total	2.4	1.0	50.0	2.7	1.5	49.9	2.5	1.0	50.0

Strategic Interventions for Family Justice

The main suggestion put forward for enhancing access to family justice is encouraging consensual resolution of conflict at family and LC level by 23% of the survey respondents. 15% urgent the use of alternative dispute resolution with elders, clans and religious leaders deemed to be less corrupt in the over roll system

Table 71: Strategic Interventions

What Should be done to Make Resolution of Family Conflicts Faster/ Fairer	Regions				
	North	East	Central	West	Total
	Col%	Col%	Col%	Col%	Col%
Remove Corrupt/ Tribalistic	6.3	5.6	4.4	.5	4.5
Sensitize in Communities/ Schools -Rights and FJS; give cons	12.5	15.9	12.8	6.5	12.1
Encourage Consensual Resolution at Family and LC Level	22.4	16.0	21.4	34.9	23.4
Encourage ADR (Elders/Clan/Religious) less corrupt/ prudent	16.7	18.1	19.5	5.9	15.1
Encourage Legal Aid on Family Conflicts	.8	1.7	2.1	4.0	2.0
Legislate and encourage practice of equity	1.4	1.9	4.9	6.0	3.2
Empower Elders and LCs with capacity to Make Judgments	8.0	13.0	4.3	18.5	10.9
Emphasize conciliation, make counseling part of family just	3.0	1.6	1.7	6.1	3.1
There should be enforcement of summons	3.1	3.1	3.3	.3	2.5
All conflicts should be reported to LC and Police without i	3.7	3.5	6.7	3.9	4.2
Punishment should be commensurate to crime	3.3	1.3	4.9	.8	2.5
Conflict Resolution should be free	3.6	1.7	.8	.4	1.9
Educate local leaders in the law and pay them	9.2	8.5	7.4	.4	6.7
Increase law institutions below the sub county	2.9	3.6	1.6	5.2	3.3
LC and religious leaders should be stopped from cases	.1	.1	.5	.3	.2
Vulnerable Persons Need Special Attention	.4	.6	.8	.8	.6
Family courts should be established at lower levels	2.4	3.8	2.4	3.9	3.1
Recognize other forms of marriage	.2	.0	.3	1.7	.5
Institute proper record keeping at all levels	.2	.0	.2	.0	.1
Total	100.0	100.0	100.0	100.0	100.0

The study highlights the need for increased transparency and access to the mandates of justice institutions and actors. There is also a need for increased education of respondents themselves on different resolution methods for family conflicts. The study highlights that there is a desire to have local institutions strengthened and made more transparent by respondents. There is a need for clear definition of and sensitization on mandates of different actors in family conflict resolution given the fact that most parties involved in consensual resolution are family members themselves as. There is a high level of corruption within the justice system to the extent that respondents are emphatic on alternative dispute resolution that are less corrupt as illustrated in the table 71 above.

VOLUME 3: CONCLUSIONS AND RECOMMENDATIONS

1 LAND JUSTICE

The prevalence of land conflicts at household level is high (34.9%) and is slightly higher amongst rural households (36%) compared to urban households (33%). Child headed households reported a comparatively higher prevalence of land conflicts (41.3%), which is a manifestation of the underlying social and economic vulnerability in this category of households. In the central region Kibanja on Mailo land has the highest prevalence of land conflicts rated at 30% while in all the other regions customary tenure is most conflict prone accounting for 60% of conflicts. Land conflicts are evidently disruptive to law and order as well as livelihoods, given that proportion of respondents who reported imprisonment and inability to access land under dispute which often heightens social tension, this warrants specific interventions from JLOS.

The most prevalent land conflicts point to lapses in tenure administration and management especially with regard to boundaries (32%), ownership (19%) and its transmission, occupation, trespass and fraudulent transactions. Inheritance and succession wrangles account for (15.5%) and illegal occupation is rated at 12.3%. Most land conflicts are inter rather than intra household, involving mostly persons with neighboring plots of land (neighbor/ other community members) although a reasonable number involves natal relatives again also staying on adjacent parcels or squabbles over inheritance matters.

Land disputes are on the increase and yet there is lack of or no capacity at all in the institutions charged with the adjudication and settlement of land disputes. These disputes often lead to high costs, deter investments and are a drain on resources of poor households and the economy. Land disputes have also resulted in public disorder and mob violence, leading to loss of lives in some districts. This high level of public discontent with service delivery in land disputes resolution is thought to be the reason in some circles that has led to Government tabling the Land Act (Amendment) Bill 2007. It is partially considered to be a result of this frustration, there was even an attempt by the executive to take away land adjudication from the Judiciary¹³⁹.

1.1 LEGAL ISSUES

(a) Land Laws and Land Justice

One of the complementary elements of the land justice system is the land laws. The land laws make provisions for the protection, regulation and enforcement of land/property rights. The certainty and clarity of land rights and the legitimacy and fairness of these laws make a big difference, especially with regard to land conflicts and disputes.

The existing landlord-tenant relationship as enacted in the Land Act is a major contributor to the escalating land conflicts and land disputes in the country¹⁴⁰. The overlapping and conflicting land rights on one and the same piece of land have created a land use deadlock between the statutory tenants (lawful occupants and bonafide occupants i.e. bibanja holders) and the registered land owner (mailo /native freehold owner). The current provisions in the Land Act are not effective in resolving the land

¹³⁹ Oscar Kihika, President, Uganda Law Society

¹⁴⁰ This was a major finding by the Constitutional Review Commission in 2003 and it has been re-echoed by majority stakeholder groups in the debates surrounding the controversial and contentious Land Amendment Bill, 2007

use deadlock; hence the rampant mass evictions by registered land owners¹⁴¹. The definition and rights accorded to bonafide occupants in the same act are also unpopular and lack legitimacy on the part of most landlords and this has resulted in massive forced evictions. The other controversy surrounds the nominal ground rent as provided for in the Land Act Cap. 227.

There is currently a legal lacuna as far as compensation to lawful occupants and bonafide occupants are concerned. Prior to the 1995 Constitution, a registered and owner could apply to court to pay compensation (as adjudicated by the court) and give a 3-month or 6-month quit notice to the tenant on payment of fair compensation. The statutory protection given to the lawful occupants and bonafide occupants under the Land Act leaves no room for compensation. The mutual agreement between the registered land owner and the occupant as provided for under section failed to work, hence the rampant evictions.

The principal law on compensation i.e. the Land Acquisition Act, 1965 is not only outdated, but it is also inconsistent with the provisions of the 1995 Constitution which demand for fair and adequate compensation payable prior to the compulsory acquisition Act, 1965), the basis of assessment of compensation is not provided for. The Land Act does not define 'adequate and fair compensation' and it does not outline what constitutes 'adequate and fair compensation'.

A bill to amend the Land Act has been presented to Parliament. The stated object of the bill is to amend the Land Act, Cap. 227 to enhance the security of occupancy of the lawful and bonafide occupants on registered land. The purpose of the amendment is stated to be to "further enhance the protection of lawful and bonafide occupants and occupants on customary land from widespread evictions from land without due regard to their land rights as conferred by the Constitution and the Land Act." Given the controversies which this proposed amendment has generated in a wide section of the population, it remains to be seen whether these proposals will stem the rampant and widespread evictions. Some of the disputes and conflicts further arise out of lack of enforcement of the provisions in the Land Act; in particular sections 38A (on security of occupancy on family land) and section 39 (the consent clause i.e. restrictions on transfer of family land)

Recommendations:

1. *The land law requires urgent reforms to remove the glaring conflicts between the legal provisions and the current socio-economic realities, addressing the root causes of the rampant evictions rather than the manifestations, this implies a legal prescription reviewing the landlord-tenant relationship as currently enacted in the Land Act (pursuant to Article 237(9)(a) of the Constitution) to create a harmonious relationship which is not only balanced but also cognizant of the current economic and social situation, and to extent possible fulfilling the expectations of landlords (mainly economic) and tenants (mainly secure tenure). The current legal provision under Section 36 of the Act permitting mutual agreement between tenants by occupancy and registered owners to achieve the objectives of Article 237 (9) (b) i.e. for the occupant to get registrable interest has failed to work, so it is further recommended that this position is reviewed.*

¹⁴¹ According to President of Uganda there are 3 problems; the ignorance of the tenants of their rights under the law; a heavy financial burden involved in court litigations; and corrupt elements in the Judiciary. He further asserts that a combination of these 3 factors has seen rampant evictions peasants from these pieces of land alienated from their original owners by t he British (President's Independence Speech on 9/10/2007)

2. *In addition, the compensation provisions under the Land Act and the Land Acquisition Act need to be fully reviewed in the light of the Constitutional provisions, and the entry point is the PSCP II Project under the Private Sector Foundation, where the process of legal review and reform of land related laws has begun. The legal reform process should be speeded up.*
3. *It is further recommended that the formulation of the National Land Policy which started 2 years ago should be speeded up so that policy informs and gives necessary directives to the land laws and the land administration institutions.*

(b) Compliance with International Legal and Human Rights Instruments

Uganda has not yet domesticated most of the principles, commitments and standards enshrined in the relevant international legal and human rights instruments. The principles and standards concern the following:-

- (a) the right to property as a human right as laid down in the ICCPR
- (b) the right to adequate housing, as a human right
- (c) the right to possess a degree of security of tenure
- (d) access to land to be treated as an entitlement
- (e) that forced eviction is a gross violation of human rights which can only be justified in extreme circumstances
- (f) that whenever evictions are necessary¹⁴², for whatever justifiable reason, there are acceptable ways of carrying out such evictions and these include adequate notification, genuine consultation with those affected and comparable alternative settlement, where appropriate, must be negotiated by all interest groups, with provision of legal recourse to those affected.

