



Power & Vulnerability in Land Dispute Resolution

Evaluating Responses to Domestic Land Grabbing in Northern Uganda

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¹Woe to those who plan iniquity,
to those who plot evil on their beds!
At morning's light they carry it out
because it is in their power to do it.

²They covet fields and seize them,
and houses, and take them.
They defraud people of their homes,
they rob them of their inheritance.

Micah 2



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EXECUTIVE SUMMARY

Unfolding analysis reveals two types of land disputes prevalent in postwar northern Uganda: cases that involve a legitimate cause of action and those that do not.¹ Since mediation and alternative forms of dispute resolution rely on parties' willingness to negotiate in good faith, cases featuring 'bad faith' and land grabbing—where powerful parties intentionally exploit another person's vulnerability in order to illegally² claim land—pose a serious challenge for local land dispute mediators. Such mediators must wrestle with whether and how to remain neutral in the face of injustice.

While bad faith and land grabbing each have the ability to unravel the ADR process, both are difficult to pinpoint since they are not immediately apparent. In this study,

land grabbing is understood as *the illegal and opportunistic act of depriving someone of land rights;*

bad faith describes *the dishonest or obstructive way someone approaches the dispute resolution process.*

The two are used almost interchangeably, since if a person behaves deceptively and undermines the ADR process (acts in bad faith), it is assumed they are trying to illegally deny someone's land rights (grab land).

So far, studies have highlighted the causes, impacts, and reactions to domestic land grabs, but little is known about the on-the-ground efficacy of ADR interventions in these cases. Moreover, with over 17 different actors intervening in land disputes simultaneously³ in northern Uganda, it is imperative that ADR actors critically evaluate the appropriateness their responses to land grabbing through the eyes of disputants, mediators, and key stakeholders. If ADR is to play its part in ending this epidemic, its interventions must be shrewd and strategic.

The purpose of this report is to distill the experiences of victims, offenders, and land dispute interveners to inform current practice and policy advocacy. This investigation—conducted from March to July 2013 in partnership with seven (7) member organizations of the Northern Uganda Land Platform—assumes that better understanding and coordination of ADR approaches will inspire more appropriate responses to the grave nature of these cases.

¹ Levine, S. et al. (2008); Rugadya, M. (2009); Mabikke, S. (2011); Akin, J. & I. Katono (2011)

² Section 92 of Uganda's Land Act (1998, Cap. 227) states that "a person who...makes a false declaration in any manner relating to land" or "willfully and without the consent of the owner occupies land belonging to another person"... "commits an offence." Notably, however, the Penal Code Act does not mention land-related crime or theft, robbery, or grabbing of immovable property. This discrepancy is problematic, as discussed later.

³ Akin, J. & I. Katono (2011)

SUMMARY OF KEY FINDINGS

1. **Three criteria are found to be reliable indicators of bad faith.** These reveal themselves as the ADR process unfolds, and include:

- **RIGHTS: Land rights of each party.** These are determined by family ties, marital status, and transactions (gifts and sales)
- **INTENT: Parties' demonstrated willingness to (not) respect these land rights.** Usually evidenced by the presence of any "warning signs" and/or similar actions, body language, and statements.
- **POWER: Parties' perceived ability/opportunity to deprive opponent of land rights.** This is context-specific, and may be assessed through probing.

Warning Signs for Bad Faith

- | | |
|--|---|
| • Ignoring a court ruling without appealing the judgment | • Refusal to listen to others' input or allow certain people to speak |
| • Arrest, assaults, destruction of property, witchcraft | • Refusal to cooperate with the mediator without a valid reason |
| • Denying another's land rights (whatever the reason) | • Coincidental timing (i.e., after death of a family head) |
| • Use of force or intimidation when the claim is laid | • Claiming land is yours, but having no evidence to back this up |
| • Surveying disputed land without key witnesses present | • Acknowledging no right to the land, yet still demanding a share |
| • Division of land without consent of family/clan members | • Breaching or introducing new terms to a previous agreement |
| • Denying there is a dispute at all | • Family head apathetic about mediating a case they know about |
| • Selling land that is in dispute or is managed by a caretaker | • Veiled references to "invisible hand" who backs you no matter what |

2. **To effectively tackle bad faith, one must discover the reasons for it.**

Land disputes always occur in context. Disputants may be entrenched in their positions because of hidden agendas which a dialogue about land may not uncover. Unless a mediator understands the real genesis of the conflict, his or her intervention will only address symptoms. Pinpointing how and why the parties' relationship broke down may help unlock the reasons for a perpetrator's bad faith.

Through holistic probing⁴, mediators may identify the need for forgiveness and reconciliation to take place first. The research team asked parties in each case study to consider why the dispute came up in the first place. Their answers point strongly to non-land concerns.⁵ A few include:

- **Greed:** Seeing land as a profitable asset for sale. This may take the form of carrying out ‘dirty work’ for an unseen powerful figure and being rewarded for doing so (*Apong Family Cases*, Amuru District)
- **Politics:** Having lost to the other party in a clan leadership election, the winner wants to be rid of his opponent by chasing him and his family off of their land (*Winnie and Son vs. Allori & Akao*, Katakwi District)
- **Desire for ‘appreciation’** for having served as caretaker for many years (*Areket vs. Ekiding*, Kumi District)
- **Clan members wanting to assert dominance** against foreigners from another clan who have moved into their territory and begin earning money from a stone quarry on previously gifted land (*Rupert vs. Jok-Kene*, Gulu District)

3. Bad faith complicates the ADR process in several ways.

- **To begin with, ADR may not even take place.** At the grassroots, the process is voluntary and non-binding, so parties may avoid⁶, stall, or manipulate the process with essentially no legal repercussions.
- **Bad faith creates a layer of negative history to the case** that must be dealt with, or else parties will not be reconciled and the sustainability of any agreement made is thus in doubt.
- **When mediated, bad faith can lead to unjust outcomes for the sake of ‘peace’.** Compromise often results in the ‘steal two acres, give one back’ scenario.⁷ Yet rather than bringing the harmony that a mediator envisioned, a victim’s sense of injustice after such a compromise may actually foster resentment and entrench long-standing grudges, planting a seed for future generations seeking to “grab back” what was “stolen” through mediation.⁸

4. Perpetrators use a variety of tactics to make the victim give up and concede the land.

Prominent strategies from interview and case study data include:

- Disregarding ADR and lower-court processes
- Arresting your opponent to put them “out of circulation”

⁴ Data shows that mediators save time, resources, and energy when they dig to find out why any previous attempts at ADR were unsuccessful. ADR actors can then determine whether they can provide any value addition, and explain available options to the Complainant. If this assessment is not done, the mediator may fall into a trap.

⁵ A senior member of Ker Kwaro Acholi states that, “*The facts behind most, if not all land disputes, [in Acholi] are actually hatred from the camp, continuing in the villages.*” (Interview, Gulu, 17/05/13)

⁶ This is unlike cases at the Commercial Division of Uganda’s High Court.

⁷ See Adoko, J. & Levine, S. (2008)

⁸ Interview, Complainant – *Rupert vs. Jok-kede*, Paicho Subcty, Gulu Dist., 16/05/13

- Manipulating the survey process to your advantage
- Relying on support from an unseen, powerful actor who makes you 'untouchable'
- Blowing a case out of proportion to detract from hidden agendas

5. **ADR actors are responding to land grabbing in five basic ways**, described in the table below. Each of these has benefits and disadvantages.

Response Type	Description	Goal	Practiced By
Neutral Evaluation	<ul style="list-style-type: none"> • 3rd party investigates facts • 3rd party gives legal opinion of land rights, available options • Address power imbalances through "sensitization" of land rights/laws 	Evaluate validity of parties' individual claims in light of law/customs	NGOs T, X, Z
Mediation	<ul style="list-style-type: none"> • Parties decide for themselves how to proceed • 3rd party acts as neutral facilitator 	Restore harmony in the community through win-win solutions	NGOs T, V, W, X, Y, Z; RDCs; Faith leaders; Police
Arbitration / Conciliation	<ul style="list-style-type: none"> • (Arb.) 3rd party identifies a "winner" and a "loser" • (Conc.): 3rd party makes a decision and asks "winner" to give concessions to the "loser" 	Do what 3rd party feels is best for the parties and/or community	NGOs U, V, Clans, LCs, RDCs, Rwodi Kweri, Faith Leaders
"Crime Stopping"	<ul style="list-style-type: none"> • 3rd party defends victim using law enforcement (court, police, and/or clans) 	Stop land grabbing attempts	NGOs T, U, X, Y, Z
Referral	<ul style="list-style-type: none"> • 3rd party passes case to 4th party in search of more authority to impose certain behavior 	Bring in a stronger authority to enforce decisions	All

6. **Clarity curbs both vulnerability and predatory incentives.** When land rights of different persons, land boundaries, institutional mandates of different actors, law enforcement protocols, dispute resolution pathways, and consequences are clear, would-be perpetrators have fewer excuses or “escape routes” to attempt a land grab.
7. **ADR actors refer land grabbing cases almost always to courts and police. Yet since state law enforcement views land cases as purely civil matters, the state is only treating symptoms of land grabbing attempts, not land grabbing itself.**
- Police across all three sub regions indicate that they do not investigate land cases under S.92 of the *Land Act* due to instructions from superiors and legal interpretations.
 - All land cases—whether in good or bad faith—are first taken through the civil process in order to establish ownership of the land (through a balance of probability) before any criminal allegations can be considered (based on evidence beyond a reasonable doubt).
 - NB: When theft of *movable* property—such as a bicycle or heads of cattle—occurs, police respond immediately by investigating on the ground to identify the person(s) to whom the stolen item belongs. No lengthy civil procedure is required. Criminal investigations begin immediately upon report of the crime.⁹ It is unclear why land is handled differently.
 - Thus, parties in land grabbing cases only face criminal charges if they commit another crime such as malicious damage, removal of boundary marks, assault, threatening violence, or defilement.¹⁰ In this way, the root crime (attempting to take land that does not belong to you) is neglected for the sake of its symptoms (other crimes).
8. Interview and caseload data strongly indicate that, overall, **there is inconsequential or no punishment for land grabbing in northern Uganda.** Rather, community ADR actors refer to each other and consider it sufficient to simply reestablish the status quo.
- Clan leaders in Soroti state that their low severity for punishment of land grabbing “*depends on how government has graded such acts. When you report to the police that a piki has been stolen, they will treat it as a criminal case. But when you report grabbing of land, they say it is civil, you go back to the clan.*”¹¹ It is ironic that clan leaders take cues from police to guide them in their disciplining of land grab attempts, since police express ambivalence toward clan’s role in enforcement: now dismissing, other times taking cues from, *clans!* A senior police officer in Lango asserts that “*The clan has more powers*

⁹ Key informants throughout the LEO community could give no concrete reason for why this is not the case for the theft of land. After analysis, this may be due to the fact that theft/robbery of immovable property (land) is not mentioned in the *Penal Code*.

¹⁰ Criminal trespass applies if a civil court has already established ownership of the land.

¹¹ Focus Group Discussion, Clan leaders, Asamuk Subcty, Soroti Dist. (17/04/13)

when it involves customary land, and many times police refer customary land conflict to the clan...’’¹²

9. Referral may be perceived as institutional weakness and rarely adds value to the dispute resolution process. Instead, prolonged legal battles give more time for crimes to be committed on the ground and deteriorate the relationship between the parties.¹³ Cases may be dismissed, go silent, or be ruled upon but not enforced. At this point, many parties involved in such processes lose trust in the justice system and consider taking the law into their own hands.

- When disputants act upon this urge—as data clearly illustrates they sometimes do—violence is an automatic ticket to arrest, regardless of land rights.¹⁴ Thus, victims and perpetrators alike are sometimes ‘referred’ by their actions, or the accusations of others, to prison.
- While in prison, resolution of their land disputes waits for their release. One police officer in Teso laments, *“We’re handicapped by the law, because our intervention ultimately doesn’t solve the land dispute. It can actually aggravate the dispute – if one person is sent to prison, the parties become enemies and start killing each other. While in prison, someone else can grab the land.”*¹⁵

10. Nearly half of all inmates in Gulu, Lira, and Kitgum Government Prisons¹⁶ report facing charges stemming from a land dispute. With 95 percent confidence, we can say that among these inmates:

- **Between 78.4 – 92.4%** are on remand¹⁷, while only **between 7.3 - 21.3%** are convicted.
 - The median length of an inmate’s incarceration was found to be six months.
 - At times, groups as large as 36, 48, or over 80 people are rounded up, arrested and put on remand for the same land-related case. This was the case in Lango and Acholi, and likely to be the case in Teso (where, due to time limitations, the survey was not conducted).
- **Between 51.5 – 65.5% say they are directly impacted by a land dispute back home.**
 - This is commensurate with other studies¹⁸ that put land dispute prevalence between 29 to 59 percent in Acholi sub region alone.

¹² Interview, Senior Police Officer, Amolatar District (06/05/13)

¹³ As one pastor observes, *“You may win your court case, but you can’t win your brother.”* (Stakeholder Forum, Lira, 19/06/13)

¹⁴ Interview, Senior Police Officer, Katakwi District (05/04/13)

¹⁵ Soroti Stakeholder Forum (26/04/13)

¹⁶ Gulu Central (n=193 out of 1099), Lira Central (n=193 out of 572), and Kitgum Central (n=81 out of 210)

¹⁷ Describes inmates whose cases have either not yet been heard by a judge or are still pending deliberations.

¹⁸ See Burke, C. & Egaru, E. (2011), pg. 4

- **Between 39.9 and 53.9% say their charges stem from that very land dispute.**
- As ‘civil’ matters, these serious land wrangles go unresolved while one or more of the parties is held under criminal charges.
- Of those who say their charges stem from a land dispute, **nearly all indicate having previously tried to resolve the conflict through some type of ADR.**

12. Addressing land grabbing is likely to significantly reduce crime rates.

- When asked what percentage of their caseloads is land-related, key informants estimated:
 - **“About 70%”** of the cases here are land-related. (Senior Regional Police Officer, Gulu, 28/05/13)
 - *“The majority of criminal cases we handle on a daily basis are connected to land. It’s not easy to tell since these cases do not come as land cases directly, but I guess **approximately 70 to 89%.**”* (Senior Court Official, Gulu, 14/05/13)
 - **“At least 70%”** of cases originate from a land dispute. (Senior Police Officer, Katakwi, 05/04/13)
 - **“At least 75% of our caseload is land-related.”** (Court Officials, Katakwi, 10/04/13)
 - *“**The majority** of all [our] criminal cases emanate from land, whether directly or indirectly through aggravated robbery, grievous harm, threatening violence, etc.”* (Senior Court Official, Lira, 09/05/13)
 - **“70% of police cases here are land related.”** (Senior Police Officer, Soroti, 24/04/13)
 - **“75% of our cases in this office are land related.”** (Assistant to Senior Govt Representative, Soroti, 24/04/13)
 - **“At least 70% of the cases that we handle are land-related.”** (Senior Court Official, Kitgum, 28/06/13)

13. Of inmates who face charges stemming from a land dispute, two-thirds express interest in mediating their land cases—even while in prison—so that the matter is resolved.

- Ethical issues considered, this is a potentially major opportunity for government, law enforcement, customary authorities, and civil society to strategically end cycles of violence and vulnerability.

14. Non-binding ADR agreements are largely not successful in ending land grabbing attempts because to prevent future offending requires constant vigilance, which neither law enforcement nor NGOs can provide. It seems, then, that **the most sustainable way to eliminate bad faith is to transform it.**

- A surprisingly small number of case studies (**less than 3 out of 110¹⁹**) were found to be sustainably resolved. Upon analysis, this is most likely because:
 - a. The perpetrator was appeased and the victim gave up in the form of compromise for the sake of peace

¹⁹ Although many had not yet been fully mediated by the NGOs, clan and local leaders had almost always already attempted some kind of ADR.

- b. The parties' relationship remained unreconciled
 - c. One party felt that they had support from a powerful entity who made them 'untouchable'
 - d. The 3rd party concluded the case prematurely or hurried the process
 - e. The 3rd party referred the case but never followed up, or referral added no value
 - f. The perpetrators backed down when threatened with consequences, but renewed grabbing efforts once this threat seemed unlikely or the case grew cold
 - g. A key party was detained in prison
- Anecdotal data shows that once a perpetrator's underlying reasons for bad faith are meaningfully addressed, the land dispute is likely to resolve itself once and for all. This suggests that a more holistic approach to ADR—one that grasps concrete land rights as well as the relational dimension—is needed.
 - Furthermore, it is likely that when authorities bring certain high-profile or "Leader" perpetrators to task, other "Follower" perpetrators will see this and stop their land grabbing attempts as well.

15. *Appropriate ADR sets a precedent for bad faith cases and builds a foundation for reconciled families and communities.*

- The process of gathering facts, listening to community members, and hearing from the parties themselves provides ample material to identify warning signs for bad faith. If the criteria for land grabbing are met (land rights at stake, demonstrated intent, perceived ability/opportunity), then the ADR process must shift into a higher gear. Crime demands the rule of law.
- **The ultimate goal of appropriate dispute resolution is not land dispute settlement; rather, it is the rebuilding of whole and orderly communities, with each sector (state, traditional, and faith) playing its part.**
- This may be practically attainable through the following Layered Approach, which **sets a precedent by establishing and acting upon evidence for bad faith and builds a foundation by digging into the relational dynamics underlying bad faith.**



I. INTRODUCTION: A VULNERABLE MAJORITY

*It is easy to dodge our responsibilities,
but we cannot dodge the consequences of dodging our responsibilities.*

—Sir Josiah Stamp

Unfolding analysis reveals two types of land disputes prevalent in postwar northern Uganda: cases that involve a legitimate cause of action and those that do not.²⁰ Since mediation and alternative forms of dispute resolution rely on parties' willingness to negotiate in good faith, cases featuring 'bad faith' and land grabbing—where powerful parties intentionally exploit another person's vulnerability in order to illegally²¹ claim land—pose a serious challenge for local land dispute mediators. Such mediators must wrestle with whether and how to remain neutral in the face of injustice.

²⁰ Levine, S. et al. (2008); Rugadya, M. (2009); Mabikke, S. (2011); Akin, J. & I. Katono (2011)

²¹ Section 92 of Uganda's Land Act (1998, Cap. 227) states that "a person who...makes a false declaration in any manner relating to land" or "willfully and without the consent of the owner occupies land belonging to another person"... "commits an offence." Notably, however, the *Penal Code Act* does not mention land-related crime or theft, robbery, or grabbing of immovable property. This discrepancy is problematic, as discussed later.

Land tenure security is considered the “key ingredient” for household livelihoods and national economic development, especially in Uganda’s mostly agrarian context.²² Assurance that land rights are protected—that another actor will not suddenly enter the scene to deny citizens the fruits of their labor and the ability to cultivate more later—is foundational to an orderly and productive society. Yet today, rampant and unconcluded land conflicts threaten to keep previously displaced communities violent, shortsighted, and impoverished.²³

Systemic factors heavily impact land mediation processes in northern Uganda. Where disputes occur over land under customary tenure—a system under which Section 38 of Uganda’s new National Land Policy (2013) acknowledges “the majority of Ugandans hold their land,” but has been “regarded and treated as inferior in practice,” “assessed as lesser regarding dispute resolution and mediation compared to the statutory system,” and “disparaged and sabotaged in preference for other forms of registered tenures”—disputants find themselves fighting an uphill battle before they even approach a third party.