Recommendation:

The principles articulated above, ideally form part of any country's involuntary resettlement policy. Uganda as a country does not have an Involuntary Resettlement Policy to cater for the increased number of evictions/displacement which calls for involuntary resettlement (due to infrastructure projects and evictions from wetlands, forests and other protected areas). It is our recommendation that efforts should be made to domesticate the principals in the international legal instruments to protect and promote the several aspects of legal and human rights. In particular the relevant laws should stipulate the procedural protections which should be applied in relation to forced evictions by the government, private persons and bodies.

1.2 LAND DISPUTE RESOLUTION FORA AND MECHANISMS

The framework of laws for administration of land justice exists¹⁴³, however, the efficacy of the institutions is well below the expected standards, so in practice one can hardly speak of meaningful access in the area of land justice, since there is little motion in terms of cases moving to final resolution, with that the public is loosing confidence in the justice system, extra judicial means to resolve disputes are now being pursued leading to loss of lives or under hand eviction orders from the Registrars', because the systems moves too slowly, in part due to the staffing (a few Judges for example in the Land Division in High Court who have other responsibilities as well such as criminal cases).

¹⁴² Many people are being evicted on daily basis by the government agencies from forest reserves, wildlife protected areas, government land (farms and ranches), wetlands and for other environmental and or development concerns including infrastructure development – all these victims of forced eviction require protection under international human rights laws

¹⁴³ As laid down by law; Judicature Act, Constitution, Magistrates Court Act etc, asserts Oscar Kihika, President, Uganda Law Society

There is a multiplicity of land dispute resolution for a, which many times leads to “forum shopping” by aggrieved parties, without a clear hierarchy. There is a multiplicity of systems and institutions working in parallel. This has created overlaps and conflicts in the processing of land disputes. Uganda operates both the formal system as well as the informal system. The institutions include Local Council Courts, Land Tribunals, Courts, legal aid service providers, police, informal institutions and government agencies.

Article 243 of the Constitution establishes land tribunal as decentralized system of land dispute resolution. The Land Act established an elaborate structure of tribunals for each district (but implemented under a circuiting model). The operations of tribunals have since been suspended by the judiciary, citing limited resources. The Act also provides for LC Courts, with the LC 2 Court being the court of first instance, and for the appointment of adhoc mediators, in appropriate circumstances, to assist the tribunals in resolving disputes. No specific recognition is given under the Act to indigenous/customary law as a normative framework for processing of disputes and customary tenure.

The realistic situation on the ground is that when land conflicts occur, the leading options of first instance are local councils 1 and 2 rated at a level of 57.7%, followed by Clan and other community leaders rated at 27.5%. Western is the only region that exhibited a relatively higher level of use of the formal court system at 14.4% although again local councils one and two were most used (55%) followed by clan/ community leaders (20.7%). It's apparent that the land justice seeking behaviour and choice of options at the first reporting level is strongly influenced by distance to the resolution option (22.9%), the understanding that it is 'legal requirement to go there' (21.3%) and familiarity with how the particular option actually works (18.9%). However it is also clear that cases do often stagnate at LCs, Clan and Community leaders levels, once a conflict is not resolved at first instance, people are concerned about ability to sustain the case to conclusion.

For all the land conflicts that were found to have occurred in the survey communities only 20% had not been reported to any dispute resolution option with 63% of these in rural areas because of preference for consensual resolution which is an informal process without any guidelines or appropriate linkages with the formal systems that would ensure case history and records. Relatives either natal (brothers and sisters) and immediate family play the leading role in stopping land conflicts from being reported under the guise of preferring consensual dispute resolution. Above all for the parties involved knowledge of the mandates of various grass roots actors in land justice is critical in enhancing access through facilitating informed choices and decisions.

Survey respondents reported a dispute resolution rate of 59.9% for land conflicts at first instance; with an average dissatisfaction rate of only 13.3% and an average (40.9%) rated land justice system as fair. With regard to institutions that finally resolve the land conflict, LC 1 is rated highest than all other options at 39.3% followed by consensual option at (20.2%), much as the LC1s are main institutions that handle land disputes/conflicts on the ground, they do not have a legal mandate, therefore LC2 the court with legal mandate for first instance in resolution of land disputes largely functions as an appellat court.

Although, not provided for in the law, it is also common for dispute resolution to be undertaken by President's office (i.e. Directorate for Land Affairs), and the offices of Resident District Commissioners. To crown it all, the state institutions that are supposed to deal with land disputes under the provisions of the Land Act are not functioning as prescribed. The LC2 Courts and LC3 Courts have not been equipped to deal with land disputes. Under the Land Act, the LC1 court has no jurisdiction to hear land cases and

yet they have continued to hear these cases illegally, because the Local Council Courts Act still grants them power to do so, which is a contradiction and legal overlap between the two statutes/laws.

In instances where respondents gave up on the resolution process, the leading reasons were demands for money they could not satisfy (27.9%), which in turn rendered the process expensive (34.9%) and caused frustration (14%), crown by the particular option being slow (9.3%). For those that accept to pay the monies demanded, 88% do not receive any form of receipts. Corruption and illegitimate demands for money slow the justice delivery process. It is important to note that refusal to honour summons is a significant reason in impeding the process of justice at a ranking of 11.6%

By the time the mandate of the Land Tribunals expired in November 2006, the caseload was as follows; registered cases: 6,900; completed cases: 2,468; pending / partially heard cases 4,432¹⁴⁴. The modus operandi of circuiting contributed to delays in settlement of disputes and increased the case backlog. By the time Land Tribunals closed, they had developed complex jurisdiction and litigation procedures which are usually associated with ordinary courts of law, contrary to the intent of their set up. The 2006 Baseline Surveys revealed that the Land Tribunal was ranked very low in performance. Land Tribunals were indicated as expensive and extremely ineffective. It ought to be noted that only 18 chairpersons were appointed to the then 56 Districts and 2 members were appointed in the then 56 Districts. In result, chairpersons were rotating between 3 to 5 districts that formed a circuit.

Tribunals are institutions created by the Constitution. The spirit underlying the Constitutional provisions and the law that operationalized them was to provide local input through members drawn from local areas, who are knowledgeable in the land tenure systems, culture, customs and the usage of their people as a means of ensuring that fairness and natural justice are adhered to and to generate public confidence in the land justice system. It was intended to make land justice popular, to render cheap and expeditious land justice. Land Tribunals were suspended mainly due to inadequate funding from Government¹⁴⁵ and expiry of the 5 year term of Chairpersons.

Government should deal with the structural issues that led to the poor performance of the Land Tribunals, these include;

- (a) Inadequate funding which forced the authorities to adopt a circuiting system whereby a chairperson would move to 3 – 5 districts
- (b) Acute shortage of funds meant that land tribunals could hold court sessions only for 2 days in a month in each district – this led to a low rate of disposal of land cases countrywide which caused public complaints and outcry¹⁴⁶
- (c) The two members of the Land Tribunals were part-time and were paid a monthly retainer fee of a paltry Uganda shs. 150,000 which was a big demotivating factor.
- (d) Many of the members were residing outside the subject districts hence persistent lack of quorum as members were not readily available.

¹⁴⁴ This is in addition to 2768 land cases which were reported still pending in the High court as at 30/4/2007 (JLOS Progress Report presented to the twelfth Joint GOU/Donor Review, June 2007).

¹⁴⁵ Ministry of Finance, Planning and Economic Development released only shs. 1.2 billion out of the budget of 3.9 billion for the FY 2006/2007, leaving a gap of 2.7 billion for the second year running

¹⁴⁶ According to the official records from the Judiciary, at the point of handover of land cases to the Magistrates Court, the caseload was as follows; registered cases: 6,900; completed cases: 2,468; pending / partially heard cases 4,432

Recommendations:

1. *This study recommends the immediate re-operationalization of Land Tribunals as the most viable land dispute resolution institution that has not been overtaken by events, besides shifting land disputes resolution to Magistrates Courts is not helpful since they have a high backlog of criminal and civil cases, this is in addition to many new ones that were transferred to them upon increased jurisdiction following the amendment of the Magistrates Court Act.*
 - a. *It is clear from the study, that despite the failure to finance and resource them, Land Tribunals were filling a critical gap, if only they could be set up in the manner that they were initially envisaged with each district having its own the circuiting policy should be abolished, however should circuiting be found inevitable then the maximum is 2 districts) and they should be fully equipped and be well-facilitated, doing away with the complex jurisdiction and litigation procedures.*
 - b. *It is recommended that Government prioritizes the land dispute resolution and allocates adequate funding to the judiciary to enable it run the Land Tribunals. The Judiciary needs Uganda shs. 8.9 billion annually to cater for the 84 District Land Tribunals.*
 - c. *In case the funds are insufficient to establish a Land tribunal in each of the 84 districts; it will be prudent to establish fully fledged district tribunal in district where the incidence of land conflicts / disputes is high as an interim measure. In the rest of the districts let the Magistrates Courts continue to hear land cases and create a special land division in these Magisterial areas.*
 - d. *Special funds should be allocated to handle the existing high case backlog. The Judiciary should first develop and cost a land cases-back log reduction strategy. This strategy ought the embrace the principle of short trails and quick judgments.*
 - e. *The supervisory mandate for the Tribunals constitutionally rests with the Judiciary, however for operational purposes, the Judiciary and the Land sector need to engage for purposes of arriving at a workable modus operandi in terms of resourcing and supervision, if service delivery is to be attained under this model. The Ministries responsible should speed up the approval of the structure of District Land Tribunals which has been submitted by the Judiciary.*
 - f. *All members be made full time employees to avoid failed quorum, it should also be a requirement that all members reside in the subject district for purposes of availability on a daily basis as rule 35 of the Land Tribunals (Procedure) Rules demands.*
2. *Indigenous/traditional dispute management institutions should be accorded precedence in respect of disputes over land held under customary tenure. These actors need to be empowered and strengthened through knowledge and skills to enable them respond adequately to land disputes and land conflict situations. Empowering these informal actors and integrating them into the statutory system is critical as there is a strong sentiment that formal institutions are punitive and not emphasize conciliation.*
3. *Local Council Courts are accessible in both physical and technical terms, affordable, user friendly, participatory and effective because they are conciliatory and faster, leaving both he parties satisfied. In addition, people have confidence in them as administrators of justice that people understand and identify with. Local council courts provide an alternative to the procedurally complex, less accessible and expensive formal courts especially with regard to the majority of the rural poor. For*

all the above positive attributes, these courts should be supported and promoted. JLOS should encourage the public to use Local Council Courts more to settle land disputes as one way of reducing the growth of land cases on the formal system. However;

- a. It ought to be appreciated that the operations of LC1 and LC2 Courts are currently besieged by a number of illegalities as well as contradictions. Between the Land Act and Local Council Courts Act. Under the Land Act, LC2 is the court of first instance however under the Local Council Courts Act, LC1 is the court of first instance. There is a need to harmonize the two positions. It is recommended that the Land Act be amended to restore jurisdiction to LC 1 courts with appeal to L3 Courts to achieve the same objective of reducing costs as the earlier 2004 Land Amendment placed jurisdiction at LC2 (its is redundant, as people go to LC1), skipping LC2 by granting appeal status to LC3 works as effectively as earlier intended.*
 - b. In addition, the constitutional court ruling made the LC1s and LC2s in the country illegal, yet they continue to operate on ground. The amendment of the law to remedy the situation has not yet received assent from the President, this needs to be expeditiously accomplished so that the election of new LC1 and LC2 takes place.*
 - c. Lack of motivation of LC officials presents opportunities for abuse of office and exploitation of users despite section 41(2) of the Local Council Courts Act that provides for allowances for members limited to LC Courts of a Town, division or sub county, this excludes the rural areas where such abuse and exploitation is rampant.*
 - d. Some LCs have been reported to be corrupt and engaging in bribery. Cases of nepotism, undue influence and political bias have been reported. The Local Council Courts' adherence to principles of human rights, ethical conduct, natural justice and gender sensitivity is rather poor. These negatives can be dealt with through training and sensitization, monitoring and supervision. JLOS should work closely with the Ministry of Local Government to train and build capacity for these courts to effectively and efficiently handle land cases. The Judiciary should institute monitoring and supervisory mechanism over LC Courts.*
- 4. JLOS should promote the use of alternative dispute resolution mechanisms (ADR) as an alternative to formal litigation in the land justice system. There is need to develop a regulatory framework and standards for ADR especially that undertaken by Legal Aid Service Providers. There is also need to enhance awareness of the public and users on benefits of ADR.*
- 5. There is need to define a clear hierarchy in order to guarantee finality and authoritativeness of decisions of all dispute processing mechanisms subject only to appeal to higher levels of jurisdiction. There is need to develop and enforce minimum standards of service delivery in land justice system.*

1.3 LAND JUSTICE AND SUPPORT INSTITUTIONS

One other important element of the land justice system are the support institutions outsiders the key JLOS institutions and these include the legal aid service providers, the land administration institutions and the traditional/customary land administration and land conflict/dispute management institutions. It ought to be stressed once again that the land justice system should operate to protect, regulate and enforce land/property rights, security of tenure, and use of land for economic development and empowerment.

Legal aid service providers in the Land Sector mainly provide secondary legal aid which includes legal literacy (through awareness sessions, booklets, posters and radio programmes), paralegal programmes, community activities and research/advocacy initiatives. The most active in this field are Uganda Land Alliance, Uganda Law Society and FIDA Uganda and Public Defenders Association. The Local Council Courts/Legal Aid Baseline Survey (2006) found that legal aid providers are not visible, audible or accessible to many people in the people. They are also affected by delays in the formal justice system which in effect increases the costs of their operations and further compromise access to justice for the poor persons they represent. They are also constrained by lack of an enforcement mechanism particularly on cases that are resolved through mediation.

The Draft National Land Policy describes the land rights administration system in Uganda as typically beset by a number of malfunctions, prominent among which are: a high degree of obsolescence, bureaucratic complexity, managerial opacity, operational inefficiency and high transaction costs. The Land Registry is one of the cornerstones in the Ugandan land administration system and contains information on land ownership and other rights necessary for the State to be able to uphold law and order and to safeguard security of tenure to the benefit of the citizens for social and economic development. But the Land Registry is in a sorry state. The several studies which have been carried out on the Land Registry in the recent past have pointed to the considerable confusion over legal property rights. The studies¹⁴⁷ have identified the problems in the Land Registry as being:

- (i) poor physical condition of land records, lack of updating and loss of information due to damages and theft.
- (ii) increased systematic fraudulent and back-door practices which lead to the losses of property by rightful owners, undermine public confidence in the state registration system, affect the land tenure security, make the transactions of the property uncertain and has tragic consequences for many families that suffer from such practices.
- (iii) fake land titles circulating in the market, which create additional uncertainty in the market.
- (iv) the cumbersome procedures in the degraded registry environment and damaged and outdated land records leave a little chance to the genuine owners and clients to protect themselves or get reliable information about the property.

These malfunctions have tended to impede the development of the Land sector and those other sectors with which it has intimate linkages. They are also a source of land conflicts and disputes.

Transparent and efficient land administration providing basic public services at an affordable cost for all groups of society not only facilitates the development of business but also contributes to the protection of property rights of most vulnerable groups of society and increase food security and social peace. However, cumbersome and non-transparent procedures of land registration and corrupt practices of land administration can have opposite effects. A poorly managed land conveyancing mechanism has a direct bearing on economic development because it affects property rights/ownership and discourages investment. Inefficient and corrupt systems of land administration have a negative impact on a country's investment climate and also affect the most vulnerable groups of population.

¹⁴⁷ The studies include a study by DW Greenwood (1990); the Review of the Status of the Land Information Systems in Uganda (2003) and the Baseline Evaluation Report-Securing and Upgrading the Land Registry and Implementation of a Land Information System in Uganda (2007)

Two other important land administration institutions have never been formed because the district councils which are supposed to pay them say they have no funds. The Land Recorders (responsible for issuing certificates of customary ownership and certificates of occupancy, as well as transactions on customary land and transactions in certificates of occupancy) who are supposed to be at sub-county level are not functioning at all and the Area Land Committees, that are supposed to be lower level institution facilitating the registration of rights and interests in land.

Recommendations

1. *JLOS should work to remove constraints that limit the effectiveness of the legal aid service providers and encourage them to continue rendering legal aid services using mediation and other forms of ADR as the key methods used in response to the high cost of litigation as well as delays. In addition, given the high and almost prohibitive costs of litigation, it is more efficient to handle strategic litigation and class actions so that a big lump sum is spent to achieve maximum results and far reaching impact. To this end, the legal service providers need to be encouraged to handle test cases on key land and human rights issues and public interest litigation to precipitate social change.*
2. *The reforms on land rights administration framework being implemented by the Second Private Sector Competitiveness Project (PSCPII) by the Private Sector Foundation on the Land Registry are in the right direction and should be supported by JLOS. The sub component on the Land Registry aims to help increase the effectiveness of public land institutions so as to make it easier to obtain and transfer evidence of land ownership. This will in turn improve tenure security, investment incentives, gender equity, and governance and will facilitate the use of land titles as collateral for credit. This is in line with Key Result Area 5 of SIP II : JLOS Contribution to Economic Development Enhanced, which is geared to making the justice system responsive to Uganda's growth demands as articulated under Pillar 2 of the PEAP on enhancing productivity and competitiveness.*

1.4 ACCESSIBILITY TO LAND JUSTICE

The Legal Aid Baseline Survey and Needs Assessment (2004) found that there are specific factors that impact on access to justice for the people of Uganda, especially the poor and the factors include the high cost of litigation, lack of awareness of rights, technicalities in using the formal justice system, attitudes and orientation of personnel in the justice system, lack of co-ordination among legal and service providers, gaps in the monitoring the quality of services provided, breakdown in the justice system in war affected areas, and aspects of social difference as a basis of marginalization (age, health status and gender).

According to the 2004 National Service Delivery Survey Report (NSDS), 80% of the households are located more than 19 km from the High Court; 66% are located more than 10 km from the District Land Tribunal and 48.8% from the Magistrate's Court. Regarding the quality of and satisfaction with legal services, NSDS inquired about the time it took to resolve the issue/case as a proxy for effectiveness. Overall, 66 percent of the cases took less than one month however, with significant variations depending on the institution contacted. The District Land Tribunal, the High court and the Magistrate's Court were reported to have taken long to resolve cases. For all cases presented to the District Land Tribunals 73 percent had taken more than six months; 46 percent of cases for the Magistrate court an 59 percent for the High Court had taken more than six months to be resolved. The District Land Tribunals had nearly 53 percent of cases pending while the customary courts had the lowest percentage of pending cases 4.6%.

Regarding costs, 52.3% of the respondents in the survey reported that they had made payment to District Land Tribunals (official and unofficial payments for the services they received). The households that made payment before their issue/case was resolved were asked the purpose of payment. Of concern is the payment of unofficial charges which is an impediment to access and utilization of services. Bribery was highest (33.0%) in the central police; 16% in the High Court; 16% in the Magistrate's Court; 11% in the District Land Tribunals; 7.3% in the LC1 Courts. Bribery was least common in the customary courts where only 2.7% of the households paid a bribe.