This situation does not merely affect the poorest of Uganda’s poor, but rather the majority²⁴ of its population.

Apart from the lack of recognition and support²⁵ for the nation’s most predominant tenure system, backlogged courts, bias and corruption among customary and state leaders, and poor enforcement for land-related rulings and agreements render lasting resolution elusive. High levels of residual trauma²⁶ further complicate these cases.

Mediation, with neutrality and good faith as its core tenets, requires an enabling legal environment to be effective. Yet as mediators in northern Uganda have found, the compromises reached through alternative dispute resolution (ADR) often fall short of upholding land rights.²⁷ This is especially apparent in situations where parties exhibit

²² Banda, J. (2011), pg. 312

²³ Atkinson, R. & J. Hopwood (2013) find that 19.2 percent of land disputes throughout Acholiland involve violence. Of these, only 34.5 percent were reportedly resolved from April to September 2012. (See pages 36-37).

²⁴ Burke, C. & D. Kobusingye (2013) calculate that 98.8 percent of plots in the country’s Greater North are held under customary tenure. Other sources estimate that country-wide, anywhere from 65.5 percent (UBOS 2006) to 80 percent of Ugandans (Adoko & Levine 2004, pg. 54) hold their land under customary tenure. Whereas the UBOS National Household Survey for 2005/2006 shows only 65.5 percent of respondents living under customary tenure (see a2bq7), 94.5 percent of the same respondents reported having no formal certificate of title, customary ownership, or occupancy (see a9q2). Of the few who report having such a certificate, less than 40 percent have a hard copy of it (see a9q3).

²⁵ Rugadya (2008) observes that customary tenure’s “recognition came with hidden distortions by failing to accord its traditional institutional framework the same stature. Indeed findings show that the informality of its traditional institutional framework does not necessarily imply tenure insecurity for the holders... before displacement” (pg. 42).

²⁶ In a study of internally displaced persons across Amuru and Gulu districts using the Harvard Trauma Questionnaire, Roberts, B. & K. Ocaka et al. (2008) found a prevalence rate of 54 percent and 67 percent for post-traumatic stress disorder and depression, respectively—among the highest rated *worldwide* using similar methods. The share of IDPs who had reportedly witnessed or experienced the murder of a family member was 75 percent. See also McKibben, G. & J. Bean (2010) and Amone P’Olak, K. et al. (2013).

²⁷ Akin, J. & I. Katono (2011)

power imbalances or predatory motives. **Since mediating such cases may easily lead to unjust outcomes for the sake of “peace”, some kind of *appropriate* dispute resolution is needed.**

In this context, there is need to learn from local stakeholders to gather best practices on how to constructively handle land cases that involve ‘bad faith’ and land grabbing attempts in northern Uganda. The purpose of this report is to distill the experiences of victims, offenders, and land dispute interveners to inform current practice and policy advocacy. This investigation assumes that better understanding and coordination of ADR actor approaches will inspire more appropriate responses to the grave nature of these cases.

When mediated, bad faith may lead to unjust outcomes for the sake of “peace.”

II. BACKGROUND

Defining terms

Bad faith is defined, for the purposes of this study, by what it is not. If ‘good faith’ is characterized by sincere willingness to negotiate a fair resolution, its counterpart is the opposite: a lack of good sportsmanship; an unwillingness to play fair; the intent to exploit, evade, or claim that to which you have no right. In different jurisdictions, the concept of ‘bad faith’ is associated with illegitimate claims, falsifying information, refusal to comply with a judge’s orders, or attempts to otherwise undermine the ADR process.²⁸ The concept is quite slippery and abstract, and almost certainly context-specific.

Enter land grabbing in northern Uganda. Adoko and Levine’s seminal investigation on the subject defines the term as “illegally depriving someone of land rights.”²⁹ Elaborating, Mabikke (2011) calls it “the acquisition of land by a public, private enterprise, or individual in a manner that is illegal, fraudulent, or unfair taking advantage of existing power differences, corruption, and breakdown of law and order in the society.”³⁰ The International Land Coalition’s Tirana Declaration of 26th May, 2011³¹ recognizes the phenomenon at multiple levels:

“We denounce all forms of land grabbing, whether international or national. We denounce local-level land grabs, particularly by powerful local elites, within communities or among family members. We denounce large-scale land grabbing, which has accelerated hugely over the past three years, and which we define as acquisitions or concessions that are one or more of the following:

- i. in violation of human rights, particularly the equal rights of women;*

²⁸ See Weston (2001), pg. 612

²⁹ Levine, S. et al. (2008), pg. 9

³⁰ Mabikke, S. (2011), pg. 15

³¹ See International Land Coalition (2011). “Tirana Declaration: Securing land access for the poor in times of intensified natural resources competition.” <http://www.landcoalition.org/about-us/aom2011/tirana-declaration> (last accessed November 2013).

- ii. *not based on free, prior and informed consent of the affected land-users;*
- iii. *not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered;*
- iv. *not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing, and;*
- v. *not based on effective democratic planning, independent oversight and meaningful participation.*

The use of power or influence is typically involved in achieving this inherently criminal end—*criminal*, according to Section 92 of Uganda’s 1998 *Land Act* (Cap. 227), which states that “*a person who... makes a false declaration in any manner relating to land*” or “*willfully and without the consent of the owner occupies land belonging to another person*” ... “*commits an offence.*”³²

Yet proving that a land grab took place—especially at the less visible family and community levels—is another story. Despite detailed understanding of the causes and symptoms of land grabbing, practitioners have largely relied upon circumstantial evidence: a widow asks, for example, “How come you waited until my husband died and I was alone before claiming the land?”³³ Such context is helpful, but not sufficient proof of land grabbing.

Allegations of land grabbing, like those of witchcraft and bribery, have historically been hard to substantiate and therefore rarely prosecuted in northern Uganda. Without reliable evidence, court does not entertain such cases. Often, it is as if a crime never took place—and yet, the criminal elements in such cases trump the mandate of non-binding ADR. Slipping beneath the radar of court and beyond the scope of mediation, land grabbing seems to have the justice system beat.

Bad faith and land grabbing each have the ability to unravel the ADR process, but are difficult to pinpoint since they are not immediately apparent. In this study,

land grabbing is understood as *the illegal and opportunistic act of depriving someone of land rights;*

bad faith describes *the dishonest or obstructive way someone approaches the dispute resolution process.*

The two are used almost interchangeably, since if a person behaves deceptively and undermines the ADR process (acts in bad faith), it is assumed they are trying to illegally deny someone’s land rights (grab land).

Under S.92 of the 1998 *Land Act*, it is irrelevant whether this is done unknowingly or deliberately, since both making a “false declaration in any matter relating to land” and occupying land “willfully and without consent” are stated “offenses.”

³² Notably, however, Uganda’s *Penal Code Act* does not mention land-related crime or theft, robbery, or grabbing of immovable property. This discrepancy presents problems, as explained later.

³³ Adoko J. & S. Levine (2008)

Land Grabbing: What We Already Knew

The prevalence of land grabbing in northern Uganda is symptomatic of several wider institutional breakdowns. It thrives in gray areas, especially at intersections between:

- Laws (customary vs. statutory)
- Land tenures (customary vs. freehold vs. leasehold vs. mailo)
- Concepts of ownership (private vs. joint vs. “co-”)
- Economic worldviews (traditional oral arrangements vs. contemporary commoditization of land)
- Dispute resolution approaches (litigation vs. alternative dispute resolution)
- Norms of jurisprudence (civil vs. criminal)

In all of the above, the question “Which should apply in this case?” provides a shelter for perpetrators to stall under until the rain of inquiry dies down. Thus, such cases have proven extremely complex and entangling for those seeking to effectively intervene.

On the other hand, it is clear that neglect—and frequent collusion³⁴—on the part of the very actors in charge of dispute resolution, law enforcement, land administration, and social protection allows the situation to continue. Local Councilors typically act without supervision, clan leaders may tend to favor ‘their own’³⁵, police do not usually investigate land-related claims, Area Land Committees are neither adequately facilitated or working under set fee structures, and veterans of the 1981-1986 Bush War may act as untouchables due to their political and military connections.³⁶ This impunity breeds a frustrated and despairing citizenry that, after decades of trauma during the LRA-UPDF war, is faced with the grim option of either giving up or taking the law into their own hands.

A third option, however, has become popular in recent years. Alternative dispute resolution (ADR), or ‘mediation’ as it is known, is not as technical, costly, or time-consuming as formal court processes, and aims to promote harmony among community members rather than naming a winner and a loser. Civil society organizations (CSOs) and non-governmental organizations (NGOs) have stepped up efforts to provide, and equip others who provide, these services. Yet as NGO caseloads continue to grow while the share of resolved land cases declines, questions surround the efficacy of typical ADR approaches, especially concerning the many cases that involve criminal or exploitative elements.³⁷ Adoko and Levine caution that “like all tools, [ADR] can be used well or badly” in the sense that compromises often facilitate land grabbing when mediators do not analyze land rights and power dynamics.³⁸ Put simply, land grabbing is a different animal.

³⁴ LEMU (2009), “*Why is customary protection failing to prevent land grabbing?*”

³⁵ This is particularly disadvantageous for women, whose access to land in the customary context is linked to inheritance patterns and marital ties. “Where there is a high demand for land,” Joireman (2011, citing Tripp 2004) explains, “migrants, divorced women, and women in general are most likely to face exclusion.”

³⁶ Levine, S. et al. (2008); Mabikke, S. (2011), pg. 18

³⁷ Akin, J. & I. Katono (2011), pg. 10, 31

³⁸ Levine, S. et al. (2008), pg. 68

The stakes are high. History shows that grassroots-level land grabbing feeds into a bigger picture in two ways. First, the presence of local-level land grabbing undermines the customary tenure system by making it appear ineffective in providing tenure security, discriminatory by blocking land grabbing attempts, and prohibitive of land markets since transactions usually require approval of the clan—thus, reinforcing the case for its abolition.³⁹ This trend would be inconsequential except for the fact that 98.8 percent of plots in northern Uganda⁴⁰—and more than 90 percent of sub-Saharan African territory⁴¹—are found to be customarily governed and without supporting documents.

Secondly, when land grabbing occurs freely, it creates an environment of impunity that benefits local elites.⁴² As the ‘powerful’ accumulate more land from the ‘weak’, those that have more land than they can use begin to sell it off to investors. Domestic land grabs pave the way for foreign large-scale land grabbing that is already happening in places like Ethiopia, Guatemala, Honduras, Indonesia, Liberia, and South Sudan.⁴³ In extreme cases, villages are displaced, customary systems uprooted, and investors and elites are not held accountable for fulfilling promises they make to communities.⁴⁴

Scholars emphasize how internal and external threats to customary land rights foster particular conflict dynamics. Joireman (2011) argues that because customary law was largely an invention of the colonial era and thus promoted certain individuals’ interests at the expense of others (particularly migrants and women), “the legal recognition of customary law and tenure systems creates winners and losers with different interests.”⁴⁵ Banda (2011), on the other hand, concludes that “customary tenure is not insecure per se. However, the major threat to security of customary tenure on the [African] continent seems to be the predatory behavior of land management authorities, including governments.”⁴⁶

While the debate surrounding customary land tenure is not the focus of this paper, it does form the backdrop against which land dispute resolution occurs in northern Uganda. An ADR actor’s perception of customary tenure as part of the ‘problem’ and/or the ‘solution’ to land dispute resolution impacts the way practitioners understand and confront land grabbing on the ground.

What We Still Need to Learn

So far, studies have highlighted the causes, impacts, and reactions to domestic land grabs, but little is known about the on-the-ground efficacy of ADR interventions in

³⁹ In fact, data from this study shows that a variety of key informants are dissatisfied with the current customary tenure setup in Uganda.

⁴⁰ Burke, C. & D. Kobusingye (2013)

⁴¹ Byamugisha, F. (2013), pg. 55

⁴² These include army and security officials, politicians, and others with superior educational, social, and economic status. See Mabikke, S. (2011), pg. 6

⁴³ See Zagema, B. (2011); Mabikke, S. (2012, pg. 14); Pearce, F. (2012)

⁴⁴ Knight, R. & J. Adoko et al. (2012); Zagema, B. (2011)

⁴⁵ Joireman, S. (2011), pg. 299

⁴⁶ Banda, J. (2011), pg. 333

these cases. Moreover, with over 17 different actors intervening in land disputes simultaneously⁴⁷ in northern Uganda, it is imperative that ADR actors critically evaluate the appropriateness their responses to land grabbing through the eyes of disputants, mediators, and key stakeholders. If ADR is to play its part in ending this epidemic, its interventions must be shrewd and strategic.

III. METHODOLOGY

From January to June 2011, the Northern Uganda Land Platform conducted a baseline assessment of best practices for land ADR in the region.⁴⁸ The findings of this study highlighted the reality that non-binding neutral evaluation and mediation work well in cases where parties negotiate in good faith, but are inadequate to address the criminal

ADR actors' perceptions of customary tenure as part of the 'problem' or the 'solution' impacts the way practitioners confront land grabbing on the ground.

elements found in land grabbing cases. Thus, Platform members agreed in November 2012 to conduct a follow-up study to learn how to practically and effectively respond to bad faith in land grabbing cases.

From March to July 2013, a 10-person team⁴⁹ conducted field visits with seven (7) different member organizations of the Platform. These

Key Informant NGOs were chosen for their role as active, experienced, and leading land ADR actors in the region and their wide geographic coverage across Acholi, Lango, and Teso sub regions. The participating NGOs included:

- Action Aid International – Uganda (AAIU)
- Africa Community Development Network (ACODEN)
- Facilitation for Peace and Development (FAPAD)
- Justice and Peace Commission – Gulu Archdiocese (JPC)
- Land and Equity Movement in Uganda (LEMU)
- Kitgum NGO Forum (KINGFO)
- Uganda Land Alliance (ULA)

The central research questions were:

1. **How can ADR actors reliably tell whether a case involves bad faith?**
2. **What tactics are perpetrators using to grab land?**
3. **What approaches do ADR actors currently use to respond to land grabbing?**

⁴⁷ Akin, J. & I. Katono (2011)

⁴⁸ See Akin, J. & I. Katono (2011), “Examining the ADR-tistry of land dispute mediators in northern Uganda,” on behalf of the Northern Uganda Land Platform.

⁴⁹ Composed of: Jeremy Akin (Team Leader), Abalo Proscovia, Aguti Jemimah, Ajina Catherine, Alupo Solome Topistar, Atiti Eunice, Koli Christine, Obai Isaac, Odongo Martin, and Oringa Christopher

4. What are the outcomes of these approaches?

5. What practices lead to lasting resolution and prevention of land grabbing?

To answer these questions, more than 110 land grabbing cases were purposively⁵⁰ selected from among these NGOs' caseload data (2007 to present) for their exemplary bad faith and/or criminal elements. The cases were grouped according to resolution status (agreement or no agreement) and the vulnerabilities at play (widow, orphan/child born out of wedlock, separated/divorced woman, disabled/sick/elderly, migrants/aliens, and community land). From there, the researchers conducted separate focus group discussions⁵¹ with the Mediators, Complainants, and Respondents involved in each case.

From there, key informants from civil society, court, cultural institutions, lands offices, law enforcement, local government, prisons, religious institutions, schools, and youth groups were interviewed and met in stakeholder forums to discuss trends, data gaps, and possible solutions. These meetings were held in Lira, Gulu, Katakwi, Kitgum, and Soroti and served as an opportunity for various state, cultural, and faith-based actors to validate the emerging findings and brainstorm feasible ways forward.

Following a lead and with permission of the Uganda Prisons Service⁵², the research team also randomly surveyed 467 male and female inmates at Gulu, Lira, and Kitgum Central Prisons to gauge the prevalence of land conflict among those remanded and convicted.

Interview data was analyzed through regular de-brief sessions among the research team and coded according to research question. Prison statistics were processed using SPSS. The findings of this study were presented in Lira (July 2013) and Soroti (October 2013) at meetings of the Northern Uganda Land Platform, during which the research team gleaned feedback and recommendations.

Limitations of the Study

Conflict is largely about perceptions. Disputant testimony was not always verifiable and is thus treated with cautionary descriptors such as "allegedly" and "reportedly". Frequently, however, the research team did attempt to ensure the factuality of case studies through consultation with field-based NGO staff and other key informants.

Due to the highly sensitive nature of the research topic, the field team could only probe so far among key informants to learn details of specific cases. Thus, case study data is far from complete, but represents a combination of viewpoints from the complainants, respondents, and mediators.

⁵⁰ The investigators elected for purposive over random sampling because of the contextual and not-readily apparent nature of land grabbing. Moreover, the purpose of the investigation was to "go deep" into responses to land grabbing rather than to quantify its impacts or prevalence.

⁵¹ This served both as a means of verification of peoples' stories, as well as an awareness-raising event in which assumed 'victims' and 'offenders' got to see that they are not alone and others like them face similar situations.

⁵² The research team is extremely grateful for support shown by the Commissioner General, Northern Regional Prisons Commander, and the Officers in Charge of Gulu Central, Lira Central, and Kitgum Central Men's' and Womens' Prisons.

Disputants did not always attend interviews when invited, either due to logistical challenges, fear, or suspicion. Where possible, the field team followed parties to their homes to explain the purpose of the study and request an interview. Nearly all accepted once this was clear, but a few still declined to participate. This left gaps in case study data which, if not filled later by key informants, remain “hanging”.