Recommendations

- 1. Efforts should be put in place to remove all the cited constraints to accessing land justice. In particular, the high cost of litigation, corruption, lack of awareness of procedures and rights, delays in dispensing justice, lack of capacity in the Local Council Courts and the traditional/customary institutions, and lack of monitoring mechanisms for access.*
- 2. Justice delayed is not only justice denied, but slow judicial process normally leads to further conflicts and violence. JLOS should set minimum performance standards in the administration of land justice to improve efficiency in the discharge of justice. Innovative approaches to speed up service delivery should be designed; and pilots aimed at reducing the case backlog should be put in place.*
- 3. Local Councils, traditional institutions, elders and community leaders should be empowered with appropriate knowledge and skills to rise up to the challenges of land dispute./conflict resolution. Informal mechanisms of dispute resolution should be promoted and strengthened. There is a strong perception in communities that formal justice options are largely punitive and do not promote conciliation.*
- 4. ADR mechanisms (both formal and informal) should be promoted as they have several advantages; low-cost, speed, accessibility, cultural relevance and responsiveness to poor people's concerns. These mechanisms should receive state support and the state agencies (court and police) should assist on enforcing decisions of these mechanisms.*
- 5. Interventions should be designed to improve access to legal aid and use of paralegals. The growing number of legal aid initiatives that are seeking to protect, defend, or strengthen the land rights of the poor and the marginalized in society should be supported. Providing legal assistance so that these groups can defend their rights, this could also help diffuse and resolve conflicts.*
- 6. There is need for increased sensitization on land laws and land rights. Poor men and women frequently lack precise knowledge of their precise land entitlements, and are frequently unaware of the different mechanisms that exist for land dispute resolution and land administration in general. This widespread knowledge gap contributes significantly to the weak land rights enjoyed by vulnerable groups, and it creates opportunities for others with more power to unlawfully acquire their land rights.*
- 7. Land rights information and awareness campaigns should be increased and these should include the technical and legal procedures for accessing land justice. There is need to develop appropriate and effective means of communication and information dissemination. There is need to put in place supervision mechanisms over all instructions responsible for land justice. In addition, the public information*

should explain the mandates, roles and functions of the different institutions involved in the administration of land justice.

- 8. It is recommended that the judiciary establishes user committees; this will go along way to in-calculate and appreciate a culture of legal process involving mediation. It will also promote accountability of government through its executive agencies like the RDCs and avoid parallel jurisdiction and unwarranted conflicts.*

1.5 LAND JUSTICE INSTITUTIONS IN CONFLICT-AFFECTED AREAS

The destruction of property and displacement of persons increased land disputes and land conflicts in the affected areas. The break-down of civil administration and institutional breakdown in the conflict-affected districts has left a vacuum and this turn has increased insecurity of person's and property. The settling of internally displaced persons (IDPs) and the setting up of army detaches on private land has also generated a set of disputes and conflicts.

The weakening of traditional/customary systems, structures and institutions that used to deal with land administration and land dispute/conflict management is yet another crisis problem that JLOS has to deal with. Years of displacement have eroded substantially the authority and outreach of traditional dispute resolution mechanisms.

Cases of restitution, compensation and resettlement are piling up without a clear policy, legal and institutional framework to handle. Studies have indicated that land disputes in these areas are likely to increase as more IDPs leave the camps and try to return to their original homes.

The institutional frameworks are dysfunctional. Weak capacity in central and local levels of government is hampering the process of resolving claims to land especially claims of vulnerable groups.

Recommendations

- 1. The conflict-affected districts in Lango Acholi, Karamoja and Teso need and deserve special attention and affirmative action in so far as land administration and land justice are concerned. The urgency cannot be over-emphasized as failure to resolve emerging land disputes and conflicts might trigger another wave of armed conflict.*
- 2. There is need for increased resources to build capacity of land institutions in Northern and North-Eastern Uganda to enable them render the necessary land services and stem further escalation of land disputes and conflicts. District Land Offices and Area Land Committees in particular need to be established and equipped.*
- 3. There is need for prioritized interventions in conflict affected areas to increase the presence and effectiveness of the formal land dispute resolution institutions i.e. the LC Courts and the District Land Tribunals. In this regard, these areas need and deserve affirmative action in allocation of resources to land dispute resolution institution.*
- 4. Support should be given to traditional justice mechanisms and systems, and transitional justice initiatives. There are a number of international NGOs, CSOs and local NGOs which are already on the ground and working in these areas of justice. The idea is to build synergies with these agencies.*

5. *Knowledge of the land laws and land rights is very important in stemming the incidence of land disputes/conflicts. Studies have found a high illiteracy and ignorance of the contents of law. Education and Public awareness campaigns should be launched in these conflict affected areas. The land laws should be simplified, translated into local languages and disseminated. Brochures should be produced to inform the public on the functions of the land justice institutions/agencies and where their services can be obtained. User manuals and guides should also be produced. JLOS should sponsor regular radio programmes in various languages on dissemination of laws, rights and the administration of land justice including the technical and legal procedures.*
6. *The vulnerable groups (the women, the widows, the orphaned children, the elderly and persons with disabilities) need special attention. These groups need protection to their land housing and property rights. JLOS in collaboration with the Ministry of Lands, Housing and Urban Development, together with local government and human rights agencies should design specific interventions.*

2. FAMILY JUSTICE

2.1 FAMILY STRUCTURES

Findings of the survey in this study show that 40% of household are involved in family disputes at a particular point in time, with rural households, leading at a prevalence of 41% in rural households, while the urban household stand at 38%; domestic violence is the most significant type of family conflict with a prevalence of 25.7%, even though child headed household report 'asset stripping/grabbing' at 34.1% and succession and inheritance conflicts at 22.2%. Results also show that 32.3% of all the family conflicts that occur go unreported to any dispute resolution option, mostly in (70%) rural households at times under coercion or inability to pursue other options by vulnerable groups, with outcomes perhaps biased against women, the reason being family matters are considered private and thought to be best resolved consensual amongst family members, thus the community prevails on those affected "not to report" but resolve "internally".

In aggregate terms, 72.4% of family members play a role in this while other actors including neighbors / community members (11.7%) and clan leaders (12.1%). Family conflict situation turn out to be very complicated and embarrassing that people opt for the privacy of consensual dispute resolution options in spite of their pitfalls. It also indicates the need for more institutionalized approaches to resolution, the current ones are perhaps considered not sensitive enough to certain subtleties or complexities of family conflicts.

In terms of gender, women face additional social pressures not to report family conflicts and are also the main victims of family conflict considering that domestic violence is the main type of family conflict. For example, female responses ranked 'feared repercussion' or 'was prevailed upon not to report' aggregately at 39.1 % whereas male responses ranked the same only at 24% as reasons for not reporting a conflict. On the other hand in child headed household cultural systems and safety nets have failed to protect the rights of children or have themselves become the perpetrators of conflicts, thus leaving the formal authority holders as the only viable sources of justice.

The above findings are a clear indication that JLOS under SIP II is responding to an articulated need for justice across rural and urban households, however the differentiated occurrence of conflict within households evidenced above is a factor that needs to be considered when JLOS is designing programmes to enhance access to justice and is particularly related to vulnerabilities that reduce opportunities and

capacities of such households to access justice in relation to cost of justice and income differentials. Often family justice is considered a small issue that is best handled within the family or at household level; reports only reach formal institutions when the situation turns violent or events lead to death.

Recommendations:

1. *It should be recognized by JLOS in the design of its interventions for family justice, that it may add value to enrich informal processes by providing guidelines or institutionalizing informal focal points given the sensitive nature and subtleties or complexities of family conflicts, that often deliver outcomes biased against vulnerable groups (women, children, elderly and persons with disabilities) because family matters are considered private and thought to be best resolved amongst family members, thus the community and the general environment often prevails on those affected “not to report” but resolve “internally”.*
2. *Differentiated approaches for family justice are necessary for the different parties and individuals within households, because they are not uniformly affected or constrained in access to family justice. It is therefore recommended that the strategies and interventions designed for family justice be cognizant of the special needs, interest and circumstances that give differentiated impacts and effects by providing an innovative menu of options as “one size fits all” solutions are not feasible in this area.*
3. *Given the levels of reoccurrence of domestic violence and child abuse, there is need for sensitization on the effectiveness of consensual resolution versus reporting, or providing clarity within the systems for administration of justice clearly discerning at what point or clarifying which cases categorically qualify for consensual resolution and which ones require other forms of intervention.*
4. *In terms of targeting, responses or programmes to enhance family justice must have spouses within marital relations as the ultimate beneficiaries since they are the major perpetrators of family conflicts, followed by in-laws and family members (brothers and sisters) who are the other power holders on family matters in the absence of spouse, hence take over as the second major perpetrators of family conflicts. The community specifically through its leaders is also significant, as a regulator of family conflicts.*

2.2 LEGAL ISSUES

Majority of the family laws are obsolete or inadequate in addressing some of the modern tensions or are not in conformity with the various principles that upheld justice in the 1995 Constitution.

- (a) Marriage laws do not address the issue of co-habiting despite the presence of such unions that are times long term and upon death or separation lead to confusion and conflict over entitlement over accumulated wealth. However according to case law, property acquired during marriage is marital property if it is jointly acquired.
- (b) It is also apparent that a knowledge gap exists on relational obligations and rights within social unions especially marriages where (neglect of marital obligations and domestic violence) issues stand out as requiring specific responses in law defining norm and practices and setting obligatory norms for adherence within a legislative framework.
- (c) The Children’s Act does not address specifically provide for jurisdiction issues in respect of adoption, fostering, adoption by relatives, the adoption process

and guardianship. The gap in the law is the procedure of acquiring guardianship, thus the need to reform the law to provide for guardianship specifically. Guardianship is not described under the Children Act leaving intending applicants as guardian in doubt as to the extent of their parental role. There is no specific law under which guardianship is applied for in Uganda despite the provisions in the Constitution.

- (d) In terms of child trafficking there are no policies to combat trafficking, and there is no specific law to address trafficking of children except, scattered section in the Penal Code Act (Cap 120) that is now obsolete. This is a challenge to the police which charges the offenders with offences like, abduction and kidnapping under S. 126 (a) and (b) of the Penal Code.
- (e) It is clear from study findings that despite having articulate constitutional principles there are discriminatory aspects in the law disregarding any contribution that a spouse may have made towards the acquisition or preservation of the estate of the deceased in the Succession Act. On the ground there is widespread gender discrimination in property inheritance, Cultural and religious norms are used to strip widows and female children of their property including land and exploitative practices dominate inheritance matters in Uganda.

Another major issue is that the institutional structures needed to ensure that the laws are implemented are often weak or even non-existent., For example, although Uganda has a law that requires mandatory registration of all births and deaths are registered (Birth and Death Registrations Act, CAP 309), however there is not enough incentive and sanctions to ensure compliance with this law. In addition there is no explicit policy for birth and death registration with define defined priorities and strategies.

Recommendations:

1. *The implications of the above findings in relation to the nature of responses needed at causal level, result in a two – pronged approach;*
 - a. *responding to socio-economic contextual aspects that determine incomes (or poverty levels, alcoholism, polygamy, life of need etc) within families to address the major cause of alcoholism, which is a function of broader socio-economic policies or putting in place social – clinical measures that are beyond the mandate and spectrum of services offered by JLOS institutions.*
 - b. *A number of laws under the compendium of family laws need to be reformed so that they are in conformity with the various principles that upheld justice. Numerous laws related to family justice are either outdated or non-applicable for any meaningful results, yet sit on the statute books. In essence JLOS needs to re-align laws and justice access mechanisms for family to respond to situations pertaining on ground.*
2. *The law reform process has been frustratingly slow as parliament has been unable to enact appropriate laws to attain family justice, even with numerous court petitions, the legislature has not followed suit by to heed calls for law reform.*
 - a. *JLOS and its stakeholders, in collaboration with Uganda Law Reform Commission should cultivate relational linkages with the legislature so as to actively pursue the reform of family law by lobbying and recruiting a cadre of family law reform activists to challenge and urge the Parliament of Uganda to raise to its challenges of law reform given direction from the*

various petitions that the Constitution courts has ably set in place law by precedence.

- b. JLOS should provide an environment that encourages the bench to engage in judicial activism in order to actively align laws by applying article 274 of the Constitution where family laws are discriminatory. In addition, actively encourage legal aid service providers with capacity and resources to petition the courts of law.*
- 3. Conflict between customary law, religious law and modern law is as old as law itself. The justice seeking public is cushioned in a bed of customs and norms that often hinder the realization of many rights for vulnerable groups especially women and children. Findings from literature stress the need for law reform to adequately take into account norms on the ground. For example The Domestic Relations Bill has in the terms of one key informant “now become on an old song that needs new band members, a fresher melody, for it to take off”. This particular response falls squarely on the shoulders of JLOS institutions.*
- 4. Addressing the ascertainment of property rights within family, with particular emphasis on succession and inheritance since a combination of causes revolve around failure of both social institutions and processes to guarantee rights (asset stripping/ grabbing, death of spouse, polygamy and bride price, property etc) especially in female headed households and child headed households.*
- 5. Another major issue is that the institutional structures needed to ensure that the laws are implemented are often weak or even non-existent. In essence it is not enough for the law to be on the statute books, it has to be enforced or implemented to deliver justice. In addition have a department of legal education responsible for educating the masses on laws that are passed, those existing and those in the making.*

2.3 FAMILY JUSTICE AND SUPPORT INSTITUTIONS

The study sought to clarify physical access, technical processes and procedures as well cost of family justice and how these relate to efficiency and effectiveness in the delivery of family justice. Overall, even though formal institutions are accessed, informal institutions such as clans and families play a vital role in family conflict resolution. The local council (50.5%), clan (29.2%) and other relatives (6%) are the most common first instance options in seeking justice as far as family conflicts are concerned. At second or latter instance, formal courts at Sub County and District levels gain prominence by 22% of users.

Choice of option is influenced by considerations such as distance (21.7%), understanding of how the option works (20.3%), the perception of legality of the option as first instance (18%) and trust of the option with regard to fairness (17.6%). With regard to effective resolution of family conflicts, the most effective option was the clan commanding (32.9%) closely followed by LC 1(31.6%) and other relatives (12.8%). There is a considerable level of trust in the fairness of LC 1, but a much higher level of trust in customary institutions such as clans. Results indicate a lower level of confidence and trust in the police and probation officers (on the basis of lack of understanding or comprehension of procedures and processes within these institutions) than in customary institutions in matters of family justice.

Results of this study show that at first instance, the rate of resolution of family conflicts was 76.9%; with an average dissatisfaction rate of only 16.4% for decisions made by various foras. At second or latter instance; results show a declining rate of resolution (69.2%); a case pending rate of 17.3% and instances of giving up pursuance of any

option stand at 13.5%. Noteworthy is that most pending cases are before court either at sub county/ district (27.9%) and the probation office (25%). 31.3% of those whose cases were pending did not know why their cases were pending while 22.4% indicated that there were demands for money or other forms of facilitations that they could not afford. (25%) of study respondents felt that family justice system is unfair, 30% perceived the system to be expensive or generally unaffordable, while 51% of all the respondents surveyed felt the family justice system was fair.

Despite that fact that the police is one institution that is well positioned in the improvement of access to justice for women, children, elderly and persons with disabilities, because of the Family Protection Unit with several liaison officers, it was asserted in focus group discussions that the highest number of cases abort at the police due to corruption. Fertile ground for this is provided by the many processes and technical procedures involving filling of forms and taking of evidence which directly affect the perception of affordability. Findings show high perceptual levels of corruption where 91.3% of payments are not receipted for justice seekers under family. Focus group discussions show that such demands are often made with impunity as if the payments are part of the official process and are expected before service is rendered. Responding to corrupt tendencies goes beyond moral reprimands and calls for a more innovative and structurally approach that calls on the values of users themselves as a starting point.

Legal aid service providers on family issues mainly provide secondary legal aid which includes legal literacy (through awareness sessions, booklets, posters and radio programmes), paralegal programmes, community activities and research/advocacy initiatives. The most active in this field are Federation of Uganda Women Lawyers (FIDA), Uganda Law Society, Uganda Women's Network, and Women in Laws and Ethics on HIV/AIDS. The Local Council Courts/Legal Aid Baseline Survey (2006) found that legal aid provides are not visible, audible or accessible to many people. They are also affected by delays in the formal justice system which in effect increases the costs of their operations and further compromise access to justice for the poor persons they represent. They are also constrained by lack of an enforcement mechanism particularly on cases that are resolved through mediation.

Provided that there is no political interference, the court bailiffs as officers of the court are one of the better performing in terms of enforcement institutions in access to justice. Access to Administrator General's office is in Kampala, there are regional set ups in Mbarara and Gulu that are supposed to be regional centres, which are not known therefore they need to be publicized

Recommendations:

1. *JLOS should provide public education and guidance on the different dispute resolution foras and institutions involved in the delivery services on family justice (both formal and informal), because there is a need for clear definition of and sensitization on mandates of different actors; detailing their roles and mandates as well as advice on which ones to approach when a particular nature or type of case arises, this will enable users to make better decisions on accessing family justice. The departments of Police and Probation need to go an extra mile on this matter because of lack of public understanding or comprehension of their procedures and processes.*
2. *In order to respond to corruption, JLOS will have to improve its own internal mechanisms of monitoring judicial offers and offices, however there is a need to go an extra mile and call on the moral values of users themselves as a starting point in*

attempt to curtail corruption and bribery in the sector, this will require an innovative and structural approach for public information on fees structures for service delivered. Users reason that resorting to mediation or alternative dispute resolutions within families and clans is far less corrupt than the formal family justice institutions.

3. *Informal institutions such as clans and families play a vital role in family conflict resolution, these need to be supported and strengthened through institutionalization of their roles and clarification of their mandates through issuance of guidelines by JLOS particularly those taking responsibility over family matters such as inheritance, succession, and marriage*
4. *Interventions should be designed to improve access to legal aid and use of paralegals. The growing number of legal aid initiatives that are seeking to protect, defend, or strengthen family rights should be supported, especially;*
 - (a) *Civil Society Organizations carrying out legal literacy and public education for the poor and vulnerable groups in society*
 - (b) *the number of private advocates offering pro-bono legal services on family matters needs to support to least double just as commercial and criminal services.*

2.4 ACCESSIBILITY TO FAMILY JUSTICE

Review of literature shows that the consequences or outcomes of family conflict are directly related to the justice seeking behaviors of individuals involved and on the power relations within households. Poor literacy rates have adverse effects on people's ability to access the formal justice system. The vast majority of justice seeking public has little working knowledge of English, less than half (44.4%) the respondents could either read or write in English, interlinking proficiency in the use (Reading and Writing) of English is one of the reasons why respondents abandoned pursuance of justice. In addition fear of the process and repercussions accounted for (23.7%) of those who gave up pursuing any option and ignorance of how to proceed with resolution of the family conflict (15.3%) were higher amongst those who did not have proficiency in the use of English compared those (15.8% and 5.3% respectively) with proficiency in the use of English mostly amongst rural and female respondents.

According to Focus Group Discussions, all formal institutions (police, probation, etc) on family justice routinely embark on recording as a first step as soon as a case is reported; the momentum is kept throughout the proceeding to conclusion of the cases. However Local Councils only register the nature of case reported and the parties involved, in some circumstances they may record the verdict of the council, but rarely are the proceedings recorded, the clan or family heads on the hand solely on their memory for record and rarely ever put facts, proceedings or verdicts into record forms, a factor that literature review richly articulates. Comparatively, key informants felt that family courts handle family disputes very effectively; they are fast and take care of the principle of welfare effectively compared to courts handling land matters.