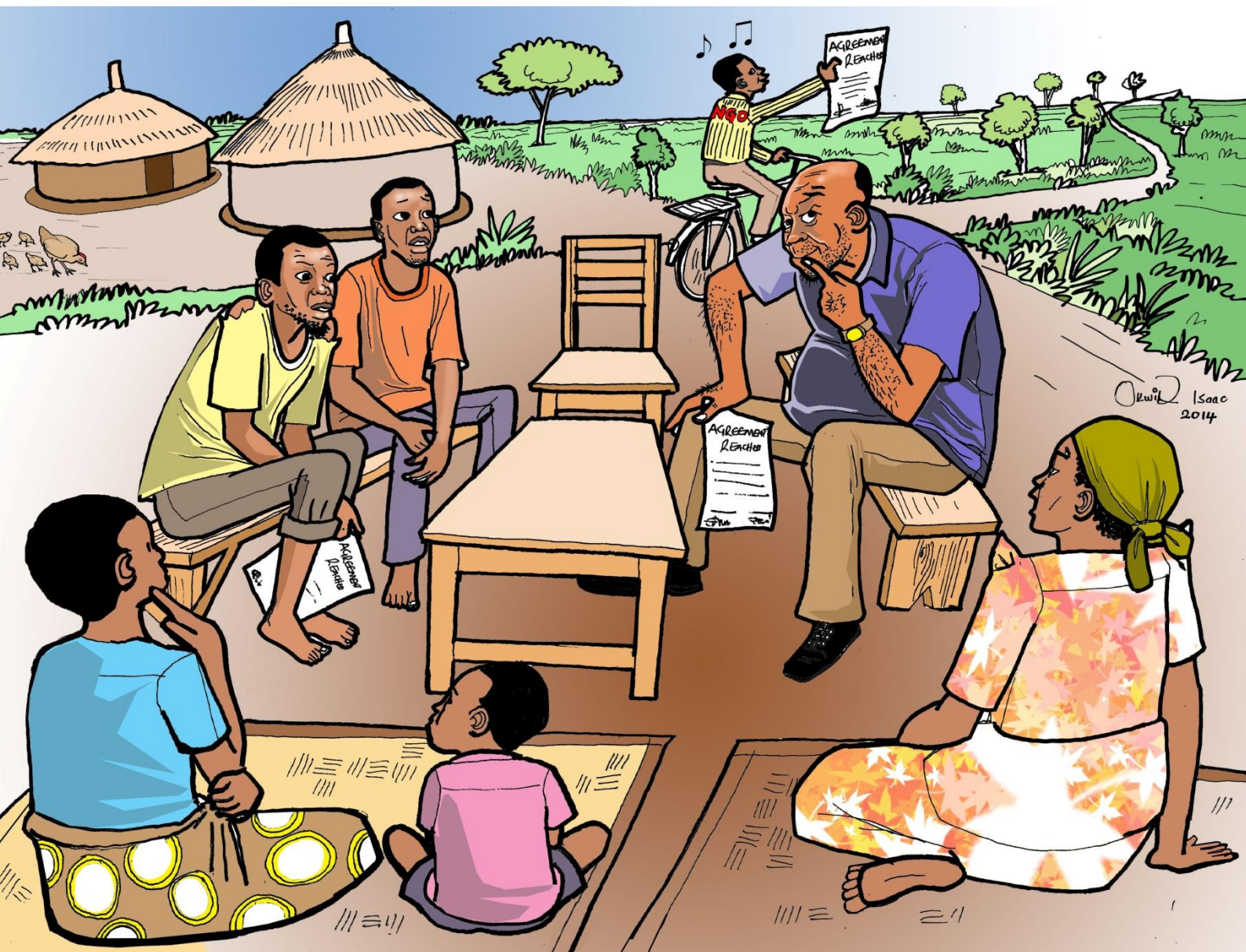
In the Prisons, the research team was welcomed by prison staff but, in some cases, was met with intense suspicion by inmates, even after the purpose of the study was clearly explained. Thus, only 467 out of the targeted 500 inmates were surveyed. (This is likely due to the fact that 88 inmates were detained in Kitgum men’s prison for involvement in the same inter-clan land dispute. Many of these inmates said that they were unwilling to speak with us for fear that the information would be used against them by the other side in the conflict). The research team also took care to operate around prison work schedules – when non-capital inmates leave the premises to go and perform community labour – but this may still have had a marginal effect on the sample survey population.



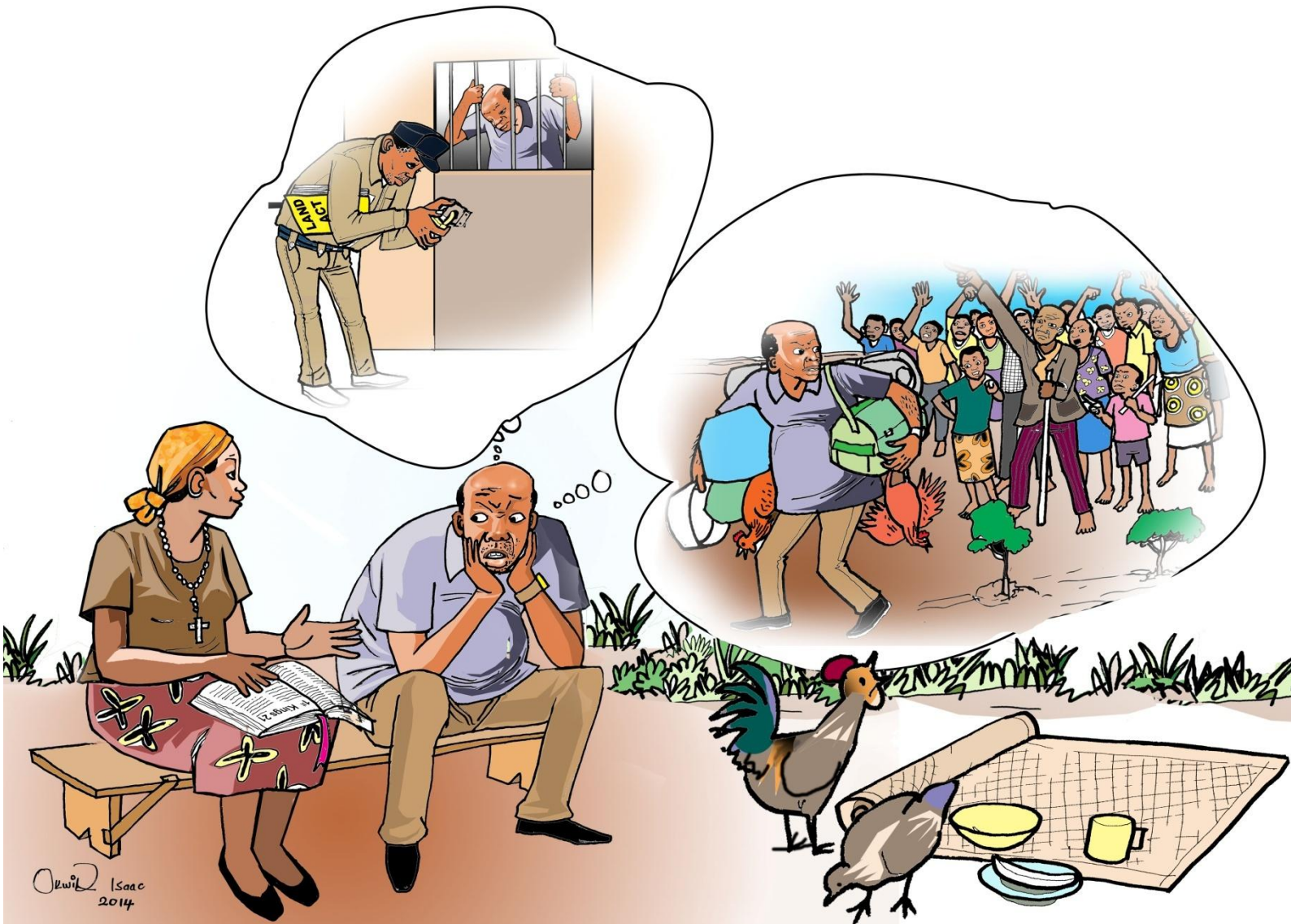
AFTER THE MEDIATION...

LAND GRABBING IN PICTURES

Illustrations by Isaac Okwir









IV. KEY FINDINGS

“That’s like asking a monkey whether the forest should be cut down... Police wants to solve the real issue, which is land grabbing, and not dealing with its symptoms alone.”

—Senior Police Officer, Katakwi (05/04/13)

“Land is what fills up this prison.”

—Senior Prisons Official, Gulu (31/05/13)

The findings of this study are organized into two main sections: Understanding Land Grabbing (Research Questions 1-2) and Understanding ADR Responses (RQs 3-5). The first section is more issue-based, unpacking the phenomenon of land grabbing and why it continues, as understood by actors on the ground. The second portion, on the other hand, is more practical and focuses on the perceived and demonstrated efficacy of different intervention strategies.

The research team collectively coded and analyzed interview data from key informants and case studies, while survey data was processed through SPSS. Selected case studies, study instruments, and data tables are located in Appendices at the end of this document.

PART ONE – UNDERSTANDING LAND GRABBING

RQ 1:

How can one reliably tell whether a case involves bad faith/land grabbing?

- a) What are the warning signs?
- b) How does bad faith affect the land ADR process?

Identifying whether bad faith is likely

Interview data reveals most ADR actors do not immediately distinguish between genuine and bad faith land disputes. Rather, the consensus is that over time, as the mediation process unfolds, some cases prove harder to resolve than others. While such conflicts feature the *likelihood* of bad faith, this does not mean that land grabbing is in fact occurring.

Different actors sift out cases involving bad faith in various ways. For example, NGO-V paralegals bring the cases they cannot handle themselves—due to complexity, severity, or stubbornness—to the field office. NGO-X staff flag files that involve violence, criminal activity (i.e., removal of boundary marks, assault, destruction of property), or situations where leaders using undue influence to disrupt the process. NGO-Z lawyers, on the other hand, use several rounds of mediation to probe parties’ statements and establish whether hidden interests, such as personal vendettas or greed for money, are hindering progress towards a resolution.

To many clan and local council (LC) leaders, such as those in Asuret Subcounty, Soroti District, the default way to discern whether parties are acting in bad faith is to listen to hear if anyone is lying: *“When the clan sits [in a large group meeting], it is clear who is telling lies. Even if the elders lie, the truth will always come out.”*⁵³ This strategy, however, depends on the truthfulness of the clan leaders themselves, which case study data shows is not necessarily the case.⁵⁴ One senior political figure in Teso, on the other hand, takes the more nuanced approach of *“[looking] at how each land matter has evolved over time, as it reveals itself”* to determine whether foul play is involved.⁵⁵

Warning signs

In all of the above approaches, the likelihood of bad faith is not apparent at first. Yet through observation over a period of time, mediators are able to identify cases where, despite the fact that one or more party’s claims are objectively found to be illegitimate or unreasonable, the conflict continues anyway. This is one of the clearest warning signs for bad faith.

⁵³ Interview, Clan leader: Asuret Subcounty, Soroti District, 17/04/13

⁵⁴ For cases of clan and LC leaders who use their influence to abet a land grab attempt, see *Rose vs. Preston*, Agweng Subcounty, Lira District; *Alumina vs. JP and Odokonyera*, Paicho Subcounty, Gulu District; *Aaron vs. Faustino*, Asamuk Subcounty, Amuria District

⁵⁵ Interview, Senior Political Figure, Katakwi District, 05/04/13

The following is a list of other reported indicators that signal likelihood of bad faith in a land dispute. Although not exhaustive, it represents data from interviews with key informants and disputants in living case studies.

- Ignoring a court ruling without appealing the judgment
 - *Rupert vs. Jok-kene* (Paicho Subcounty, Gulu) – Jok-kene reportedly accepted the LC 2's decision and has not appealed against it, yet is mobilizing agents (his sons and a few neighbors) to encroach on the disputed land and physically intimidate Rupert.
 - *Apaka vs. Bosco and 2 others* (Pailyec Subcounty, Amuru District) – Rwot Kweri and LC 1 ruled in Apaka's favor, but there has been no enforcement of this ruling or appeal by Bosco. An NGO mediated the case in February 2012 and facilitated an MOU between the two parties, but as of May 2013, Bosco and his brothers have not upheld their part of the agreement.
- Breaching, or introducing new terms to, a previous agreement
 - *Euki vs. Selina* (Asuret Subcounty, Soroti District) – The two parties mediated, agreed, and signed, but two months later LC 2 writes a letter saying C is encroaching and has planted orange trees on land designated for his brother.

...Despite the fact that one or more party's claims are objectively found to be illegitimate or unreasonable, the conflict continues anyway.

This is one of the clearest warning signs for bad faith.

- *Ayuru vs. James* (Awelo Subcounty, Amolatar) – James lent Ayuru 20,000 shillings to assist in paying school fees. In return, Ayuru loaned James land as she looked for money to pay him back. When Ayuru eventually refunded the money, James demanded interest of 4,000/= (not agreed upon before, and Ayuru could not pay this), or else James would keep the land.
- *Komakec vs. Pius* (Pailyec Subcounty, Amuru District) – An NGO mediated and parties agreed to a 50/50 split of the disputed land. Yet one year later, R is encroaching into another garden outside of his agreed share. R has not yet signed the agreement, and is using this to his advantage. Boundaries were not marked.
- Denying another's land rights, whatever the reason
 - The excuse that 'Blood is thicker than water', used to disenfranchise a widow (cited by (female S5 students in Ongongoja Subcounty, Katakwi District).
 - *Apaka vs. Bosco and 3 others* (Pailyec Subcounty, Amuru District) – When Apaka (a widow) approached Bosco (her brother-in-law) as he was tilling her marital land, Bosco reportedly told her that she had no right over that land, that she was just married there and a mere woman, and should go back to her maiden home.
 - *Maria vs. Paolo* (Muntu Subcounty, Amolatar) – Paolo and his brothers denied land to their unmarried sister, arguing that "traditionally, women are not supposed to be given land from their father's land."

- *August vs. Willy* (Tubur Subcounty, Soroti District) – Different family members taking turns to claim the same piece of land from Willy, who is both an orphan and a clan ‘nephew’.
 - *Dilish vs. Agnes* (Atiira Subcounty, Soroti District) – Agnes’ father, Okello, has a mental disability. His sister, Dilish, allegedly appropriated Okello’s land based upon the logic that land is only for those who can use it. Thus, Agnes, an unmarried mother, was denied an inheritance from her father’s portion.
- Intimidation through violence, bullying, arrest and/or imprisonment
 - *Luoli Clan vs. Obili Clan* and *Laker Clan vs. Lacor Community* (both in Padibe East Subcounty, Lamwo District) – A chief mobilizer for the Luoli clan attended the interview with a recent and deep panga gash on his head, while the left arm of one member of Laker clan is bandaged. Both explained that their wounds are the result of reprisal attacks in the community land.
 - *Euki vs. Selina* (Asuret Subcounty, Soroti District) – A day after he was released from prison for uprooting boundary trees that were freshly planted after a clan-led meditation, Euki threatened to cut his mother, Selina, with a panga when she approached him in the garden. Euki’s brother saw the commotion, came and stopped Euki. This brother reported to LC 1, who came in the garden, saw Euki with a panga and felt threatened, so LC 1 went to police. Police came, Euki hid from them for three days. When they found Euki, police took him directly to the Soroti Central Police Station.
 - *Matilda vs. Isageto* (Katakwi Subcounty, Katakwi District) – Intimidation (violent verbal expressions/ threatening language, and brandishing of weapons).
 - *Wilbarido vs. Justine* (Orungo Subcounty, Amuria District) – Wilbarido says Justine threatened him with the words, “*Don’t joke with me. I’ll kill you. For us, we are very many, but you are just alone. We can kill you anytime.*”
- Surveying disputed land without key witnesses present.
 - The survey process as proscribed for Area Land Committees and Subcounty offices requires the presence of neighbors to verify the boundary. When neighbors or local leaders do not know how someone acquired a title to the land in dispute, this is cause for concern. (See case of *Dilish vs. Agnes*, Atiira Subcounty, Soroti District)
- Division of land without knowledge or consent of family or clan members
 - *Martin vs. Opolot* (Mutema Subcounty, Gulu District) – The two parties are biological brothers. Their father has not yet allocated land between the brother, yet Opolot insists that he deserves a larger inheritance because he has fathered more children than Martin.
- Lack of interest from family head to mediate a case of which they are aware
 - Under custom, family heads are among the first responders in land disputes. If the family head is not willing to hear a case, it could mean one of several things: the complainant may have no valid cause of action and the family head sees that hearing the case is a waste of time; the family head is too intimidated to hear the case; or the family head is complicit in the abuse. Whatever the reason, this situation raises a red flag.
- Selling land that is already in dispute or is being managed by a caretaker
 - *Maruni vs. Yusuf* (Katkwi Subcounty, Katakwi District) – Maruni is a grandmother who separated from her husband and moved to Busoga. When

her husband died, she returned to her marital home to claim her husband's land, which she began selling. Several community members allege that Maruni has expressed interest in selling her marital estate and moving back to Busoga, where she has another home. She has already sold portions given to her, now vying for her grandson (Yusuf)'s land. Maruni is the one who reported the case, saying the clan is refusing to let her sell.

- *Sebastiano vs. Okiror & Abednego* (Asamuk Subcounty, Amuria District) – Sebastiano is a total orphan. Abednego (his grandfather) sold 6 out of the 7 gardens intended to be the inheritance of Sebastiano and his siblings.
- Refusal to listen to the input of others
 - *Rose vs. Preston & 3 others* (Agweng Subcounty, Lira District) – Preston and his brothers wrote a letter insulting the “doggie LC 1” and refused to attend when summoned for mediation.
 - When one party refuses to let a certain witness testify against them, this is a warning sign. If the parties were acting in good faith, they would have nothing to hide.
 - Refusal to cooperate with the mediator without a valid reason
 - Parties may refuse a mediator for a variety of reasons: perceived bias, desire for a court to rule the case, etc. But where a party does not give a clear reason for their persistent lack of communication, this may raise concern.
 - “*The first time you meet them, they’re willing to talk with you. Then when you ask them if you can put the case for mediation, they create an excuse. Or they dodge you. When we try to follow up, they don’t pick our phone calls.*” (X Community Mediator, 26/04/13)
 - *Okot vs. Karina & Lonjino* (Paicho Subcounty, Gulu District) – Karina and Lonjino have a history of “stubbornly refusing to attend” mediation sessions.
 - Timing too coincidental? (e.g., after death of a family head)
 - *Magdalena vs. Musa* (Aduku Town Council, Apac District) and *Rose vs. Preston & 3 others* (Agweng Subcounty, Lira District) – In both of these cases, the Respondents (in-laws to the complainant, a widow) claiming the land immediately after the death of the complainant’s husband.
 - *Priscilla vs. Madikeo* (Amuch Subcounty, Lira) – Madikeo waited until Priscilla was away for one month in the village to encroach on her land, building a permanent structure. When Priscilla demolished the building, Madikeo had her arrested for malicious damage.
 - *Miriam vs. Mateo* (Orungo Subcounty, Amuria District). Previously, Miriam’s grandfather had a land suit against Mateo’s father. Miriam’s mzee reportedly won at Amuria Court, and the judge divided the land. Since the records of this court decision were burned in a house fire, Miriam believes Mateo is using this opportunity to begin the case afresh.
 - Claiming something specific, but having no evidence to back it up
 - *Aaron vs. Faustino* (Asamuk Subcounty, Amuria District) – Aaron contributed money for medical treatment of Faustino’s paternal uncle. Aaron feels this was payment for a piece of land and argues the sick uncle gave him the land before he died as a “thank you for keeping me”. Faustino feels this was exploitative and wants the land for his children to use.
 - *Areket vs. Ekiding* (Atutur Subcounty, Kumi District) – Areket produced a “will” 17 years after her father had died which no one has ever seen or heard of, supposedly naming Areket as the heiress to her father’s estate.

- **Conflicting information on the same land by Complainant and Respondent**
 - Inconsistent testimonies may indicate an intention to confuse people, but again, this is a warning sign, not evidence of bad faith.
 - *Winnie vs. Allori & Akao* (Usuk Subcounty, Katakwi District) – This case is full of complex relationships and migrations back and forth. Winnie’s late husband and Allori were half-brothers, sons of the same mother, Elisabet. Winnie claims that Elisabet was *inherited* by the brother of Winnie’s late husband, but Allori insists that Elisabet *divorced* and remarried R’s father. This discrepancy—between widow inheritance and divorce—has implications for land rights of the different parties.