Results show that 24.8% households registered their children at birth; 46.7% said they registered their marriages, while 27.7% reported incomplete payment of bride price and 21.1% reported no payment as hindrances to registration. With regard to registration of deaths only 13.7% reported having done so. These findings are not in consonance with the literature review or records at Uganda Registration Services Bureau, this because;

- (a) Respondents in the survey assumed that immunization cards issued during to children born at health centres or later public immunization events by the Ministry of Health are birth certificates hence giving a distorted picture.

- (b) A number of initiatives by civil society especially FIDA and Plan International on sensitization on the registration of births and deaths are registering progress and response
- (c) The demand for birth certificates by Uganda National Examinations Board (Primary leaving Examinations) registration had forced a number of parents to register for birth certificates

Recommendations:

1. *The process of arbitration or mediation needs to be formally guided starting with the communities participating at the grassroots level, because communities tend to know about the environment they are staying in better than any other external person. Only when arbitration fails should litigation become an alternative. On the other hand criminal courts need to expedite the handling of issues especially those that have civil implications.*
2. *In informal systems, elders are given prominence at initial level to mediate and a number of disputes are resolved at that level, even though at times the resolution takes place in biased manner against the more vulnerable party, unfortunately the framework has not been given legal recognition. It will be important to introduce mediation rules for such institutions for the betterment of services rendered by persons at this level and mechanisms to enforce their decisions, therefore mechanisms allowing for a linkage with the formal systems that backs the enforcement of such decisions becomes important.*
3. *Low levels of literacy affect ones ability to access justice, although JLOS is not directly responsible for literacy levels in the country, it should encourage other government processes that improve literacy such as Universal Primary Education and Adult literacy programmes of Civil Society Organization and Private Sector. JLOS should however, ensure that administrator of justice adequately communicate to parties seeking their service in a language or manner that is well understood, this may require offering translation services for users of the judicial services in areas where literacy is very low.*
4. *Record keeping (especially of case proceedings) is one of the major areas needed to strengthen of the family justice system and institutions especially the informal ones. LC Courts need to be encouraged and supported to keep appropriate record of cases that they deliberate on. If it is utterly impossible to record proceedings, at least a record summary of key issues that the defendant and plaintiff have proved before LC1 that have influenced the judgment should be in written form in case one of the parties prefers to appeal. The clans on the other hand have to first appreciate the value of written records (at least the principle they apply in particular cases ought to be written down) and sensitized on the value addition of recording within family dispute resolution.*
5. *It was recommended by majority of key informants that compulsory registration of births and death will ease succession since paternity and relations will be easy to establish.*

3. DEFINING STRATEGIC INTERVENTIONS FOR JLOS

3.1 JLOS LINKAGES FOR FAMILY JUSTICE AND LAND JUSTICE

The study recognises the interrelatedness of all branches of justice administration and in particular the linkages between the two new focus areas under the JLOS SIP II framework and criminal and commercial justice; the previous reform priorities under JLOS SIP I. The study was therefore interested in exploring the linkages across the goal; the rights sought to be protected and nature of services provided under the following framework.

Table 72: Scope for addressing land and family Justice with JLOS framework

	FAMILY JUSTICE	LAND JUSTICE	CRIMINAL JUSTICE	COMMERCIAL JUSTICE
GOAL	Structures, processes and institutions (formal and informal) protecting and enforcing family rights and disputes.	Structures, processes and institutions (formal and informal) protecting and enforcing land rights and disputes.	Structures, processes and institutions (formal and informal) protecting the public fro crime and preserving the rights of accused persons	Structures, processes and institutions (formal and informal) protecting and enforcing commercial rights and dispute resolution.
PARTICULAR RIGHTS THAT ARE PROTECTED	Individual rights within a family setting including child's rights, adoption, property, and women's rights	Right to own property Protection of women's, child's, and marginalized communities' rights to ensure non-discrimination	Due process-Right to a fair and speedy trial Right to legal representation Freedom from torture and inhuman treatment	Right to swift, accessible and speedy justice in the resolution of disputes
PARTICULAR JLOS SERVICES	Registration of births and marriages, separation and divorce Child Rights Protection during and upon dissolution of marriage Adoption Property rights upon death, dissolution of marriages – Administration of Estates	Land Registration Land dispute resolution		
PARTICULAR JLOS INSTITUTIONS TARGETED	Administrator General' Department Family and Children's Courts Family and Child Protection Units, UPF Probation and Social Welfare Officers, MoGLSD Local Council Courts	Administrator General's Department Courts- Land Division Uganda Law Council for Legal Services- legal aid service provision, regulation of legal practitioners Local Council Courts	UPF GAL DPP Courts UPS MIA-Community Service MOGLSD- Juvenile Justice	Commercial Court Division of the High Court ULRC Uganda Law Council and Uganda Law Society URSB Administrator General's Department Local Council Courts
PARTICULAR JLOS PROCESSES TARGETED	Law making and reform Policy making Administration of family justice including ensuring access to fair, speedy and just services, legal aid Effective oversight over Local Council Court Operations	Ensuring fast court disposal of land matters Availability of legal aid services Fair and professional practice of the part of legal practitioners Effective oversight over Local Council Court Operations	Legislative, policy and practice changes Fast and fair disposal of cases Access to justice for victims of crime, accused persons as well Legal aid and legal advisory services	Law making and reform Alternative Dispute resolution Case Disposal Standard setting in service delivery Availability and access to legal aid services Effective oversight over Local Council Court Operations

The framework draws upon the literature review to recognize that a major cause of workload in land and family matters lies in the inadequacies in the legal regime, a situation that is hastened by the current economic pressures on households. Failure to

resolve them at the outset culminates most times into commercial or criminal disputes. Within this framework of analysis the need to address these interrelated problems through a systematic reflection, within a human rights framework, becomes apparent. From the framework it is clear that there are critical challenges underlying all arms of justice including the centrality of poverty, low levels of public confidence in the justice system; the protection of disadvantaged groups and the administrative efficiency of JLOS institutions that will benefit from a common strategy across focus areas.

Table 73: Strategic Linkages evident in JLOS for Land and Family Justice

	FAMILY JUSTICE	LAND JUSTICE	CRIMINAL JUSTICE	COMMERCIAL JUSTICE
INTERPLAY WITH FAMILY JUSTICE		<p>Unequal opportunities to access land among women and children</p> <p>How can the land rights of all be secured especially the poor and marginalized, in post conflict societies</p>	<p>Gender based violence coupled with inadequacies in gender responsiveness of the legal system affects access to land</p>	<p>Securing land rights of poor and marginalized who are the main users of land secures investments</p>
INTERPLAY WITH LAND JUSTICE	<p>Plurality of legal system including customary and statutory laws-access land through customary norms and lack of registered land titles which can create family disputes</p> <p>Multiple fora dispute resolution</p> <p>Interplay of gender and poverty in land and family justice therefore need for affirmative action to promote equity</p> <p>Reforms in family will reinforce reforms in land justice</p>		<p>Securing land rights of the poor and marginalized communities reduces land related crime</p> <p>Conflict escalates due to land resource wars</p>	<p>Securing land rights is a key incentive to investment</p> <p>Imbalance between local and foreign resource use and protection may be source of conflict</p>
INTERPLAY WITH CRIMINAL JUSTICE	<p>How does the sector respond to gender based violence?</p> <p>How has the Sector strengthened its institutions to address gender and poverty concerns?</p> <p>Are there preventive measures?</p>			
INTERPLAY WITH COMMERCIAL JUSTICE	<p>Discrimination at the household level of women, children, widows...at income and land level.... Impacts on ability to invest.</p>	<p>Securing land rights is a key incentive to investment</p> <p>Imbalance between local and foreign resource use and protection may be source of conflict</p> <p>Imbalances between gender in resource use</p>		

This framework adds another benefit to the study to understand focus area specific challenges in land and family justice that call for targeted strategies. The centrality of gender concerns in family and land justice; the prevalent use of institutions close to the user to resolve land and family disputes; the prohibitive cost of legal services and resolution of the duality between formal and informal legal systems are important themes drawn from this analysis and that are followed throughout the study.

3.2 OPPORTUNITIES FOR LAND AND FAMILY IN THE JLOS FRAMEWORK

The strategic interventions below are proposed within the framework of the JLOS second Strategic Investment Plan; taking into particular consideration the linkages across the four focus areas and highlighting requirements for policy shifts and/or modifications in the current framework. The following general observations drawn from a synthesis of the literature review and findings from the field have informed the proposed interventions

(a) *Demand for JLOS services to remain high in both Family and Land Justice*

From the prevalence of both land and family disputes at the basic structural level which is the household, it is clear that the administration and management of both land and family disputes will continue to exact considerable demands in the area of administration of justice. What comes across strongly again and merits further consideration by JLOS is the form of intervention that matches the needs of the population. JLOS institutions are not the preferred first responders in land and family disputes at household level. However notable shortcomings for instance protection of the disadvantaged; gender and poverty biases and inadequate application of the law exist in the institutions of first call and that are closest to the households, compel JLOS to direct and guide the process at that level and therefore minimize these inadequacies in these institutions under the JLOS framework offers the dual benefit of meeting the needs and aspirations of the people and freeing JLOS resources to offer services where there are most required.