- **Acknowledging that you have no right to the disputed land, yet still demanding a share of it**
 - *Areket vs. Ekiding* (Atatur Subcounty, Kumi District) – In an interview, Ekiding complained that his land was under attack. Yet later, he confessed to the fact that as custodian of the disputed land, he did not have the right to claim it for himself: “I had no intention of taking the orphan’s land.” Rather, he explained he was simply seeking an appreciation for having looked after the land all these years. Unfortunately, his actions had led Areket (the Complainant) to report the dispute to thirteen (13) actors before the matter was resolved in a joint mediation by the clan, facilitated by NGO-X!

- **Denying there is a dispute at all**
 - This was the case in *Ayuru vs. James* (Awelo Subcounty, Amolatar District). It took three summonses from an NGO before James attended the mediation and agreed to resolve the dispute. In the interview, James denied ever having a dispute with Ayuru.

- **Veiled references to an unseen hand who renders you ‘untouchable’**
 - This was the case in the *Apong Family* cases in Amuru Subcounty, Amuru District and the case of “*Batman*” in Ongongoja Subcounty, Katakwi District. Both cases involved reports of forceful grabbing from multiple families. It is believed that both the Apong Family and Batman have connections to senior ex-army officers.

- **Accusations of witchcraft**
 - *Alumina vs. J.P & Odokonyera* (Paicho Subcounty, Gulu District) – Witchcraft was mentioned separately by both parties during interviews. J.P explained that “*one man, Onono, during the 1st NGO mediation was supporting us. Alumina said that, ‘Since Onono is supporting J.P. and Odokonyera, a snake will bite him on the way home,’ and on the way home it happened just as she said and he died. That’s why people fear [Alumina]... though nobody has seen the charms she is said to have.*” While accusations of witchcraft are characteristically difficult to prove, its perceived presence among the parties reflects hostility between the parties that would not be there if the two sides were operating in good faith.

- Tampering with boundary marks
 - *Melly vs. Morris* (Usuk Subcounty, Katakwi District) – Morris was arrested at least twice for uprooting boundary marks after they had been planted by clan leaders who had intervened in the dispute.

Towards reliable criteria for bad faith

Whereas land grabbing is essentially a question of rights, bad faith describes a person's response to those rights in the context of mediation. Interview and case study analysis indicate that, to reliably tell whether bad faith is present, a neutral actor must assess:

1. **RIGHTS: Land rights of each party**
 - a. Determined by family ties, marital status, and transactions (gifts and sales)
2. **INTENT: Parties' demonstrated willingness to (not) respect these land rights**
 - a. Evidenced by presence of any of the above "warning signs" and/or similar actions, body language, and statements
3. **POWER: Parties' perceived ability to deprive opponent of land rights**
 - a. Context-specific, assessed through asking detailed questions designed to "dig deep" and learn root causes of attitudes

When a party has no right to the disputed land under custom or statutory law, has breached prior agreements and ignored court rulings to this effect, and feels he/she has the financial, political, or other means to forcefully obtain the land, it is almost certain that he/she is operating in bad faith.

This is because to have good faith dialogue, it is essential that parties respect each other's rights. When a person refuses to respect their neighbor's land rights, that person is effectively choosing to break the law. Non-binding ADR does not compel parties to abide by laws; thus, the case takes on a criminal nature that invites external legal enforcement.

***"ADR can even be moving forward,
but in a wrong direction."
– NGO-Z Legal Officer***

Root causes

Simply identifying the presence of bad faith does not change the situation. As one legal officer explains, *"If you only mediate a few times, you just say the mediation failed but don't assess why."* Or, on the other hand, *"ADR can even be moving forward, but in a wrong direction."*⁵⁶ This mediator from NGO-Z, an NGO based in Acholi sub region, illustrates how an awareness of the underlying reasons for the bad faith can help unlock genuine resolution:

⁵⁶ Interview, NGO-Z Legal Officer, 03/06/13

“In one case, I had to probe deeply... [The case] was between a widow and her neighbor. During insurgency, the widow’s home remained untouched while neighbors’ homes were burnt, and other neighbors were killed, but she and her family remained unscathed. Her son, who was involved with the LRA rebels, is now absorbed into the UPDF, but had killed many people in the area...”

After several rounds of failed mediation attempts, the mediator decided to investigate the cause for the neighbor’s bad faith:

“The neighbor in this case was changing their tactics by bringing in other things indirectly related to the land issue. I had to understand why, so I first put the land issue aside and dug deeper...”

“The dispute was not about land, but it took several meetings to find this out. The neighbors were denying the widow access out of a sense of payback and resentment at what her son had done during the war. I had to explain to them that a mother doesn’t always know what her son does and did not give him instructions to kill A, B, and C. Rather, her son was forced to either kill or be killed. I asked the neighbor who was in tears and showing intense emotion, “If these were your kids who did that, should you be penalized simply because you gave birth to them?” I made them realize that the killings happened against their will, and it could have happened to anyone... I told them to ‘speak yourself out,’ and this helped us get to the root...”

*“The parties suggested that they undergo mato oput and reconcile over the killings. They did [and we as NGO-Z witnessed it but did not provide any of the materials], and afterwards the neighbor said, ‘**This is not our land. Now the adrenaline we had has come out. You, Mr. Lawyer, have put us to task, and if I was in her shoes, I would not want to be treated this way.**’”⁵⁷*

If “Mr. Lawyer” had not taken time to probe the reasons for what he saw as unreasonable stubbornness, however, the two parties would have been neither reconciled, nor their land dispute resolved.

Likewise, what appears to be bad faith in a case may be symptomatic of an entire community undergoing an erratic identity crisis regarding land use. As one LC Chairperson observes, clans who once shared community grazing, hunting, and farming lands are now dividing up the land for personal profit: *“In the past, we used this land for farming activities. But now, people are using land as a source of money, to sell. That’s why there’s so much conflict here over land.”*⁵⁸

⁵⁷ Ibid.

⁵⁸ Interview, Local Councillor, Lamwo District, 29/06/13. The phenomenon of opportunists divvying up shared grazing, hunting, and farming lands at the expense of their fellow community members was the lively topic of discussion at a recent stakeholder meeting in Lango sub region on 02/09/13. For a closer look, see Adoko & Krentz (2013).

How bad faith impacts land ADR

Bad faith affects ADR processes and outcomes in several key ways. To begin with, **ADR may not even occur in the first place.** At the grassroots, the process is voluntary, so parties in non-binding ADR are not required to participate.⁵⁹ Thus, perpetrators of land grabbing have the right to decline to attend mediation sessions when summoned by community leaders. Social pressures may compel some perpetrators to attend who otherwise would not, but others who live comfortably removed from village life often see no value in engaging in ‘lower’ forms of dispute resolution.

In addition, a perpetrator has the right to decide whether to agree to anything at all. If a party is not satisfied with the terms proposed, regardless of the rights at stake, there is nothing that forces him or her to accept. Even if both parties sign a consent agreement, the agreement is not legally enforceable should one party later breach it.⁶⁰ Thus, the non-binding system of ADR currently in place in northern Uganda creates situations whereby **bad faith actors can deliberately avoid, stymie, or manipulate the mediation process with few legal repercussions.**

One case in point involves an elderly widow named Melly and her neighbor, Morris, in Usuk Subcounty, Katakwi District. A year after her husband died, Melly was cultivating in her garden when Morris’ son allegedly came and beat her with a stick, claiming that the land did not belong to her. Despite two mediated agreements led by the clan and LC 2, Morris’ son uprooted the freshly planted boundary trees each time (he maintains that the trees died “because of weather conditions”). When NGO-V stepped in to mediate the case in May 2012, Morris and his brothers became hostile—intimidating the mediator—and rain ended the meeting prematurely. Since then, the file has remained pending in NGO-V’s office.

Bad faith also creates an added negative history to the case that must be dealt with, or else parties will not be reconciled. In the case of Quinton vs. Mario in Paicho Subcounty, Gulu District, Mario attributes the death of his father and unborn child to Quinton’s family over the land dispute. During the interview, Mario displayed a police report showing where Quinton had kicked his pregnant wife in the stomach while the two fought in the disputed garden, resulting in a miscarriage. On the other hand, Quinton maintains that Mario is responsible for the death of one of Quinton’s clan members. Until these deaths are compensated for, both sides insist, the land dispute—which is now four years old—will not be resolved. *“If I kill someone, or they kill me, you all will be my witnesses,”* Mario told the research team.⁶¹

When mediated, bad faith may lead to unjust outcomes for the sake of “peace.” Jauline, a widow in her mid-50s in Lamwo District, questioned how local leaders had handled her land dispute with her brothers in law, who under custom have no rights to the land of their late brother’s widow. *“I’ve lived on that land with my late husband*

⁵⁹ This is unlike cases at the Commercial Division of Uganda’s High Court, where cases must undergo ADR before being heard by a judge.

⁶⁰ Depending on who facilitates the agreement, but there is usually no enforcement.

⁶¹ Interview, Respondent – *Quinton vs. Mario*, Paicho Subcounty, Gulu District, 22/05/13

since 1980. But the mediators told me to divide the land with my brothers-in-law. It was very unfair on my side. What can I do?"⁶² The author of this report observed a similar situation unfold over the course of two field mediations facilitated by NGO-Y in Lira District. After a heated argument in the hot sun, the mediators "made peace" by encouraging the widow to surrender nearly two-thirds of her marital estate to four brothers in law, who sought to convert some of their newly acquired acreage into a grazing pasture for their cattle.⁶³

As long as NGOs' ADR interventions are not grounded in land rights, such 'mediations' become dangerous opportunities for the powerful to skew outcomes in their favor.

The 'system-incentives' for most NGOs are to have an agreement reached and to classify a given case as successfully settled—not to uphold land rights. As long as NGOs' ADR interventions are not grounded in land rights, such 'mediations' become dangerous opportunities for the powerful to skew outcomes in their favor. The outcomes of both ADR interventions described above neither upheld these women's customary land rights nor withstood the exploitative influence of bad faith actors.

Instead of harmony and 'peace', a victim's resulting sense of injustice may actually foster resentment and entrench long-standing grudges. In fact, case study data reveals that land disputes characterized by bad faith may become generational—that is, parties in current conflicts often made at least one reference to a dispute their parents or grandparents had over the same land, or with the same adversary. A mediator's tolerance of bad faith to shape negotiated land re-distributions can thus plant a seed for future generations seeking to reclaim or "grab back" what "they" stole.⁶⁴

In summary, mediators must carefully gauge power dynamics, warning signs, and land rights to discern the presence of bad faith in a land dispute. Once bad faith is identified, mediators are wise to explore the underlying reasons for the behavior and guard against its negative effects on the ADR process.

⁶² Interview, Complainant – *Katine Clan vs. Okwangodul Clan*, Padibe East Subcounty, Lamwo District, 01/07/13

⁶³ Field Mediation Observations – *Rose vs. Preston and 3 others*, Agweng Subcounty, Lira District, 13/02/13; 19/02/13

⁶⁴ Interview, Complainant – *Rupert vs. Jok-kede*, Paicho Subcounty, Gulu District, 16/05/13

SUMMARY: IDENTIFYING BAD FAITH

- **Land grabbing** is the act of depriving someone of land rights.
- **Bad faith** describes the dishonest way someone approaches the dispute resolution process.
- Bad faith reveals itself as the ADR process unfolds. Its presence can be reliably identified according to:
 - Land rights at stake
 - Warning signs that demonstrate intent to violate land rights
 - Perceived ability/opportunity
- Bad faith usually exists for a reason, which may be discovered through probing.
- Major warning signs: Evasive behavior; Refusal to cooperate with the mediation for unclear reasons; Use of bullying, violence, or intimidation
- Bad faith can complicate or stymie the dispute resolution process and promotes outcomes that do not uphold land rights.



RQ 2:

In addition to findings of previous research, what tactics do perpetrators use to grab land?

- a. What factors make someone, or some land, a target?
- b. What factors may lead someone to illegally claim land?
- c. How can vulnerability and incentives for predatory behavior be reduced?

The land grabbing tactics that surfaced in case studies and interviews are everything from cruel, to creative, to brazen, to well-calculated: pursuing a relationship or marriage with a dying elderly widow just to acquire her land upon her death; selling the same piece of land to seven different unsuspecting buyers; burning houses, destroying crops, planting witchcraft charms, or killing people who stand in the way.

Before describing the new tactics prominently identified through this study, and to avoid repetition, it is helpful to recall the major strategies Adoko & Levine (2008) highlight. These include grabbing land:

Tactics – Grabbing of Family Lands⁶⁵

1. **Progressively:** *encroaching one meter now, then two, then three...*
2. **Through intimidation:** *verbal/psychological abuse; witchcraft; violence*
3. **By borrowing:** *and never giving back*
4. **By seizing opportunities:** *laying claim after the death of a head of family; citing bad behavior to discredit the victim and justify the grab*
5. **By compromise through customary justice:** *agreeing to “steal two acres, give one back”*
6. **By exploiting ignorance:** *keeping children unaware of their actual inheritance*
7. **By exploiting dependency:** *caretakers mismanaging land of the vulnerable, knowing victims find it hard to ‘bite the hand that feeds’ them*
8. **Through the courts:** *bribes; injunctions; dragging the case on over a prolonged time*

Tactics – Grabbing of Community Lands

1. **By exploiting lack of protection and oversight:** *draining wetlands through cultivation; encroaching on grazing land where no one notices until it’s too late; leaders dividing community tracts among themselves*
2. **By exploiting weakness:** *using physical strength to hold land by force; using the fact that community members are not united in protection efforts*
3. **Test, withdraw, test:** *if challenged, saying I was only “using” the land for a season*
4. **By persistence:** *after harvest, quickly replanting another crop until it is accepted that the land is yours*
5. **Through the courts:** *using law that benefits crop owners and cattle keepers, not communities*
6. **Exploiting lack of clarity:** *especially when there is no set management structure for community lands*

The ultimate end of these strategies is to make the victim give up and concede the land. To stop fighting is to surrender one’s land rights, for, as these authors observe,

⁶⁵ See Adoko & Levine (2008), pg. 27, “The anatomy of a land grab”

*“rights cannot be given. They must be claimed.”*⁶⁶ The case below illustrates how, although one woman approached 13 different actors to claim these rights, she was still unable to secure the full 11 gardens intended for her and those under her care.

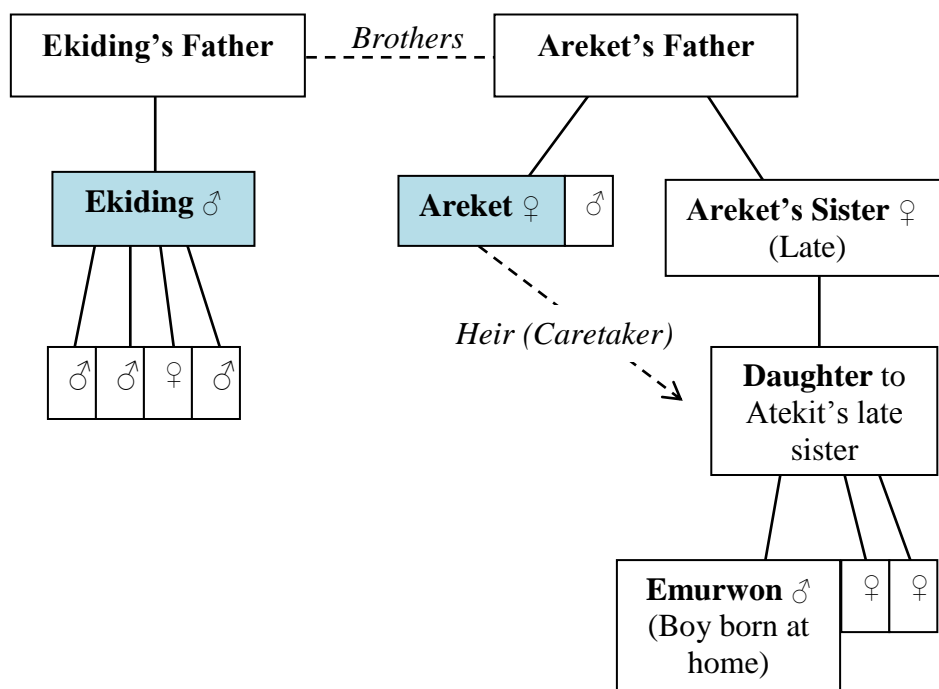
Example Timeline: Areket vs. Ekiding

NGO-X

Atatur Subcounty, Kumi District

Status according to file: Resolved

- **Complainant:** Female Heir representing children of her late sister, born at home
- **Respondent:** 1st Cousin (son of C’s paternal uncle)



CASE HIGHLIGHTS

- Shows perpetrators are just trying their luck, to see what they can get away with
- This “Resolved” case is an example of appeasement of land grabbing through ADR
- Ekiding refused to come multiple times when called (by the clan or LC 2), yet claims he knew the land was not for him but wanted an “appreciation” for having looked after the gardens for the years when Areket was away.
- Areket claims the respondents have many children and at some point may have thought they would never return. *“My sister and her daughter all died so I am alone with a great nephew and 2 great nieces. We were an easy target.”*

⁶⁶ Levine, S. et al. (2008), pg. 77

TIMELINE

- **1983** – Father of Areket dies, leaving behind two daughters. Areket is reportedly named the heir of her father’s estate of 11 gardens.
- **1990s** – Areket marries, is displaced – flees to live in Busoga. Ekiding remains behind and watches over the disputed land (held in trust for Areket and her sister and any future children).
- **Early 2011** – Areket returns from Busoga with her husband. Dispute starts with Ekiding. Areket brings case to →
 - Ekiding’s elder cousin, who refers her to →
 - Family heads (Ekiding does not show up), who refer her to →
 - Lower clan leader Ilomut (Ekiding does not show up), who refers her to →
 - Overall clan leader Emenyit (clan meeting called, Ekiding comes and Areket is told to keep only 4 out of the 11 original gardens, which she refuses) →
 - Subcounty clan leader (asked for minutes of previous clan meeting, but Emenyit did not forward these), so Areket goes to →
 - Probation Officer of Kumi (the land is situated at the boundary of Kumi and Bukedea Districts), who forwards the case to →
 - Probation Officer of Bukedea, who refers her to →
 - LC 2 (who apparently does not hear the case) →
 - Police (who write a letter instructing Ekiding and his sons to stop cultivating on the disputed land) who refer her back to the LC 2 →
 - LC 2 (call a meeting, but Ekiding does not attend. Instead Emenyit, the overall clan leader, writes a letter in support of Ekiding), so Areket goes to →
 - Police (where the Officer in Charge explains that they cannot handle the case) and refers her to →
- **7 Nov 2011** – LC 3 Malera Subcounty (Bukedea), who rules that the 11 gardens belong to Areket. Ekiding and sons are not satisfied with this ruling, so they file a case in the Chief Magistrate Court of Soroti.
- **1 March 2012** – Chief Magistrate (Soroti) rules that “the matter was simply heard afresh whereby the LC 3 court assumed an original jurisdiction. For this reason its decision cannot stand... Appeal is allowed. A retrial to be commenced in the courts of law within 21 days. Costs awarded to the appellant (Ekiding).” Confused as to why she is tasked to pay damages, Areket goes to →
 - Grade 1 Magistrate (Bukedea), who says that “a mistake” was made at the Chief Magistrate court, and refers the case back to →
 - Chief Magistrate (Soroti), where she learns the case has already been judged.

- **24 Sept 2012** – Areket reports to NGO-X.
- **2 Oct 2012** – LEMU assesses the case (the LC 1 reports that the matter was solved by Chief Magistrate), and organizes a mediation.
- **27 Oct 2012** – Parties reach an agreement: Clan awards Areket’s nephew 4 out of the 11 gardens, Areket 4, and Ekiding 3. Boundary trees are planted.
- **22-24 Apr 2013** – Research team makes follow up.
 - When asked about the outcome of the mediation, Areket explains: *“I accepted this instead of losing out completely.”* She says that of the 4 garden she was awarded, she has sold 1 to cover previous court costs and hired 2 out to pay off debts. She is left with 1.
 - Ekiding states that Areket was just *“misadvised by people because when she had just come back from Busoga we were all in good terms, besides, I had no intention of taking this child’s land.”* Ekiding agrees that the disputed land was indeed for Areket’s family, but he also wanted something for having taken care of their gardens all these years.

Additional tactics

A list of all the many creative land grabbing techniques encountered in the field would be impractical for the purposes of this report. Thus, the author has selected five additional tactics to discuss which add to our understanding of land grabbing methods.

1. Ignoring ADR and lower-court processes

Section 88 of the *Land Act* (1998) recognizes traditional authorities’ power to “determine” and “act as a mediator” over customary land disputes, while the *Local Council Court Regulations* (2006) give the same jurisdiction to Local Councils.⁶⁷

Yet perpetrators who feel secure in themselves rarely see any benefit in engaging in these ‘lower’ forms of dispute resolution at the community level. This is understandable—the costs, language, technicalities, and transportation requirements of court significantly advantage powerful perpetrators over victims with less means.⁶⁸ By ignoring or ‘opting out of’ grassroots mediation processes, these offenders are fulfilling their personal right to a fair trial (since ADR is not compulsory) while at the same time indefinitely denying the land rights of another person on the ground.

The typical ‘opt out’ case features a perpetrator who is self-confident in their position, resources, and level of influence. Okung, a wealthy clan leader, refused

⁶⁷ For a closer review of this overlapping jurisdiction, see Akin, J. & I. Katono (2011), pg. 15

⁶⁸ See findings under Research Question 4: “Outcomes” in this report.

four times to attend a mediation facilitated by NGO-U, reportedly asserting that he “cannot sit under a tree for mediation” but rather, “should just be taken to Gulu High Court” because that is where he “belongs.”⁶⁹ In another case, Preston and his brothers did not come for a mediation called for by the LC 1 Chairperson. Instead, they sent a letter that read that they were unable to attend a meeting “organized by a doggie LC 1.”⁷⁰ In yet a different case, one widow’s in-laws refused three times to respond to a mediation organized by the LC 1. When NGO-W finally facilitated an agreement in February 2012, the in-laws—who have seven grown boys compared to the widow’s three younger ones—did not keep their end of the bargain by refunding the buyer to whom they had illegally sold the widow’s land. At the time of interview, the in-laws are still cultivating the disputed area.⁷¹

“There are people,” one Local Councilor observes, “who want to go to court and avoid mediation because they know that the court process drags and it is easier to manipulate.”⁷² Likewise, a senior member of Ker Kwaro Acholi explains:

“They ignore the cultural institutions and even ignore the mediation meeting called by the Rwot Kweri, and they opt to go to the court system. This is always done as means to grab land of the weak. They exploit and bribe the civil process.”⁷³

Opting out, while perfectly legal, is an effective land grabbing tactic because it takes control away from institutions closest to the conflict on the ground (i.e., the clan, LC 1, Rwot Kweri)—and thus more appropriately placed to assess the facts—and puts it in the hands of far-removed magistrates and politicians.

2. Arrest and Imprisonment

The related strategy of criminalizing an otherwise neighborly land dispute was found to be prevalent. By provoking and then arresting a land rights-holder, perpetrators may effectively put the victim “out of circulation” so as to freely use the disputed land.⁷⁴ As one police officer in Katakwi acknowledges,

“Informed people use their knowledge of what is a crime – so they get the vulnerable person arrested for threatening violence, trespassing, robbery, etc. It may really just be a civil case, but informed perpetrators exaggerate and turn it into a criminal matter. Then they use the police as a tool to intimidate the vulnerable.”⁷⁵

A perpetrator may alternatively decide to blame the victim for a crime he or she did not commit. “People like framing others of things that they haven’t done, yet the original issue is land. There is a lot of blackmail in land disputes. Grabbers

⁶⁹ Interview, Complainant – *Okello vs. Okung*, Awelo Subcounty, Amolatar District, 06/05/13

⁷⁰ Interview, Complainant – *Rose vs. Preston and 3 others*, Agweng Subcounty, Lira District, 02/05/13

⁷¹ See *Apaka vs. Bosco and 2 others*, Amuru Subcounty, Amuru District

⁷² Interview, LCs, Amuru Subcounty, Amuru District, 30/05/13

⁷³ Interview, Senior Member, Ker Kwaro Acholi, Gulu District, 17/05/13

⁷⁴ Interview, Senior Legal Officer, Lira District, 09/05/13

⁷⁵ Interview, Senior Police Officer, Katakwi Police, 05/04/13

will always find something to blackmail their prey on,” says a senior political figure in Kitgum.⁷⁶

Interview and survey data from inmates at Gulu, Kitgum, and Lira Prisons confirm one officer’s assertion that *“land is what fills up this prison.”*⁷⁷ Of the female and male inmates surveyed, 46.9 percent (219 out of 467) report facing criminal charges stemming from a land dispute (see findings under Research Question 4).⁷⁸ Of these, a plurality (nearly one-third) indicate that the other side in the conflict is the one currently using the disputed land. While there was no way to verify the land rights claims of inmates surveyed, this data shows a correlation between being imprisoned and the likelihood of the other party using the land.

Furthermore, interviews with inmates—85.4 percent of whom are on remand and have not been proven guilty of an offense—reveal that those who cannot afford bail are forced to wait indefinitely on the backlogged court process, spending years in jail without trial and little evidence they did anything wrong. These findings suggest that imprisonment without trial is a highly probable vehicle for land grabbing.

3. Exploiting the survey process

This technique also involves using ‘legal’ means to accomplish illegal ends. Since nearly all customary land in northern Uganda remains undocumented—a recent study by Burke & Kobusingye puts the figure at 98.8 percent of all plots in the region—the survey and title registration process is on a first-come-first-served basis.⁷⁹ Those that are the first to draw lines around their property have an encroachment advantage over their unsurveyed neighbors, who have no documents to prove where the actual boundary stops. In the words of a Senior District Lands Officer:

*“There are no scientifically marked boundaries... no data to check whether the surveyor has gone overboard in his measurements. If your neighbor hasn’t surveyed their land, you can take advantage of that and survey a larger portion.”*⁸⁰

This was the case in *Magdalena vs. Musa* in Aduku Town Council, Apac District. In March 2010, the clan chief and LC 1 mediated the dispute and planted *omara omara* trees along the boundary between the two neighbors. Musa’s encroachment reignited the conflict in August and NGO-U mediated an agreement where Musa was given one of Magdalena’s gardens.⁸¹ Later, in January 2011, when Magdalena

⁷⁶ Interview, Senior Political Figure, Kitgum, 26/06/13

⁷⁷ Interview, Senior Warden, Gulu Central Men’s Prison, 31/05/13.

⁷⁸ The research team carefully established this through one-on-one probing of inmates’ stories.

⁷⁹ See Burke, C. & D. Kobusingye (2013)

⁸⁰ Interview, Land Administrator, Lira District, 07/05/13

⁸¹ This is typical of conciliation: Musa, a young in-law to Magdalena (a disabled elderly widow), has no right to the disputed land, yet the mediator encourages Magdalena to concede a small portion of her land for the sake of harmony between the opposing sides.

discovered Musa and others surveying another one of her gardens without her consent, she was severely beaten and hospitalized for three months. It is not clear what came of Musa's application for a Freehold Title. In a similar case in Atiira Subcounty, Soroti District, an unmarried woman now lives within the survey markstones her aunt had installed early one morning when neither clan leaders, LCs, nor interested neighbors were present.⁸²

In some cases, perpetrators surveyed legitimate boundaries; the problem was that the perpetrator had no rights to the land in question. Collusion with poorly-facilitated Area Land Committee members, insufficient oversight by the District Land Board, or tricks such as surveying the land on a market day or during displacement while bona-fide neighbors are away, may result in the title application being processed in a perpetrator's name. *"Titles acquired while people were in the [IDP] camps should either be cancelled or revisited,"* one NGO-W staff member asserts. *"Many of them are very fraudulent."*⁸³ While this study does not investigate such claims, it is interesting to observe that voices from across society raise similar suspicions regarding the link between internal displacement and spurious changes in land ownership.⁸⁴

4. Support of an 'unseen hand' that makes you 'untouchable'

Case study data indicates that some perpetrators use their power and resources to grab land remotely, using local operatives. In certain cases, parties referred to a powerful figure in London, Gulu, or Kampala who hired grassroots henchmen to carry out their plans. Local Councilors in Amuru Subcounty, Amuru District explain that these powerful, often wealthy or politically connected, perpetrators *"feel they can defy the authority of the local leaders and nothing will happen to them. So it is very difficult for them to heed what we say."*⁸⁵ The same group of LCs shared a case in point:

One female leader who is direct contact with [a senior political executive] came from Pabbo and reportedly grabbed 10 square kilometers in Amuru District. When the local leaders tried talking to her, she went to Kampala and brought soldiers and policemen who camped at the disputed land for a week. This intimidated the locals and they backed off. There are rumors that someone who tried to face her disappeared in the middle of the night and turned up dead a while later.

The story is similar to three other case studies in Amuru District that involve the Apong family, who is widely reported to be grabbing land from multiple families in their remote subcounty. The family's uncle, a regional security official in Gulu, is reportedly *"behind their every action... He has strictly instructed the police not to act on anything these people do. The just recently deceased DPC of Amuru on many*

⁸² See *Dilish vs. Agnes*, Atiira Subcounty, Soroti District

⁸³ Interview, NGO-W Mediators, 06/06/13

⁸⁴ One retired school headmaster argues that, during the LRA-UPDF war, "insecurity was a tool" whereby certain interests "locked people in camps" in order to acquire their land. (Interview, Lira District, 09/03/13)

⁸⁵ Interview, LCs, Amuru Subcounty, Amuru District, 30/05/13

occasions was heard saying that he has received calls from Kampala telling him that if he interferes with the Apong family case, he will lose his job.”⁸⁶ Upon receiving an interview invitation letter from the research team delivered by the LC 1, members of the Apong family not only declined to be interviewed for this study, but 16 of them held the LC 1 Chairperson and his boda driver hostage at spearpoint for over five hours, threatening to “beat the hell out of” them if they did not confess who “really” sent them.⁸⁷

In the same vein, a senior district official in Lamwo—where recent discoveries of minerals have increased speculation among investors in the area—recalls a fresh land dispute he is tasked with addressing:

A businessman came and brought boxes of alcohol sachets and distributed them to the youth in the village. When the youth were drunk, he told them to go intimidate and subdue those opposing him in his land dispute...

This same official categorizes key land dispute actors into four groups: *victims* (rights holders), *oppressors* (people who are mobilized to carry out violence or intimidation), *perpetrators* (those who mastermind the crime but are usually difficult to detect, since they operate from positions of power and at a distance), and *mediators* (independent people who add value to the ADR process). Of these perpetrators, he remarks:

*These are the ones who need to face justice immediately. If any civil servant or politician tries to grab land, I tell my people to just prepare the file and prosecute... You are in that position, you already know the law. Why should we negotiate with you? There's no negotiating with these people.*⁸⁸

5. Blowing the case out of proportion

If a grassroots land dispute spans administrative or international borders, data suggests some perpetrators exploit and exaggerate this fact so as to drum up support and increase their chances of “cashing in” on a potential political settlement. This was said to be the case between citizens along the border between Subcounties in Gulu District as well as between Katakwi and Napak Districts, where the Government has repeatedly stepped in to attempt to negotiate a solution.

Alternatively, a perpetrator may stoke a small land wrangle between individuals into a full-fledged inter-clan war. “*There is blind solidarity in cases that involve communities as well as individuals,*” a senior political figure in Kitgum considers. “*People believe that, if someone they know is in a dispute, it is their duty to support their very own, irrespective of whether they are right or wrong.*”⁸⁹ This mass rallying effect can serve to cloak the interests of a few powerful perpetrators.

In the case of *Dawiya Clan vs. Dungo Clan* in Padibe East Subcounty, Lamwo District, conflict between one family and certain clan members over use of a

⁸⁶ Interview, Complainant – *Migrant vs. Apong Family*, Amuru Subcounty, Amuru District, 03/06/13

⁸⁷ Needless to say, the researchers did not pursue this interview further.

⁸⁸ Interview, Senior District Official, Lamwo District, 01/07/13

⁸⁹ Interview, Senior Political Figure, Kitgum District, 26/06/13

community hunting ground erupted into a six-year-and-still-going-strong battle between two clans. The Dawiya say that their ancestors have occupied the disputed land since 1818, and Dungo only came onto the land in 1972 through a good-natured gift to a certain Dungo clan member named Geoffrey. During the LRA insurgency, however, conflict arose when Geoffrey's children encroached beyond the allotted 1972 boundaries. The fact that local political leaders hail from the clans involved has inflamed the situation more. Several episodes of violent ambush, imprisonment, and mediation later, the two clans are still aggrieved and the case is now pending in Kitgum Chief Magistrate Court.

Target practice

A variety of risk factors render a person or land vulnerable to land grabbing attempts. Vulnerability is defined in this study as *a quality or life situation that disadvantages the protection of someone's land rights*. Since these are discussed in detail elsewhere⁹⁰, this section highlights only a few key vulnerabilities that featured prominently in interview and case study data.

- *Having unclear land rights*

When land rights are unclear, they are up for interpretation by whoever has the most negotiating power. This creates particularly precarious situations for:

- **Women who seek land at their maiden homes**—this includes widows who leave their marital land, divorcees, women who are married but separated from their husbands, and unmarried women. This is because, under custom, it is assumed that a woman will get married and stay married. *“In most cases, there is no idle land in the family pool waiting for her return,”* observes one local councilor. *“It is now difficult to allocate her land. It is even worse if she comes back with children.”*⁹¹
- **Women whose marital status is unclear**—whether separated or divorced, married or ‘cohabiting.’ These discrepancies often served to justify perpetrators’ denial of land rights in case studies.⁹²
- **Children, especially boys, born out of marriage** who may or may not know their fathers, from whom they are customarily supposed to claim land rights. The mother’s clan may view these children ‘born at home’ not as sons, but as illegitimate nephews, while the father’s clan may be unaware that the child even exists. Such children, unclaimed by either parent’s clan, face severe difficulty when they come of age and seek to claim land for themselves.⁹³

⁹⁰ See Adoko & Levine (2008), McKibben, G. & J. Bean (2010);

⁹¹ Interview, Local Councilor, Lakwana Subcounty, Gulu District, 17/05/13; *Alumina vs. J.P. and Odokonyera*, Paicho Subcounty, Gulu District

⁹² *Naomi & Boaz vs. Hadassah*, Asuret Subcounty, Soroti District; *Winnie & Son vs. Allori & Akao*, Usuk Subcounty, Katakwi District

⁹³ *David vs. Kidega*, Barr Subcounty, Lira District

- *Being “better off” than your neighbors*
 Relatives and community members may, out of jealousy or resentment, seek to undermine persons that have more wealth or social standing than they do. As when a new university graduate is expected to begin paying school fees for younger relatives even before they find a stable source of income, community pressures on those with more land, money, or opportunity to give to those with less creates a climate of obligation and indebtedness whereby people enslave each other. Since there are fewer ‘haves’ today in northern Ugandan society than ‘have-nots,’ those with greater resources—whether due to hard work, saving, and careful planning or due to corruption—are more visible and less likely to disprove the accusation that they are using their wealth to exploit their poor neighbors. Thus, those with more land are likely to experience “grabbing through compromise” in order to keep social harmony.
- *Being “not from around here”*
 Migrants and aliens who hail from a different place but legally acquire land in a new community are also at risk. Such persons become geographically surrounded and outnumbered ethnically or clan-wise, and are considered by the host community to be a stranger who was just “brought in” under unspecified conditions. This also helps explain the vulnerability of a widow, who transfers to her husband’s clan and village through marriage.
- *Idle or unmanaged lands*
 Data suggests that lands that are not actively used or managed are practically up for grabs. After decades of cattle raids and insurgency, a drastic reduction in local cattle ownership and wild game has impacted use of what used to be community grazing and hunting lands. Today, the same communities that shared these areas fight for control of them.⁹⁴ With no management system for these shared resources, case studies show that these struggles can become particularly violent as larger clans assert dominance and smaller clans rally and form alliances to confront the threat.⁹⁵ Similarly, personal lands left idle due to long absence or displacement are often subjected to the idea that possession is nine-tenths of the law. This is especially the case for those caretaking land intended for young orphans.⁹⁶
- *Being associated with a past hurt*
 Unreconciled grievances between people are passed down through generations, as seen in some cases.⁹⁷ Thus, if a person is associated

⁹⁴ Interview, Senior District Official, Kitgum District, 25/06/13

⁹⁵ *Dawiya Clan vs. Dungo Clan* (Padibe East Subcounty, Lamwo District); *Luoli Clan vs. Obili Clan*, (Padibe East Subcounty, Lamwo District)

⁹⁶ See *August vs. Willy* (Tubur Subcounty, Soroti District); *Areket vs. Ekiding* (Atatur Subcounty, Kumi District)

⁹⁷ See *Quinton vs. Mario* (Paicho Subcounty, Gulu District)

through family or social ties to a historic injustice such as the killing of a loved one, an aggrieved neighbor may seek to revenge by proxy through denying that person's land rights. In one case, a jealous elder brother has repeatedly encroached on his younger brother's land because of a long-time grudge with their father. The younger is seen to be the favorite son, so the elder's land grabbing attempts are a way to get back at the father. Today, the two brothers' children do not greet each other.⁹⁸



Motivating Factors

In his *Theory of Planned Behavior*, Icek Ajzen (1991) describes intentions as “indications of how hard people are willing to try, of how much of an effort they are planning to exert, in order to perform [a] behavior.”⁹⁹ He goes on to assert that, as a

⁹⁸ See *Martin vs. Opolot* (Mutema Subcounty, Gulu District)

⁹⁹ Ajzen (1991), pg. 181

general rule, “To the extent that a person has the required opportunities and resources, and intends to perform the behavior, he or she should succeed in doing so.”¹⁰⁰ A person’s intention is thus determined by:

- Their **attitude toward the behavior** (whether they think the behavior is favorable),
- **Subjective norms** (perceived social pressure to perform or not perform the behavior), and
- Level of **perceived behavioral control** (the perceived ease or difficulty of carrying out the action).

Land grabbing is a deliberate, planned undertaking. When this act is analyzed through the Theory of Planned Behavior, a robust understanding of why parties choose to deny the land rights of others is possible. In the diagram above, land grabbing is the stated behavior to be explained. First, the theory states that a person’s attitude toward land grabbing must be favorable. If, in a person’s mind, land grabbing represents immediate material and financial gain, elevated fear and respect in the community, and increased livelihood security for his or her growing family, this criterion is not difficult to satisfy.