(b) *Having services closer to the users*

This is a strong finding derived from a review of both the literature and field findings in both land and family justice. There is a dominant preference for disputes to be resolved at the lowest level possible which this calls for empowering of the ground dispute-resolution institutions; alternative dispute resolution training; emphasis on the role of LCs and coordination of justice administration actors. The Land Tribunals are currently dysfunctional and even when they are established in all the districts; they will not have the capacity to handle all disputes efficiently. Customary and community-based mechanisms for conflict resolution are very relevant (particularly for the northern Region). Alternative Dispute Resolution (ADR) approaches such as mediation; conciliation and arbitration need to be considered.

Secondly, these mechanisms can offer effective and acceptable means of managing many kinds of land conflicts and family disputes. Enforcement mechanisms need to be put in place to ensure that their judgments / settlements are implemented. Simple disputes can be resolved through the LC Court system. Since LC1 are effectively engaging in disputes resolution other than LC2, which is the legally recognized court of first instances, the law needs to be amended to reflect the reality on ground, although moving such courts to LC1 is an enormous cost. Complicated cases that require adjudication should be referred to the District Land Tribunal. If DLTs are revived, their location needs to stay within JLOS. However JLOS need to engage with the Ministry of Lands in order to come to terms with the concept of land justice which is considered a priority rather than judicial service. The rules of procedure that are currently based on civil procedure need to be amended and the concept of circuiting needs to be done away with or scaled down (to least 2 districts in a circuit).

Original jurisdiction for dispute resolution and land administration over customary tenure should rest with traditional institutions (clans) and to the extent possible these institutions need to be integrated into the statutory land administration system. The cost of moving the statutory structures to full functionality may be higher than equipping the grassroots institutions (both statutory and traditional) that are able to “nip the problems in the bud” before they actually sprout to unmanageable levels. According to interviews

held during the survey, the absence of tribunals would not be gravely felt if the Local Council courts were equipped and in position to dispense justice¹⁴⁸, since the majority of the cases to the tribunals were actually appeals. It is recommended that in most cases a blend where feasible be allowed to emerge, producing a system that embraces the traditional clan system, accords statutory powers and functions of modern institutions such as Local Councils or Area Land Committees to blend.

(c) Legal Aid Service Provision

For the claimants that resort to the formal legal systems, lack of legal aid service provision remains a big hindrance to access to justice. From the field survey it is clear that complex procedures and lack of assistance to wade through the legal and judicial system is a contributory factor to the low levels of public satisfaction with the system. Legal aid service provision is presently ad hoc and lacking in its key aspects of disadvantaged persons' rights protection and promotion, empowerment and accountability. Recommendations in previous studies to develop a national legal aid policy and delivery framework need to be revisited and extended to both family and land justice.

(d) JLOS Institution Service Provision with Human Rights Based Approach

From the literature review and field survey findings, it is clear that formal JLOS institutions charged with administration of Land and Family Justice are thin on the ground; inadequately serviced in terms of staffing, infrastructure and equipment and poorly linked to local administration structures. Probation and Social Welfare Offices; Land Tribunals, the office of the Administrator General, Registration of Births and Deaths are some examples to mention but a few. Innovations like the Family and Children Protection Unit in the Uganda Police Force and the Family and Children Court in the Judiciary are inadequately facilitated and require a re-orientation in attitude to place value on their users as rights holders who are entitled to a quality service from the office bearers. Investment in improvements in key institutions geographical representation; linkages with local administrative structures; training and facilitation of staff including in attitude change and facilitation of their work are recommended as key strategic interventions in Land and Family Justice administration.

(e) Law Reform

Law reform is a key recommendation arising out of a review of both land and family justice administration. This is a key area for reform under the JLOS SIP II and this strategic intervention only places added components onto this already established agenda.

Key areas for law reform under Land Justice include the following;

- (i) the landlord-tenant relationship as currently enacted in the Land Act (pursuant to Article 237(9)(a) of the Constitution) to create a harmonious relationship that is considerate of the realistic economic and social situation, and to extent possible fulfilling the expectations of landlords (mainly economic) and tenants (mainly secure tenure) since the current legal provision under Section 36 of the Act permitting mutual agreement between tenants by occupancy and registered owners to achieve the objectives of Article 237 (9) (b) has failed to work.
- (ii) In addition, the compensation provisions under the Land Act and the Land Acquisition Act need to be fully reviewed in the light of the Constitutional Provisions, the pleasant recognition here is that under PSCP II project of the Private Sector Foundation, the process of legal review and reform of land related laws has thus already began.

¹⁴⁸ Views of Chief Magistrate Lira and Other Local Leaders

- (iii) Domestication into national law of the principals in the international legal instruments to protect and promote the several aspects of land related human rights.

Key areas for law reform under family Justice include the following;

- (i) Domestic Relations covering matters of marriage, succession and inheritance
- (ii) Regulation of adoption, custody and child trafficking
- (iii) ascertainment of property rights within family, with particular emphasis on succession and inheritance

(f) Legal Education and Creation of Public Awareness

Access to family and land justice presupposes awareness of law and rights; and ability to assert one's rights. Ongoing awareness efforts by both JLOS Institutions including the Judicial Service Commission and Civil Society Organizations need to be streamlined to ensure effective targeting; minimal duplication and also strengthened. Mandates and services offered by JLOS institutions need to be better disseminated through media and language relevant to the target groups. Capacity building for Land Justice and Family Justice Lawyers especially to Civil society and the number of private advocates offering legal services on family matters needs to be upped just as commercial and criminal services.

(g) Civil Society and Private Sector Involvement

There exist a number of complementary initiatives within both civil society and the private sector that need to be brought on board as part of JLOS intervention in family and land justice. Areas of current strength within civil society include strategic litigation in family justice; legal aid service provision and conducting of legal education programmes in both land and family justice among others. The Private Sector Foundation has invested in research on land rights that can form a sound spring board for land related interventions in the Sector. Civil society involvement in the conflict affected areas deserves special mention especially in the area of land resettlement and peace building. A framework for synergizing across public and private institutions therefore needs to be developed and implemented to strengthen JLOS interventions in land and family justice.

(h) Conflict Affected Areas – A special Focus

The conflict-affected districts in Lango Acholi, Karamoja and Teso need and deserve special attention and affirmative action in so far as land administration and land justice are concerned. The urgency cannot be over-emphasized as failure to resolve emerging land disputes and conflicts might trigger another wave of armed conflict. Additionally, both the Teso and Lango / Acholi studies found that land justice and administration systems are severely lacking. The GoU plan does not address the need for increased resources and capacity building of land institutions in Northern Uganda, and these institutions are not only important for land conflict management but also for natural resource management. Furthermore, the GoU plan does not address the role of customary institutions and tenure even within natural resource management. The studies of northern Uganda have highlighted the centrality of customary tenure and institutions in tackling land issues. To tackle issues of conservation as well as land conflicts, traditional institutions must be involved. There is need for increased resources to build capacity of land institutions in Northern and North-Eastern Uganda to enable them render the necessary land services and stem further escalation of land disputes and conflicts. District Land Offices and Area Land Committees in particular need to be established and equipped.

There is need for prioritized interventions in conflict affected areas to increase the presence and effectiveness of the formal land dispute resolution institutions i.e. the LC Courts and the District Land Tribunals. Support should be given to traditional justice mechanisms and systems, and transitional justice initiatives. There are a number of international NGOs, CSOs and local NGOs which are already on the ground and working in these areas of justice. The idea is to build synergies with these agencies.

Knowledge of the land laws and land rights is very important in stemming the incidence of land disputes/conflicts. Studies have found a high illiteracy and ignorance of the contents of law. Education and Public awareness campaigns should be launched in these conflict affected areas. The land laws should be simplified, translated into local languages and disseminated. Brochures should be produced to inform the public on the functions of the land justice institutions/agencies and where their services can be obtained. User manuals and guides should also be produced. JLOS should sponsor regular radio programmes in various languages on dissemination of laws, rights and the administration of land justice including the technical and legal procedures.

(i) Linkages to existing Priority Areas of Criminal and Commercial Justice

The study report has reviewed possibilities of linking the emerging interventions within land and family justice to the existing sector priorities of commercial and criminal justice within the JLOS SIP II framework and makes the following recommendation;

- (i) Sector wide assessment and analysis of causes and development of Strategy: From a review of the existing literature and the field survey findings, the compartmentalization of the different focus areas of justice is only relevant as an administrative aid in JLOS institutions. In the field crimes are a result of marital disputes and/or land wrangles. Sale of a disputed piece of land leads to domestic violence and in some instances murder thus getting into the criminal justice realm. A protracted resolution of a succession matter in the Administrator General's office is likely to cause family displacements and possible criminal offending. Thus JLOS is best placed to undertake a sector wide analysis of the root causes of problems in justice administration drawing together all categories of stakeholders including the public in defining the strategy for reform.
- (ii) A broad based strategy that cuts across focus areas to develop policy; reform laws; improve performance of institutions (both formal and informal); change attitudes and building upon the strengths of civil society and the private sector to monitor performance and compliment JLOS initiatives stands a better chance of success than a focus area focused strategy to reform.
- (iii) In all areas of JLOS reform, there exist apparent areas of linkage into existing reforms in commercial and criminal justice including in the areas of policy and strategy development; monitoring and evaluation including generation of baseline data; interfacing with the legislature, civil society and the private sector; legal education; institutional building and interventions in the conflict affected areas.