Next, subjective norms must be inclined towards land grabbing. This aspect involves a person’s peer group: If a male family head gets to know from his friends and mentors that the real value of a man is based on his acreage and family size, his pride and desire to establish himself among his peers fulfills this requirement. Likewise, if a female civil servant learns from by her colleagues’ example how widely acceptable it is to use one’s influence to corrupt local justice processes in order to obtain a desired judgment, then subjective norms are also in play.

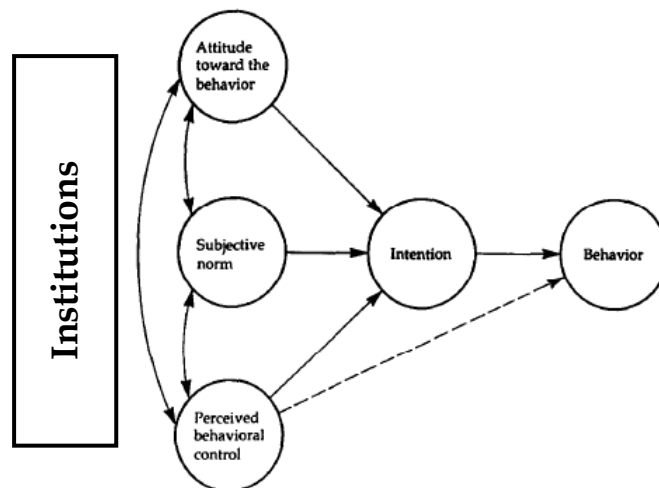


FIG. 1. Theory of planned behavior.

Third, the person must perceive that they have the ability to control the outcome of a land grabbing attempt. If a person sees there are little or no costs to trying and failing a land grab—that it is a risk-free activity—then there is little stopping them from trying their luck. Likewise, if a person feels he or she has power (finances, physical strength, intellect, and political/social connections) needed to effectively seize the land—or if it goes to court, swing the case in their favor—then this factor is met.

¹⁰⁰ Ibid, pg. 182

Underlying all these pieces of the intention to grab land is the current institutional framework of northern Ugandan society.¹⁰¹ Findings from interviews and case studies reveal that it is likely that perpetrators feel free to act with impunity largely because governance systems are complicit in, ineffective in combating, or overwhelmed by the prevalence of, land grabbing.¹⁰²

If a person sees there are little or no costs to trying and failing a land grab—that it is a risk-free activity—then there is little stopping them from trying their luck.

“Government is operating on a double standard,” laments one Senior Lands Administrator. “The ones who put the law in place are the very ones who are antagonizing justice. With the Madhvani issue¹⁰³, I had representatives from State House sit with me in this office and I told them very frankly: “You (Central Government) said that the land belongs to the citizens. But now you don’t want to follow your own laws.”¹⁰⁴

Despite the valiant efforts of many civil servants, lawyers, and law enforcement officers, case study data indicates that both the formal and customary justice systems are notoriously unreliable in the face of land grabbing. This is perhaps best illustrated in their own words:

- ***“Our judgments are rendered unenforceable,”*** says a Grade One Magistrate, speaking of his ability to guarantee the decisions he issues from the bench on the ground.¹⁰⁵ The process of enforcing a court order is fraught with several political, financial, and logistical obstacles.
- ***“In my experience, all LC court decisions are sooner or later nullified due to procedural errors,”*** observes a State Attorney.¹⁰⁶
- ***“Police does not handle land cases... We don’t have the power to handle the root causes,”*** states one District Police Commander.¹⁰⁷
- ***“It is so disturbing when a person fails to respect a clan judgment. They just run to police, who in turn come to arrest the entire clan. Police needs to learn to investigate land issues together with the clan who know the land, without being manipulated by the rich,”*** advises a clan leader from Soroti.¹⁰⁸
- ***“It’s up to the Magistrate to supervise us. But he is only in town twice a week (Tuesdays and Thursdays), and court sits on land cases three times per month.***

¹⁰¹ The author is grateful to Dr. Isaac Katono of Uganda Christian University for introducing this valuable concept.

¹⁰² A comprehensive description of systemic breakdowns is found in the next section of this paper.

¹⁰³ For more information about this famous case between an external investor supported by Government and a local community, see *Daily Monitor*, 31 July, 2013, “The Madhvani Quest for Amuru land”.

¹⁰⁴ Interview, Senior Lands Administrator, Acholi Subregion, 21/05/13

¹⁰⁵ Interview, Grade 1 Magistrate, Teso Subregion, 09/04/13

¹⁰⁶ Interview, State Attorney, Lango Subregion 9/05/13

¹⁰⁷ Interview, District Police Commander, Lango Subregion, 06/05/13

¹⁰⁸ Interview, Clan Leader and representative of Iteso Cultural Union, Asuret Subcounty, Soroti, 17/04/13

Even then, court hours are only from 10:00am to 1:00pm... We are not closely supervised,” admit two court clerks.¹⁰⁹

- *“The reason so many cases are in court is because the clan system has died out. Most are not handled by the clan, they are just pushed to court... We need to strengthen the clan system,”* asserts a Senior Police Commander.¹¹⁰

These institutional weaknesses create the opportunity for land grabbing to thrive. Data even suggests that the low likelihood of risk may embolden perpetrator to try his or her luck. Other systemic factors that contribute to this include:

- the rampant ‘commonplace corruption’ among political leaders publicized in daily news media
- pervasive alcohol consumption¹¹¹ among northern Ugandans, especially youth;
- the so-called Prosperity Gospel which may be *“teaching people greed;”*¹¹²
- lack of family planning proportional to a family’s landholding¹¹³;
- “camp mentality” by which people are used to receiving free handouts¹¹⁴; and
- high levels of residual trauma¹¹⁵ in the wake of the prolonged insurgency.

¹⁰⁹ Interview, Court Clerks, Teso Subregion, 10/04/13

¹¹⁰ Interview, Senior Police Commander, Lango Subregion, 19/06/13

¹¹¹ In a recent World Health Organization report, Uganda ranked as one of the topmost alcohol consuming-nations in the world, at 11.93L of pure alcohol per capita annually. See WHO (2011), pg. 277. At a stakeholder forum involving over 70 LCs, clan leaders, police, clergy, and district officials, the District Police Commander of Katakwi made the following announcement:

“All of the land-related cases we’re receiving involve some mention of a drinking joint, or drinking... So, at our recent District Security Meeting, we imposed a drinking ordinance. There is only drinking of alcohol from 12:00pm to 10:00pm. If we get you drinking before midday, we arrest you.” (Interview, Senior Police Officer, Katakwi, 11/04/13)

¹¹² The Prosperity Gospel refers to the teaching of some Christian churches, especially among the Pentecostal denomination, that “you reap what you sow” and that financial success and possession of major assets (lands, cars, etc.) is a material indicator of your level of spiritual achievement. One church leader in Gulu (Interview, 27/05/13) recounted an exemplary offertory during a worship service: *“Imagine, one handkerchief (with a ‘double anointing’) being sold up to the tune of one million shillings! ...Prosperity gospel makes it look like the more property you have, the better, and yet one can have so little, yet make so much of it. The prosperity gospel is teaching people greed.”*

¹¹³ *“Men, even when they know they have little or no land, still marry many women, and in the case of their death, leave these women and their offspring conflicting over land.”* (Interview, LCs, Asuret Subcounty, Soroti District, 17/04/13)

¹¹⁴ *“During the camp period, people got used to free things, so people are not used to working hard. Grabbing another person’s land is an easy way of acquiring land.”* (Interview, LCs, Lakwana Subcounty, Gulu District, 17/05/13)

¹¹⁵ *“The biggest factor at play is trauma. People are so volatile to provocations. They have no room for tolerance or patience or dialogue. They are used to violence and killing... these land wrangles are the second type of war that we are beginning to experience.”* (Interview, Senior Local Government Official, Lamwo, 01/07/13)

Taking all the fun out of it

Analysis reveals that clarity, meaningful accountability, and galvanizing customary land governance show the greatest promise in reducing vulnerability and predatory incentives.

Clarity

- **Land rights** of different types of persons must be made clear at the lowest clan level. To do this, clans must be proactive in clarifying the marital status of women (co-habiting, separated, widows, divorcees, etc.) and clanship of children born out of marriage.
- **Land Boundaries** that are clearly demarcated by boundary marks and maps make it harder for perpetrators to encroach. This involves community-wide demarcation (this need not be technical—sketch maps and physical boundary marks of all land in a village, for example, would suffice).
- **Institutional mandates** of different court, ADR, law enforcement, and security actors must have clear boundaries. If not, forum shopping and stakeholder interference will continue to render decisions unenforceable while leaving land grabbing cases uninvestigated. This requires determined coordination on the part of top level actors, since many of these institutions operate according to ‘orders from above’.
- **Dispute resolution pathways** must be clearly spelled out to prevent forum shopping, endless referrals in search of enforcement power, and powerful perpetrators’ dismissal of community-based ADR. The authority of the clan, which is the default court of first preference at the grassroots¹¹⁶, is recognized in the 2013 National Land Policy, but it remains to be seen how this will be implemented.

Meaningful Accountability

- **Proactively challenge land grabbing in state, faith, and cultural arenas.** Land grabbing directly opposes national law, faith values, and the customary ethics of protecting the vulnerable. It is a low-risk activity today, but this would likely change if community members collectively spoke out and stood up to challenge the practice using real-life examples in clan meetings, local council sessions, church gatherings, and radio shows. Community members may decide to boycott businesses or social events sponsored by perpetrators, or church members may decide to do an in-depth study of land grabbing accounts in scripture and challenge the congregation to apply these lessons in daily life.
- **Reinstate the ability of police to investigate land grabbing attempts under S.92 of the Land Act.** Imprisonment of all perpetrators is not the solution, but the prosecution of a few exemplary cases may serve as a credible deterrent for would-be perpetrators, as seen in other contexts.¹¹⁷

¹¹⁶ Uganda Land Alliance (2010), pg. 15; LEMU (2009), “Let’s face up to land grabbing”. Brief No. 3, pg. 2; Burke, C. & D. Kobusingye (2013)

¹¹⁷ This is the approach employed by International Justice Mission (IJM), which recorded a drastic 79 percent reduction over the span of four years in the availability of children for sex in the red light district of Cebu City, Philippines, after just 92 arrests for child sex trafficking were made by local

- **Expose and publicize land grabbing tactics** so as to make people wise and reduce exploitation of ignorance.
- **Accessibility and reliability of enforcement for court judgments.** To date, a very few court brokers (the researchers learned of only 2 in Soroti and 1 in Lira) serve a wide scope of land disputants (several districts). These private brokers charge between 6 and 13 million shillings to travel to the Enforcement Division of the High Court in Kampala and process a Warrant for Vacant Possession – a price simply unaffordable for most Ugandans.¹¹⁸ Reducing the costs and improving the availability of enforcement services may thus foster a reliable sense of enforcement and a greater respect for court decisions.
- **Award legal costs in a timely manner—after each judgment.** Currently, costs are only awarded at the very end of an action, once all possible appeals have been concluded. This means that poor parties must wait their turn among thousands of other pending cases¹¹⁹ for their actions to be concluded, all the while accumulating incidental costs (transport to hearings, accommodation, etc.). To enforce a judgment in one's favor, a disputant must pay a bailiff, then pay again for the legal process to reclaim these costs. This lengthy and expensive procedure disadvantages those who cannot afford to keep up with the sustained flow of costs. To improve this situation, courts should award costs to parties after every judgment in an action, even if the decision is later appealed.

Galvanizing customary land governance

- As stated in the new National Land Policy (February 2013), provide for the legal recognition and **enforcement of customary laws and decisions** that are neither repugnant nor discriminatory, but rather socially protective. This entails specifying the powers of the customary system to regulate itself under the statutory system.
- **Link clan leaders' ability to govern with their track-record in protecting the land rights of vulnerable people under their care.** Increased intra-clan checks will enable customary tenure to shift from being a loose framework dependent on sympathy and good will, to one that is downwardly accountable for its commitment to provide land justice.
- Communities should **appoint management committees for their community lands and resources** so as to reduce their vulnerability and the likelihood for large-scale conflict.
- Police and courts should **use clans as a resource in criminal investigations**, since traditional authorities have valuable site-specific knowledge that other actors may lack.

police. For more information, see <http://www.ijm.org/node/109> . IJM is applying the same logic to land grabbing in Uganda (<http://www.ijm.org/news/landmark-property-grabbing-sentence-protects-ugandan-family>). Special thanks to Jesse Rudy and Eva Kadi of IJM-Uganda for sharing this.

¹¹⁸ Interviews, Court Brokers, Teso Subregion, 19/04/13, 24/04/13

¹¹⁹ See table on page 96 for data from Lira Chief Magistrate Court.

SUMMARY: TACTICS

- The typical goal of a perpetrator is to make the victim give up and concede the land.
- Additional land grabbing strategies include:
 - Ignoring ADR and lower court processes
 - Arrest to put your opponent “out of circulation”
 - Manipulating the survey process
 - Relying on support from an ‘unseen hand’ who makes you ‘untouchable’
 - Blowing a case out of proportion to detract from hidden agendas
- To effectively curb vulnerability and predatory incentives, there is need for clarity of boundaries and land rights, meaningful accountability, and strengthening of the customary tenure administration.



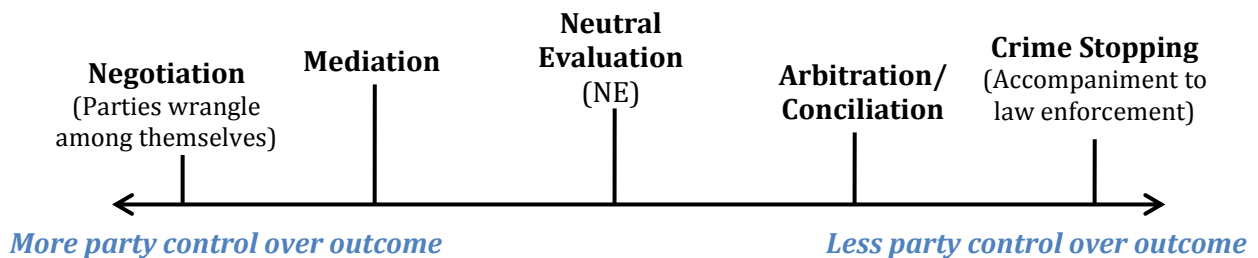
PART TWO – UNDERSTANDING ADR RESPONSES

RQ 3:

What approaches do ADR actors currently use to respond to cases involving bad faith/exploitation of vulnerability in mediation? Out of mediation?

- a. What types of cases do land ADR actors refer, and to whom?
- b. How does the community respond when someone’s land rights are violated?
 - i. Are there consequences for perpetrators?
- c. At which stages is the clan/state/faith governance system breaking down? Why?

Analysis of interview and case study data reveals that ADR-practicing NGOs respond to bad faith in five general ways: Neutral Evaluation, Mediation, Arbitration/Conciliation, Crime Stopping, and Referral. Actors often attempt these approaches in sequence, shifting from “more party control over outcome” to “less party control over outcome” (see diagram below) as the process unfolds and intentions are revealed.



1. Neutral Evaluation (NE) features an impartial third party who gathers the facts of the case and shares a non-binding appraisal of land rights according to law and/or custom. The neutral evaluator then explains various options the parties can take in resolving the dispute, along with their likely consequences.¹²⁰

NGO-X and NGO-Z, for example, conduct independent investigations or “assessments” of cases that have been reported in advance of a mediation. Acting as detectives, these mediators go to the community unannounced and consult local opinion leaders about the details of the case and make an informed evaluation in preparation for the upcoming mediation. Yet no clear mechanism is in place to ensure that the evaluator remains objective through the collecting and sharing of findings.

In this study, NEs were often found to be shared in the form of “sensitizations,” whereby the ADR actor uses the mediation meeting as an opportunity to teach the community about land rights of different persons. This is intended to bring both parties on the same page and balance any power imbalances arising from knowledge gaps. Both NGO-X and NGO-Z use “blanket awareness” sessions to give perpetrators the benefit of the doubt – perhaps the perpetrator was ignorant and simply unaware of

¹²⁰ In northern Uganda, however, it may be that a lack of any truly *neutral* evaluation is part of the problem.

the other party's land rights whom they have abused. How the person grabbing land reacts to the NE is then used as a test for the presence of bad faith.

2. Mediation, in its original sense, involves a neutral third party who facilitates a discussion in which parties decide for themselves how to resolve their land dispute. While this is a relatively “hands-off” approach, the neutral encourages parties to explore possible win-win solutions by asking questions and brainstorming options that cause parties to self-evaluate their actions and respond as they see fit. The mediator gently guides the conversation, but parties are free to agree or not agree.

Overview of ADR Responses to Land Grabbing

Response Type	Description	Goal	Practiced By
Neutral Evaluation	<ul style="list-style-type: none"> • 3rd party investigates facts • 3rd party gives legal opinion of land rights, available options • Address power imbalances through “sensitization” of land rights/laws 	Evaluate validity of parties' individual claims in light of law/customs	NGOs T, X, Z
Mediation	<ul style="list-style-type: none"> • Parties decide for themselves how to proceed • 3rd party acts as neutral facilitator 	Restore harmony in the community through win-win solutions	NGOs T, V, W, X, Y, Z; RDCs; Faith leaders; Police
Arbitration / Conciliation	<ul style="list-style-type: none"> • (Arb.) 3rd party identifies a “winner” and a “loser” • (Conc.): 3rd party makes a decision and asks “winner” to give concessions to the “loser” 	Do what 3rd party feels is best for the parties and/or community	NGOs U, V, Clans, LCs, RDCs, Rwodi Kweri, Faith Leaders
“Crime Stopping”	<ul style="list-style-type: none"> • 3rd party defends victim using law enforcement (court, police, and/or clans) 	Stop land grabbing attempts	NGOs T, U, X, Y, Z
Referral	<ul style="list-style-type: none"> • 3rd party passes case to 4th party in search of more authority to impose certain behavior 	Bring in a stronger authority to enforce decisions	All

In practice, mediation is understood to be whatever is expedient. **The primary goal of “mediation” in the context of Lango, Teso, and Acholi is to restore harmony in the community, often through compromise—and at times, at the expense of parties’ individual interests or rights.** Different actors may serve on the mediation team—NGO-T involves local politicians and security officials, NGO-X uses clan leaders, NGO-Y relies on community lawyers—and neighbors, witnesses, and other interested third parties are usually present. Mediations led by NGO-W involve religious leaders who “urge” the parties to settle their differences, but do not force people to behave in a certain way.¹²¹

Interestingly, the majority of the NGO and community mediators interviewed do not differentiate between genuine cases and land grabbing attempts—they simply mediate whatever cases are reported to them. This means in effect that these ADR actors begin cases in the same way, but sometimes find that the way the case unfolds—to reveal bad faith—demands another, firmer approach. In such cases, most of these actors refer the case elsewhere (see section 5 below). One notable exception is NGO-T’s use of a 15-member District Mediation Team made of various local leaders, independent neighbors, cultural leaders, security officials, and District officials in cases that involve large-scale violence between clans. In these group mediations, NGO-T’s community partners tasks each clan to nominate five people to act as spokespersons throughout the mediation process. As the rounds of mediation progress, NGO-T mediators gradually increase the number of mediation participants until the two communities are ready to finally come together *en masse* and commit to specific resolutions.

Technique: Land Rights Quiz

In a community mediation observed in Serere District, the mediator from NGO-X began the session in a creative way – by drawing scenarios of different types of persons (orphans, unmarried girls, boys born out of marriage) and asking the community to identify from where each derives their land rights. This caused people to think and search for correct answers, laugh at foolish responses, and eventually refer to elders to make the correct custom known.

“Make sure to engage [those gathered there],” this mediator explains. “Pose different scenarios of where different groups of people get their land rights. Then you can gauge [the crowd], who is participating, who is in a good or bad mood. Be sure to pinpoint the respondents – ask their views, how they see things. Assess them.”

This approach not only lightens the mood and uncovers knowledge gaps or misconceptions of custom in the community, but can also signal whether a perpetrator is willing to be corrected or is deliberately defiant.

¹²¹ This is already stretching the boundaries of mediation as understood in the formal legal sense and in S.90 of the *Land Act (Cap 227)*. Real mediators should not ‘urge’ anything, especially that parties should agree for the sake of agreeing.

3. In both Arbitration and Conciliation, the arbitrator makes a decision for the parties. Clans, Rwodi Kweri, LC Officials, and Resident District Commissioners were generally found to exhibit this ADR style. Once the facts are heard, these actors, who may operate individually or in a panel, rely on their authority¹²² and position to assert a position and render a decision. If the parties accept this decision, an ‘agreement’ is written and signed and the case is considered settled. If not, or if a party questions the legitimacy of the arbitrator, then the arbitrator is likely to refer the case (see 5 below). In order to maintain peace and harmony between the disputants, however, the arbitrator may encourage conciliation whereby the “winner” grants concessions (in the form of easement rights, plots of land, or other special terms) to the “loser.”

4. Crime Stopping may take place within and outside of dispute resolution sessions. This approach describes the efforts that a neutral undertakes to see that justice is done, once it becomes clear that non-binding mediation or arbitration attempts are futile due to a party’s demonstrated bad faith. A neutral may engage or threaten to engage the ‘due course of law’ through police or court, but the effectiveness of this approach lies in the credibility of the threat. In previous research, a team of NGO-U paralegals in Minakulu explain:

“A mistake we made when trying to deal with violent parties was to threaten to have them arrested in order to cool them down. We would say, “If you don’t cooperate with our evaluation of the case, you’re going to end up in jail!” Some parties would back down, but others would grow even more defensive, demanding that we produce the police there and then. Of course, we couldn’t make that happen, so we had to stop using that strategy.”¹²³

Threatening with arrest or with discipline from a higher power is usually the aim of this strategy. For example, a Senior Police Officer in Padibe East Subcounty and his colleagues are often present on the NGO-T-led District Mediation Team to provide a “peaceful, secure, and orderly environment” for the mediation to take place and for perpetrators to stand duly warned.¹²⁴ By the same token, a Local Council Chairperson in the same area described changing the venue for the mediation of *Dawiyia Clan vs. Dungo Clan*, a volatile case that involved lives at risk and the possibility of spontaneous violence, to the more neutral and secure environment of the Subcounty Offices. In the presence of security officials and subcounty leaders, he warned the disputants present that “Today, you’re sitting on the laws.” The meeting ended in a signed agreement. The next day, unfortunately, Dungo clan members filed a case in Kitgum Chief Magistrate Court.

On the other hand, a mediator may be more creative in the face of crime. In one case involving a former rebel who was using his possession of a gun to intimidate the community, a mediation team led by NGO-X decided to show the perpetrator who was boss. “We... brought in another more mature ex-rebel commander who is now a

¹²² Interestingly, when asked where they derive their mandate to resolve land disputes, clan leaders always responded “the people in the community,” while LCs and RDCs typically responded (“the government,” “the district,” or “the president”). These perceived accountability flows—whether downward to the people, or upward to a superior—color an ADR actor’s sense of duty and have important implications for the definition of a meaningful resolution in a given land dispute.

¹²³ See Akin & Katono (2011), pg. 81

¹²⁴ Interview, Police-OC Station, Padibe East Subcounty, 29/06/13

*changed man. He told the group, “Even this man [perpetrator], I can bring him down and cane him.” So it’s effective to use other members in the community. Even powerful perpetrators are also under the authority of someone, like a commander.”*¹²⁵

5. Referral is, by far, ADR actors’ default approach to bad faith in land cases. This involves one actor passing the case to a different actor, usually in search of a “higher power” with greater authority to impose or sanction certain behavior. Actors who do not know what to do in situations of bad faith refer rights-holders “up the ladder” for this reason. When, for instance, NGO-X staff see that *“our efforts to help the parties will be futile, a waste of time, fuel, and resources to the extent that it’s not viable... we write a legal opinion and forward it to the parties. The parties either follow the legal opinion, or we refer them to court.”*¹²⁶

This involves one actor passing the case to a different actor, usually in search of a “higher power” with greater authority to impose or sanction certain behavior.

While different actors were found to refer to different places (see table below), in general, **actors usually refer these cases to law enforcement officers (LEOs) such as police and court.** At times, actors send such cases back to the parties’ clan(s), attempting to work through and lend legal weight to the otherwise non-binding clan process. Actors are less likely to refer to NGOs, probably because NGOs lack the capability and mandate to address the gravity of the types of cases referred.

Criteria for Referral, as cited by NGO staff

- Inability of the 3rd party to get any outcome respected or implemented
- Serious or violent crimes¹ (e.g., assault, robbery, malicious damage, disobeying a court order)
- Credible accusations of witchcraft
- A party’s refusal to participate in ADR
- A party’s refusal to abide by a Neutral Evaluation or mediated agreement
- When the 3rd party is or perceives themselves to be: intimidated, tired, or not competent, neutral, able to meet transport costs, or otherwise willing to continue with the case

¹²⁵ Interview, NGO-X Community Mediator, Soroti, 26/04/13

¹²⁶ Interview, NGO-X Community Mediator, 26/04/13. This was the procedure applied in *Miriam vs. Mateo*, Orungo Subcounty, Amuria District

		Referral Destination				
		NGOs/ Different NGO	Clans/ Higher clan leader	Court/ Higher court	Police/ Higher Police	RDC/DISO
Actor Making the Referral	NGOs	✓	✓	✓	✓	
	Clans	✓ (rarely)	✓	✓	✓	
	Courts		✓ (rarely)	✓	✓	
	Police	✓	✓	✓	✓	✓
	Faith-based		✓ (rarely)	✓	✓	

*Community Responses to Land Grabbing*¹²⁷

Responses to situations of land rights abuse are as varied as one can imagine. The clearest finding is that community **actors tend to respond independently**, with little to no coordination of efforts. Whereas most NGOs and their grassroots partners strive on their own to bring together different local leaders (clergy, LCs, clan leaders, etc.) to mediate land disputes, there remains a strong sense of suspicion and blame between the actors. One of the chief approaches to land grabbing is therefore avoidance or ‘applying the brakes’ on the efforts of another actor. According to a senior political official in Gulu, *“The people who have the mandate to handle land disputes are mostly working to serve their own interests.”*¹²⁸

NGO actors have a particular set of resources and priorities that may lead them to believe they are best equipped to handle land grabbing cases through ADR (see previous section). At times, however, this means overstepping or ignoring the roles of other actors.

“There are many actors responding to land issues. But one of the biggest challenges is coordination. If we are not coordinated, we’re not going to do much. We may even make cases worse. One example: A case was mediated by the chiefs, and one party is unsatisfied. They go and report the case to another actor (NGO). NGO trashes the clan mediation saying it wasn’t done properly, doesn’t even read the report. NGO forgets that the chief can incite the people against the NGO.” (Senior Lands Administrator, Acholi, 03/07/13)

When these approaches fail, NGOs were found to avoid or abandon further pursuit of such cases with the reasoning that, “well, we tried.” One mediator from NGO-V, for example, consistently found herself harassed, ignored, and unwelcome as she tried to mediate the case of *Melly vs. Morris* in Usuk Subcounty, Katakwi District, so the case has remained pending in the NGO’s office since she last attempted mediation in May 2012. Similarly, when NGO-X Community mediators realize that parties’ unwillingness to listen constitutes a waste of time and resources, these mediators back away from the case, normally through referral. In this way, avoidance may be embodied through referral. Parties may interpret this as leaving a mediation halfway done.

¹²⁷ The term ‘community’ is understood here in its broadest sense – that is, the collection of diverse intersecting actors and interests that make up society. For earlier research on this subject, see Adoko & Levine (2008)

¹²⁸ Interview, Senior Political Official, Gulu, 17/05/13

Typical Community Responses to Land Grabbing

- Attempt to negotiate with the perpetrator
 - Parties try to win others (especially leaders) to their side
- Community members learn of the dispute and:
 - Take a position regarding the dispute
 - In support of the victim
 - Spread negative messages about the perpetrator
 - Consider retaliation to “chase” the perpetrator
 - In support of the perpetrator
 - Spread negative messages about the victim
 - Avoid the issue or accommodate to the land grab due to:
 - Lack of concern (“I’ve got enough problems of my own to deal with”)
 - Intimidation
 - Complicity, bias, or corruption
 - Despair of any alternatives
 - Report to clan leaders and/or LCs, who may:
 - Investigate the case
 - Verify the land claims of each party
 - Negotiate the case despite power differences
 - Decide case in favor of perpetrator
 - Appease perpetrator through compromise
 - Decide case in favor of victim
 - Not punish the perpetrator for the sake of group harmony
 - If decision not respected:
 - Refer the case “up the ladder” to a more authoritative office
 - Look to police and courts for guidance
 - Wait and see what happens next

The interventions of **RDCs** are commonly cited as a source of confusion. As the Chairman of the District Security Committee, the RDC is expressly interested in threats to the state or its citizens. As one Deputy RDC explains, “*We have to stop anything which brings insecurity, since the RDC is the chairman of Security.*”¹²⁹ Another RDC in Acholi concurs: “*I don’t have a mandate to handle land disputes. But as the RDC, it is my responsibility to monitor security. So, if a case poses a security threat, I intervene. But, always, upon request, I come in to mediate land disputes to control security issues.*”¹³⁰ The problem comes, however, when the RDC’s interests clash with the interests of the courts and/or of justice. Community mediators

¹²⁹ Interview, Deputy RDC, Acholi Subregion, 20/05/13

¹³⁰ Interview, RDC, Acholi Subregion, 26/06/13

in Paicho Subcounty, Gulu District complain that the RDC's office "fuels land disputes by meddling" in mediation agreements, overturning court judgments, and rehearing cases afresh that a court has already concluded.¹³¹ To this, one Deputy RDC replies,

*"The land grabbers do not like the work we are doing; they say we interfere with their work. RDCs are being accused [of] preventing the lawyers from doing their work [and] interfering with peace. We do work together with the Rwodi Kweri and cultural leaders; they ignore us... The lawyers and court officials [also] say that the RDC's office makes their work difficult."*¹³²

But not all RDCs involve themselves in 'interfering' by creating parallel processes. One RDC in Teso, for instance, aims to equip land disputants who come to him for help with the knowledge and tools they need to find a lasting legal solution themselves. He sees his role as that of a 'networking agent', stationed to help connect people to others who can push their cases through the justice system. He collaborates with police, LCs, cultural leaders, and clergy by referring cases to them but lends his Presidential legitimacy to their existing ADR processes.¹³³

Police across Lango, Teso, and Acholi sub regions report responding to cases involving land rights abuse with a question: Is the case civil or criminal? While the research team (as well as candidly admitting police officers) could find no concrete criteria for this distinction, this classification determines whether or not police will begin a criminal investigation:

"We as police firstly find out if the case forwarded to us is civil or criminal. If it's criminal, then we do the investigation... to ascertain the facts... the CID office involves the community or clan... If police establish that it's a civil case, they forward it to the Court since they are not mandated to handle cases that are civil in nature." (Senior Police Officer, Katakwi, 05/04/13)

Thus, while nearly all police stations across the region indicate that at least 70 percent of their crimes reported are land-related, the determination that a land grabbing case is "civil" translates to no investigation on the ground, as well as a possible 'black-listing' of the case as not appropriate for police intervention.¹³⁴

Avoidance of land grabbing cases, whether out of fear or undue influence, is also another type of response. A Senior Police Officer in Teso Region shares a common story:

¹³¹ Interview, Clan leaders, Paicho Subcounty, Gulu, 15/05/13

¹³² Interview, Deputy RDC, Acholi Subregion, 20/05/13

¹³³ Interview, RDC, Teso Subregion, 05/04/13

¹³⁴ Interview, Complainant, *Miriam vs. Mateo*, Orungo Subcounty, Amuria District, 22/04/13. Miriam concluded that police had grown tired of her after she reported Mateo's actions so many times (she said up to ten times in one month), and do not take her statements. Rather, police tell her to "go to court", but the Soroti High Court has dismissed the case in order that it be heard at a court of competent jurisdiction (LC 1). Yet currently, LC 1 courts are not operational – but even if they were, Miriam says the LC 1 is terrified of Mateo and his sons and has refused to hear the case.

“One time I went to the field, a man was reportedly taking land from someone. We police went to help resolve the conflict, but we saw the man with a panga. We’re human, we have children. We had to let him go.”¹³⁵

In a case in Aduku Town Council, a widow and her daughter in law were assaulted and sustained serious injuries over a land grabbing altercation. Police reportedly organized a meeting with the seven perpetrators but told the widow to “first take treatment before the case can be handled.” The woman was hospitalized for three months with a fractured leg, during which time the case fell silent and the meeting never took place. Upon discharge from the hospital, NGO-Y attempted to mediate, but the case remains unresolved, with the perpetrators cultivating the disputed land.¹³⁶

Police may also play a role in facilitating the ADR process. When asked what police are doing to prevent powerful actors using the police to intimidate others, one Senior Police Official responded, *“Sensitizing the community, community dialogues. Encourag[ing] them to use the legal way.”¹³⁷* Another police officer states that, *“In fact, the police are at the forefront of handling land disputes. If there is mediation, the police are present to offer security. They create an environment that is friendly for mediation.”¹³⁸* Yet on the other hand, the presence of just one police officer in a mediation has been known to cause fear and apprehension among disputants—wondering whom police have come to arrest—and may provide only the form, not the substance, of meaningful law enforcement.

In addition to facilitating mediation and dialogue, **Religious Leaders** were found to respond to land rights abuses by confronting perpetrators and praying curses upon perpetrators. One church leader in Katakwi District recalls a situation where he rebuked a member of his congregation who was grabbing land.

“There was a very influential man in my church, who gave the highest amount of money (in tithes, offertory). But he had also grabbed somebody’s land. The victim was also a member of the church, so it fell to me to mediate the dispute. I said, ‘if I say this man is in the wrong, I’ll lose my tithes and offertory. But it is my principle not to be so familiar with my flock, because they will make me shut my mouth.’ So when injustice occurred, I had to make justice prevail...

...The rich man was the one who reported the case to me, hoping the church would side with him (with his background of funding the church). Whatever judgment I make, because of my integrity, all the parties will respect and obey. I am still very much honored in the community... The rich man has left church, seeking legal redress.”¹³⁹

Another church leader in Amolatar District shares his experience with dealing with power and vulnerability dynamics in a land grabbing case:

“It has never been successful. We publicized it and he [the perpetrator] is excommunicated, but he comes back to church; he is testifying before the

¹³⁵ Interview, Senior Police Officer, Katakwi Police, 11/04/13

¹³⁶ See *Magdalena vs. Musa*, Aduku Town Council, Apac District

¹³⁷ Interview, Senior Police Officer, Amolatar, 06/05/13

¹³⁸ Interview, Senior Police Officer, Gulu, 14/05/13

¹³⁹ Interview, Church leader, Katakwi, 11/04/13

*congregation... He later changed his church and religion. The case is still ongoing, but he knows the church is testifying in favor of the other side.*¹⁴⁰

While the *Qur'an* encourages Muslims to first talk at the family level in the event of a land dispute, the Muslim community reportedly holds “a very strong belief that prayer is a powerful tool of punishment. We pray to wish bad omen on wrong doers, especially against those who don’t respect widows”¹⁴¹ with the understanding that, “if you encroach on someone’s land by one inch, it means you will carry the burden of the whole hectare.”¹⁴²

The response of a given community varies according to the case. At times, clan leaders may mobilize their members to unite and physically expel a perpetrator¹⁴³, but the presence of a land grabbing case often polarizes the community. This limits the effectiveness of grassroots ADR because “people tell lies – both the parties and their witnesses. They come to give support to one side, not to brainstorm a solution.”¹⁴⁴ Bad faith, therefore, may have a spilling effect.

In these situations, **LCs and clan leaders** tend to take one of two options – either refer the case to a stronger authority, or appease the perpetrator through conciliation in order to restore temporary social harmony. One participant in the Kitgum stakeholder forum (convened for this study) sums up this scenario for many community-based ADR actors. They “are doing their best in mediation, but dependent on people choosing to go and use mediation. In the event that they fail to resolve the issues, they tend to refer the cases.”¹⁴⁵ Accordingly, case studies are rife with examples of appeasement: allowing a perpetrator to keep only a portion of the grabbed land¹⁴⁶, or allowing the perpetrator to sell the disputed land against the clan’s better judgment.¹⁴⁷

Youth are found to play pivotal roles—both positive and negative—in responding to land grabbing. When their parents are disputing, youth may be the ones to request a clan meeting or advise their parents on how to resolve the case without violence. “Any land dispute cannot be solved by government, or by bringing it to police. But we as youth can talk to our parents to speak the truth,” explains one young man.¹⁴⁸ By the same token, youth can be easily manipulated by elders to carry out violence or to vigorously defend incorrect information. Notably, across Lango, Acholi, and Teso regions, none of the schooled and out-of-school youth interviewed for this study say

¹⁴⁰ Interview, Church leader, Amolatar, 17/06/13

¹⁴¹ Interview, Mosque leader, Gulu, 28/05/13

¹⁴² Interview, Mosque leader, Amolatar, 16/06/13

¹⁴³ Interview, Clan leaders, Katakwi, 11/04/13: “One of the big retired public/civil servants who was grabbing land from Otujai village... One time, he came with the police to arrest people. The villagers became rowdy, ganged up against him and chased him and the police. The same man did the same thing in another village in Gweri subcounty where he bought land, and the village also used the same strategy of chasing them. It was a success because the clan leader mobilized the chasing. The clan was the one enforcing.”

¹⁴⁴ Interview, NGO-X Community Mediator, 26/04/13

¹⁴⁵ Priest, Participant in Kitgum Stakeholder Forum, 03/07/13

¹⁴⁶ See *Rose vs. Preston & 3 others*, Agweng Subcounty, Lira District

¹⁴⁷ See *Joy vs. Ongom*, Lira Municipality

¹⁴⁸ Focus Group Discussion, Youth Centre, Gulu, 08/06/13

they have ever seen a successfully handled land dispute involving a powerful person. As a Senior 5 geography student in Usuk concludes, the “*majority of land conflicts we’ve seen haven’t been solved. They’re just referred to court.*”¹⁴⁹ Students at a Youth Centre in Gulu report never having even witnessed a land dispute of any kind successfully resolved.