3.3 EXTRA-ORDINARY INSTITUTIONAL ISSUES FOR JLOS

In the course of undertaking this study, a number of outstanding institutional issues pertinent to the Judiciary and access to justice came to the attention of the study team, that have a direct implication to the administration of justice and access to justice by the public, these ought to be born in mind when dealing with JLOS strategic planning and design of intervention because they constitute the external environment that exceptionally impacts on JLOS as a sector and are manifest mainly as threats to the rule of law, the independence of the Judiciary and the principle of separation of powers; these include;

1. Land disputes may continue because court orders and other eviction notices are not implemented and enforced. JLOS and Ministry of Lands, Housing and Urban Development should design and implement enforcement mechanisms to ensure that judgments / settlements are implemented.
2. Illegal eviction orders issued by the executive arm of Government e.g. the eviction order to the Balaalo herdsmen in Bulisa by the President. This directive is against the principle of separation of powers as this is a preserve of a competent court
3. Without a concerted effort between JLOS institutions and the legislature (Parliament of Uganda), the reform of Family law which the major stumbling block to family justice is threaten by the lack of goodwill from the Executive that is not ready to take on a task which substantially erodes its political popularity.
4. Both Land and Family Justice are suffering from the extreme impacts of political interference in the judicial system by the Executive arm of Government
5. Corruption continues to be a huge hindrance to the effective performance and delivery of services by JLOS institutions.
6. The nature of mediation and dispute resolution mechanisms are important factors in determining whether parties involved in a conflict will resort to violence
7. Enforcing the rule of law where by the poor and other disadvantaged groups are confident that the State will protect their legal entitlements to land can prevent conflicts.

3.4 RECOMMENDED ACTIONS FOR THE KEY RESULT AREAS OF JLOS

3.4.1 LAND JUSTICE

<p>Key Result Area One: <i>Rule of Law and Due Process Promoted</i></p>	<p>PROPOSED INTERVENTIONS AND ACTIONS</p> <ol style="list-style-type: none"> 1. Develop Strategies to address threats to the rule of law and the independence of the Judiciary 2. Prioritize reform of the Land Act and other land related laws to address root causes of land conflict and disputes, compensation issues, land access and security of tenure for vulnerable groups, gender concerns and the role of customary institutions in land administration and management. 3. Simplification and dissemination of land laws, procedures and rights of the citizens. 4. Align and strengthen local level informal land dispute resolution mechanisms e.g use of clan elders. 5. Strengthen enforcement of court orders, decisions and judgments 6. Promote zero tolerance to corruption and improve the public perception of JLOS institutions.
<p>Key Result Area Two: <i>To foster a human rights culture across JLOS Institutions</i></p>	<p>PROPOSED INTERVENTIONS AND ACTIONS</p> <ol style="list-style-type: none"> 1. Human Rights Training of staff in formal and informal land dispute resolution fora including Local Councils and Land Tribunals. 2. Adoption and Integration of rights based approach in service delivery. 3. Sensitization Programmes for all institutions geared towards minimizing or eliminating gender and social biases against the vulnerable and disadvantaged 4. Promote Human Rights to access land, adequate housing and the protection against forced evictions
<p>Key Result Area three: <i>To enhance access to justice for all particularly for the poor and marginalized</i></p>	<p>PROPOSED INTERVENTIONS AND ACTIONS</p> <ol style="list-style-type: none"> 1. Strengthen on the ground dispute-resolution institutions through training (in ADR) and improved supervision (the LC's and Clan Leaders) 2. Develop policy and guidelines to enhance access to legal aid services for the indigent. 3. Design strategy for land case backlog clearance, cost its, source for resources and implement it. 4. Capacity building of land justice institutions including Local Council Courts, Land Tribunals, Courts and Informal land Dispute Management institutions (e.g. clan leaders). 5. Support to the land registry and land administration institutions. 6. Increase presence of land dispute resolution structures at lowest level (grass root institutions; LC's and Clan leaders) 7. Design and implement legal education and public awareness campaigns on land laws, procedures, mandates and functions of the various institutions and land rights / human rights of citizens. 8. Support and work in partnership with all legal aid service providers in the land justice sector (e.g. Uganda Land Alliance, Uganda Law Society, FIDA Uganda) 9. Establish user committees to provide consultative and feedback mechanisms for the improvement of the delivery of land justice 10. Promote the use of ADR mechanisms to resolve land disputes so as to reduce the financial costs of access to justice.
<p>Key Result Area Four: <i>To reduce the incidence of crime and promote safety of the person and security of property</i></p>	<p>PROPOSED INTERVENTIONS AND ACTIONS</p> <ol style="list-style-type: none"> 1. Provide policy and procedural clarity on role of law enforcement in land dispute resolution. 2. Special focus on conflict affected areas, working closely with Office of the Prime Minister and the Land Sector
<p>Key Result Area Five: <i>(a) To enhance JLOS contribution to economic development</i></p>	<p>PROPOSED INTERVENTIONS AND ACTIONS</p> <ol style="list-style-type: none"> 1. Work with the Land Sector to support reforms in the Land Registry and the Land sector in general to provide a conducive environment for investment growth and wealth creation 2. Support to reforms of the Court Bailiffs and Police regarding enforcement of land judgments 3. Support to reforms of the land rights administration framework including Land Committees; District Land Boards; district land offices; traditional / customary land administration institutions. 4. Support to policy and legal reforms designed to enhance land access and security of tenure of marginalized groups (women, widows, orphaned children and persons with disabilities) 5. Support to legal reforms to resolve the phenomenon of multiple layers of conflicting rights on the same piece of land which is the major cause of land conflicts on tenanted land 6. Support the land sector to fast track the development of the National Land Policy
<p><i>(b) Strengthening of Reform management capacity, coordination, monitoring and evaluation</i></p>	<p>PROPOSED INTERVENTIONS AND ACTIONS</p> <ol style="list-style-type: none"> 1. Develop and monitor land justice administration and set time standards and targets at institutional levels. 2. Develop linkages with other institutions outside of JLOS such as the land sector and the Human Rights commission which have important roles to play in land justice

3.4.2 FAMILY JUSTICE

<p>Key Result Area One: <i>Rule of Law and Due Process Promoted</i></p>	<p>PROPOSED INTERVENTIONS AND ACTIONS</p> <ol style="list-style-type: none"> 1. Develop strategies to address threats to the rule of law and the independence of the Judiciary 2. Prioritize the reform and enactment of family rights protection laws including the Domestic Relations covering matters of marriage, succession and inheritance; 3. Regulation of adoption, custody and child trafficking; and ascertainment of property rights within family, with particular emphasis on succession and inheritance. 4. Cultivate relational linkages with the legislature so as to actively pursue the reform of family law by lobbying and recruiting a cadre of family law reform activists 5. Simplification and dissemination of family laws, procedures and rights of Citizens 6. Re-align laws and justice access mechanisms to respond to need to have ease of access in terms of cost, distance and simplicity of procedures
<p>Key Result Area Two: <i>To foster a human rights culture across JLOS Institutions</i></p>	<p>PROPOSED INTERVENTIONS AND ACTIONS</p> <ol style="list-style-type: none"> 1. Human Rights Training of staff in formal and informal family dispute resolution fora including Local Councils, Clans and Police personnel to better respond to the needs of the system users. 2. Adoption and Integration of rights based approach in service delivery. 3. Develop and ensure compliance with family justice performance standards 4. Sensitization Programmes for all institutions geared towards minimizing or eliminating gender and social biases against the vulnerable and disadvantaged
<p>Key Result Area three: <i>To enhance access to justice for all particularly for the poor and marginalized</i></p>	<p>PROPOSED INTERVENTIONS AND ACTIONS</p> <ol style="list-style-type: none"> 1. Strengthen on the ground dispute-resolution institutions through training (in ADR) and improved supervision (the LC's and Clan Leaders) 2. Develop policy and guidelines to enhance access to legal aid services for the indigent. 3. Capacity building of family justice personnel including family lawyers , police and court personnel, PWDs and Local Council courts 4. Infrastructural Support to Family Justice Institutions including Registration of births and death FCPU, FCC, Administrator General and the Probation Service. 5. Increase presence of family dispute resolution structures at lowest level including integration in JLOS District coordination Committees 6. Design and implement a strategy to strengthen record keeping (especially of case proceedings) in the family justice system and institutions especially the informal ones. 7. Support and work in partnership with all legal aid service providers and use of paralegals in the family justice sector (e.g Uganda Law Society, FIDA Uganda, Uganda Women's network etc) 8. Support the capacity of and expand the outreach of Police's Family and Children Desk / Units along decentralized service delivery 9. Promote the use of ADR mechanisms to resolve family disputes so as to reduce the financial costs of access to justice and overcome the "family matters are not reported" syndrome.
<p>Key Result Area Four: <i>To reduce the incidence of crime and promote safety of the person and security of property</i></p>	<p>PROPOSED INTERVENTIONS AND ACTIONS</p> <ol style="list-style-type: none"> 1. Enrich informal processes by providing guidelines or institutionalizing informal focal points given the sensitive nature and subtleties or complexities of family conflicts, 2. Provide public education and guidance on the different dispute resolution foras and institutions involved on family justice (both formal and informal), with clear definition and sensitization on mandates, services and roles through media and language relevant to the target groups 3. Support traditional/ customary institutions by defining roles and clarifying their mandates through issuance of guidelines particularly those taking responsibility over family matters such as inheritance, succession, and marriage 4. Work with URSB and Local Governments to improve registration of births and deaths at the lowest level. 5. Special focus on conflict affected areas, especially on succession and children's rights as IDP return in northern Uganda gains momentum
<p>Key Result Area Five: <i>(a) To enhance JLOS contribution to economic development</i></p>	<p>PROPOSED INTERVENTIONS AND ACTIONS</p> <ol style="list-style-type: none"> 7. Promote the use of ADR in resolving family conflicts and support legal aid service providers to reduce the drain of family resource in litigation and conflict . 8. Support to informal institution (clans, family members, Local Councils etc.) involved in family justice regarding enforcement of their judgments
<p><i>(b) Strengthening of Reform management capacity, coordination, monitoring and evaluation</i></p>	<p>PROPOSED INTERVENTIONS AND ACTIONS</p> <ol style="list-style-type: none"> 1. Strengthen linkages between JLOS institutions which have important roles to play in family justice

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