Youth, especially boys, have a vested interest in the land conflicts of their parents, since disputed land is usually someone’s future inheritance. In general, though, these youth are not exactly sure whether this inheritance will occur when they marry¹⁵⁰, turn 18 years old, get a job, complete their studies, ‘grow up’, or whether they can get land “*anytime I feel like getting it, because it’s mine.*”¹⁵¹ Case studies reveal that this uncertainty over allocation of a father’s land is a prominent trigger of conflict. When asked why a father would neglect to show¹⁵² his children land until the father is very old and near dying, one parent explained his logic:

*“I have two boys. I’ve never thought of showing them my land. If I show them my land, they will begin to think it’s their land. Then they won’t work hard since they know they have land. So I’m keeping it quiet. They need to work for their own land.”*¹⁵³

Girls, on the other hand, reveal a profound awareness of their vulnerabilities, yet are divided as to the rights they have under custom. One female Senior 4 student at a rural school in Katakwi observes that

*“Girls are not allowed to say something. A woman has no voice on land issues according to the culture. They will ask you: ‘When you were married and brought here, did you come with land?’ They will all gang up on you and say, ‘Blood is blood’ [thicker than water].”*¹⁵⁴

Her classmates, however, do not all agree:

“We have rights [as unmarried girls], but our brothers won’t let us.”

“I’m going to stay home. Even when I get married, I will still come back. When I marry, I’m going to bring my husband to my home, because I’m the only girl [and heir].”

“If I get married, I’ll share land with my husband at his home.”

¹⁴⁹ Focus Group Discussion, Senior 5 Geography class, Usuk Subcounty, Katakwi, 12/04/13

¹⁵⁰ Focus Group Discussion, Out-of-school youth, Soroti District, 27/04/13. One participant says land is given upon marriage, because “*in our custom that shows maturity. They see that having a youth who is not married, he would sell land, for drinking and getting other things... Marriage is like a key: when you marry, you are given many things, like land.*”

¹⁵¹ Focus Group Discussion, Out-of-school youth, Lira Town, 21/06/13

¹⁵² The distinction between “showing” and “dividing” land proves to be a very important one, and was often a source of confusion in interviews. A parent may “show” a child a portion of land to use, but this does not necessarily mean the parent has bequeathed that plot to the child. When a parent dies after “showing” land to a child, but before “dividing” his inheritance, conflict among siblings is likely. See *Martin vs. Opolot*, Mutema Subcounty, Gulu District

¹⁵³ Interview, Parent, Amuru District, 01/06/13

¹⁵⁴ Focus Group Discussion, S4 Students, Ongongoja Subcounty, Katakwi District, 12/04/13

“When women marry, they have no voice in land issues in her husband’s clan. She can have a voice only if she is well behaved.”¹⁵⁵

Youths’ perceptions of land issues serve as a barometer for public awareness on land rights and land grabbing. Since the large majority of the population in Uganda (and even more in northern Uganda) fall under the age of 18 years, this segment of society carries strong influence among their peers and families back home and displays personal interest in land issues.¹⁵⁶ Despite their uncertainties, the complex questions¹⁵⁷ they posed to the research team reveal that youth can be agents of change in their communities if surrounding adults give them a voice and meaningfully consider their input.

Consequences for Perpetrators

Interview and caseload data strongly indicate that, overall, there is inconsequential or no punishment for land grabbing. **Rather, community ADR actors consider it sufficient to simply reestablish the status quo.**

As custodians of custom, clans and community leaders are found to be wary of penalties due to fear of causing more unrest. Several quotes from community mediators are illustrative here:

“If one accepts their fault, there’s no need to punish. If you punish, they will feel offended and become more aggressive... If you’re punished, then it shows I can’t shake hands with you.” (Clan leader, Katakwi 4/04/13)

“Leaders must be mobilized to reject land grabbing collectively, but not individually in Acholi and Paicho particularly, since individual punishment in land disputes results in death and long family hatred.” (LC, Paicho Subcounty, Gulu, 15/05/13)

“No, it’s not punished, except if it’s in court—but even then it’s not enforceable. Why? ... We want to bring harmony and people are just happy to get back some of their land. Charging or punishing somebody brings more conflict and makes people live as enemies.” (Church leader, Katakwi 4/04/13)

In an illuminating focus group discussion, the research team asked Teso clan leaders in Asamuk Subcounty, Soroti District, what would happen to someone for stealing a *piki* (motorbike) in broad daylight. Without hesitation, the leaders agreed that such a thief would be chased, beaten, and perhaps even killed by a community mob. Then, the question: What would happen to someone for stealing a piece of land? Their answer: Call a clan meeting, restore the land, and fine the perpetrator for “time-

¹⁵⁵ Focus Group Discussion, S4 Students, Ongonoja Subcounty, Katakwi District, 12/04/13; S5 Students, Usuk Subcounty, Katakwi District, 12/04/13

¹⁵⁶ Village youth were found to be more informed about issues of customary tenure than their urban counterparts. Town students (who are usually in boarding schools) “only go back to the village on holidays – we don’t see many conflicts, only during the rainy season” (S5 Geography Students, Usuk Subcounty, Katakwi, 12/04/13). Thus, for these students, custom is just a theory. Town students never mentioned the clan in a positive sense; they merely emphasize how clans are not respected.

¹⁵⁷ Including questions surrounding cohabitation, overturning of wills, and ‘appreciation’ for caretakers in the form of land grants.

wasting.”¹⁵⁸ This began a conversation to establish the difference between “grabbing” (the consensus was that this is done while people are watching) and “theft” (which usually occurs without the owner’s knowledge).

At first, the male clan leaders said that stealing a motorbike is more serious than stealing land, since community members will beat or even kill a perpetrator. A female clan leader spoke up next: *“Actually, grabbing of land is more serious. If a woman has land, she can use her land to produce crops to sell to buy a motorbike!”* Her male colleagues then reasoned that the severity *“depends on how government has graded such acts. When you report to the police that a piki has been stolen, they will treat it as a criminal case. But when you report grabbing of land, they say it is civil, you go back to the clan.”*

This exchange, the findings of which are confirmed in similar group interviews throughout Lango and Acholi, reveals two things. First, punishment for stealing land is minimal and not commensurate with stealing other—arguably less valuable—property. One Soroti police officer has a theory as to why this is: *“People don’t punish because land is so valuable, they just feel relieved to have gotten back their land.”*¹⁵⁹

Another reason may lie in the strength of the clan. If a clan is strong in terms of integrity and coordination, they may be more likely to discipline land grabbing attempts with a fine, community shaming, or reducing a perpetrator’s land and giving it to the victim. Weak clans, however, are more likely to be polarized on the issue due to corruption or bias and thus less likely to take a stand against land rights abuse.

Second, clan leaders take cues from the formal system, such as police, to help guide them in their own work. This is ironic, however, since police express ambivalence toward the role and enforcement power of clans, even to the point of taking cues from *them!*

“The clan has more powers when it involves customary land, and many times police refer customary land conflict to the clan... When the clan holds a meeting, then the proceedings are documented and used by police and referred to in a criminal court.” (Senior Police Officer, Amolatar, 06/05/13)

“It depends on understanding the situation... Some people are a menace in society, so if the clan beats him just to restore sanity to society then it is okay. But some clan ‘disciplining’ is very dangerous which can even put someone’s life at risk. It is this kind of thing that the police will not condone.” (Senior Police Officer, Gulu, 14/05/13)

With justice actors referring to and imitating each other—and no one with the final word—it is understandable that punishment for land grabbing is avoided. In the words of one LC, *“We cannot punish people because people feel they can move ahead with the case and have no respect for your punishment.”*¹⁶⁰ In practice, this means that

Overall, there is inconsequential or no punishment for land grabbing in northern Uganda.

¹⁵⁸ Focus Group Discussion, Clan leaders, Asamuk Subcounty, Soroti District, 17/04/13

¹⁵⁹ Interview, Senior Police Officer, Soroti District, 26/04/13

¹⁶⁰ Interview, Local Councilor, Katakwi District, 04/04/13

perpetrators are punished only for what is recognized as a crime—the arson, assault, murder, or malicious damage associated with the case—but not the land grabbing attempt itself.

Systemic Breakdowns

Mixed up roles + Referring to each other + Poor enforcement

The data clearly shows that a harmonized approach to land grabbing is currently lacking in northern Uganda due to gaps within and between key institutions. This section distills the major disconnects and features noteworthy quotes in the footnotes below. ;

When it comes to land dispute resolution, actors are not entirely sure who does what. Security offices operate according to ‘orders from above’ rather than laws; thus police—who have been directed to not investigate land-related cases for political reasons—are faced with trying to stem the tide of land-related violence by doing whatever they can.¹⁶¹ Police informed us that, when it comes to land grabbing, they can only act as law *encouragers* rather than law *enforcers* by sensitizing communities on crimes and their consequences, or by participating in ADR processes in order to observe law and order during mediation. In other words, they can only address symptomatic crimes instead of getting to the root cause: predatory land rights abuse. Thus, police tend to refer land grabbing cases back to the clan or to NGOs—institutions with virtually no enforcement power.¹⁶²

When asked whether anything should be changed concerning police response to land grabbing, one police officer responded,

“That’s like asking a monkey whether the forest should be cut down... Police wants to solve the real issue, which is land grabbing, and not dealing with its symptoms alone.” (Senior Police Officer, Katakwi, 05/04/13)

Unfortunately, the very clans and NGOs that receive police referrals also refer these cases right back to police, seeking rapid intervention. A frustrating cycle is born as actors look to each other for a decisive and final word to enforce land rights. In this way, referral becomes a sign of institutional vulnerability. As Joireman (2011) observes,

“resolutions that... must eventually involve another institution are disadvantageous. Temporary solutions indicate the powerlessness or

¹⁶¹ “We have nowhere to go. We are blocked. We want to enforce the law, but people will tell you it’s land-related. When it’s a land case, it becomes weaker. So when it goes to court, there is no proper punishment. The Land Act is there, but it does not punish people” (Senior Police Officer, Lamwo District, Stakeholder Forum, 03/07/13). The research team wonders whether this highlights lack of awareness or purposeful disregard for Section 92.

¹⁶² “We always advise the person to go to the clan and the clan’s decisions can be used as evidence of bad faith if the [suspect] persists” (Senior Police Officer, Amolatar, 06/05/13); “We police have to rely on NGOs like NGO-V and NGO-Y to sensitize communities, even make arrests” (Police Officer, Katakwi, 5/04/13).

insignificance of the institution and may also identify a cumbersome extra step in attempting to achieve a goal, whether it be land access or the resolution of a land conflict.”¹⁶³

The court system has its share of jumbled roles as well. National laws conflict over who should be the court of first instance in customary land disputes¹⁶⁴—a technicality that often leads to unwelcome case dismissals. With the recent

Police tend to refer land grabbing cases back to the clan or to NGOs—institutions with virtually no enforcement power.

deactivation of LC 1 and LC 2 courts, many LC 1 and 2 chairpersons say that they still function administratively and refer land grabbing cases they receive to clan leaders. Yet while a growing body of evidence shows clans to be the *de facto* court of first instance¹⁶⁵, customary justice—though recognized in S.88¹⁶⁶ of the *Land Act* and in S.42 and S.116 of the 2013 National Land Policy—appears nowhere in the current appeal structure for customary land dispute resolution.

“The constitution provides for cultural institutions. In the Land Act, powers are given to traditional leaders to “determine” and mediate customary land disputes... It says “traditional leaders.” But now we need to define, just who are our “traditional leaders”? Who falls in this blanket? That is why we are all mixed up – we don’t know who does what.” (Senior Lands Administrator, Amuru, 06/06/13)

Courts face significant, but reparable, system problems surrounding delays and enforcement. Due to technical errors or perceived bias, Magistrate courts often disregard the decisions of both LC and clan courts without consulting records of prior proceedings. This is linked to increases in the volume of cases backlogged¹⁶⁷ in the Magistrate Court and results in substantial delays, giving desperate parties ample time to take the law into their own hands. Even when the case does complete its journey through the court process, court requires the winner of the case to enforce the judgment at the winner’s own cost (which can be several million shillings and may still not change things on the ground). Winning parties must then pay more money to go back to court and claim their expenses from the loser—which can take years even if they win.¹⁶⁸

¹⁶³ Joireman, S. (2011), pg. 308

¹⁶⁴ Akin, J. & I. Katono (2011)

¹⁶⁵ ULA (2010), Burke, C. & E. Egaru (2011)

¹⁶⁶ *“Section 88 of the Land Act has never been practiced in my view, especially in northern Uganda. Clans still have good respect, and if S.88 is well used and effected, then ADR can be very effective.”* (Interview, Senior Court Official, Gulu, 14/05/13)

¹⁶⁷ *“The state has clearly failed. They know they’ve stopped the LCs from working, but have not put in place an alternative to cover the gap. They’re telling people to go straight to the GI Magistrate, but from the village? And when they come to the Magistrate, court asks them to come with a letter from their LC1.”* (Senior Member, Iteso Cultural Union, Soroti Stakeholder Forum, 26/04/13)

¹⁶⁸ *“What happened in Acowa... at that time the police couldn’t handle it. In Acowa, the court established that the land belonged to A. But even though A had the judgment, he still could not access his land because B refused to respect the court order. That is how A died [was killed].”* (Police Officer, Soroti, 04/26/13)

Meanwhile, certain presidentially-appointed Resident District Commissioners are found to act as parallel judges by selectively overturning court rulings and blocking evictions and enforcement procedures, roles which are not included in their Constitutional job descriptions.¹⁶⁹ Other RDCs, however, recognizing that they have no legal mandate to intervene in court processes, advise winning parties to either appeal or seek enforcement if their opponent refuses to honor the judge's ruling, leave the disputed land, or mediate the case afresh.¹⁷⁰

“This is the basis of why we sometimes overrule or nullify a court judgment, because in most cases it does not favor the poor—the rich just use the power of their money... The court rulings are based on law, but not on the actual facts on the ground.”

- RDC, Lango Subregion

Land seen as a purely “civil” matter

In addition to these internal incongruities, a “legal” discrepancy ensures that land grabbing continues: is land rights abuse a civil or criminal matter?

Civil society actors cite S.92 of the *Land Act* (Cap 227), which states that “a person who... makes a false declaration in any manner relating to land” or “willfully and without the consent of the owner occupies land belonging to another person”... “commits an offence.”¹⁷¹ Police and courts, however, maintain that 1) land cases are civil matters requiring determination of ownership and 2) land cannot be stolen because it is immovable and not mentioned in the *Penal Code*. This implies that intervening in so-called “land theft” it is not the responsibility of police or the state

¹⁶⁹ “Sometimes we halt judgments if it’s not fair... It is a very good procedure because not all courts of law are one hundred percent. Therefore I must be satisfied that the judgment passed was fair... We are brought in to verify their judgments.” (RDC, Lango Subregion, 07/05/13)

“This is the basis of why we sometimes overrule or nullify a court judgment, because in most cases it does not favor the poor—the rich just use the power of their money... The court rulings are based on law, but not on the actual facts on the ground.” (Security Supervisor to Senior Political Figure, Gulu, 17/05/13)

Evictions are also a major source of contention. The RDC’s office “doesn’t allow anybody to evict without our knowledge. The RDC has to present this to the district security committee, which has to sit and decide that the eviction is to be done in a peaceful manner.” (Senior Political Official, Gulu, 20/05/13)

“Law enforcement is not knowledgeable of their roles/laws. I tell police that before they make any eviction, they need to check with the District Lands Office first.” (Senior Lands Administrator, Gulu, 21/05/13)

¹⁷⁰ In such cases, “the winning party has to appeal. All we can say is sorry and hope that people grabbing land will realize what they’re doing is wrong” (Senior Political Figure, Katakwi, 05/04/13). This is the same “up the ladder” scenario described in Akin & Katono (2011, pg. 60).

¹⁷¹ Notably, however, Uganda’s *Penal Code Act* does not mention land-related crime or theft, robbery, or grabbing of immovable property. This discrepancy presents problems, as explained later.

but of customary authorities, especially when the land is customary in nature. RDCs and Regional Police Officers, on the other hand, clearly treat land as a security threat by actively responding to high-profile land conflicts and obtaining updates on such cases in their daily security briefings.

This sparks a new question: Is this really a “legal” issue, or about lack of political will to fully implement Uganda’s laws? To this end, two points are worth highlighting.

First, while nearly all NGO practitioners refer such cases to law enforcement officers (LEOs), police across all three sub regions overwhelmingly report that they do not apply S.92 of the *Land Act* in these cases due to directives from superiors and legal interpretations. Thus, the referral destinations of most land grabbing cases (police, court) are not treating these cases with urgency or even as a crime.

Second, there appears to be no real difference between the process of confirming ownership of stolen (movable) property and disputed (immovable) land.¹⁷² Although ownership may be harder for LEOs to determine for land under customary tenure (with no title), the sources of proof—witness testimony, parties’ previous behavior, physical markings on the disputed item/land—are exactly the same as those used in criminal investigations.

For example, when theft of movable property—such as bicycles or a herd of cows—occurs, police respond immediately by investigating on the ground to identify the person(s) to whom the stolen item belongs. No lengthy civil procedure or documented proof of ownership is required. Criminal investigations begin immediately upon report of the crime. It is not clear what makes land cases different.¹⁷³

One of the only differences is that LEOs require time, transport, and resources to visit the site of disputed land in order to verify this proof, and these inputs are frequently unavailable to local police posts.

All land cases, whether in good or bad faith, are in theory first taken through the civil route in order to establish ownership of the land (through a balance of probability) before any criminal allegations can be considered (through evidence beyond a reasonable doubt). By itself, the civil process is extremely long, costly, and technical—but those seeking to defend against land grabbing (often labeled as “criminal trespass” or “forcible detainer”) must undergo the additional criminal procedure. And since criminal cases take priority over civil matters, this means that civil land cases sit stagnant for long periods of time.¹⁷⁴

¹⁷² The *Land Act* and 2013 National Land Policy ensure that Ugandan citizens own their land with or without a title, and that a Certificate of Customary Ownership (CCO) merely recognizes rights that already exist.

¹⁷³ Key informants throughout the LEO community could give no concrete reason for why this is not the case for the theft of land. After analysis, this may be due to the fact that theft/robbery of immovable property (land) is not mentioned in the current *Penal Code*.

¹⁷⁴ For the past three years, the Grade 1 Magistrate of Katakwi has also served as the sitting Grade 1 Magistrate of Amuria. The situation is the same today, so the Magistrate is only in Katakwi twice a week (on Tuesdays and Thursdays), and the court convenes land cases three times per month. Even then, court hours are only from 10:00am – 1:00pm. This means that this court hears land cases for *nine* hours per month—curious, since various officials at Katakwi Magistrate Court estimate that land cases make up over 70 percent of their total caseload!

Over time, conflicts that affect livelihoods tend to escalate. Interview and case study data frequently show how the resulting delays are linked to a probable increase in land-related crimes. One young man in Gulu District even asked the research team whether he should forcefully “grab back what they stole”.¹⁷⁵ In a separate case in Gulu, another man whose pregnant wife was kicked in the stomach while she was digging in the disputed garden told the researchers that “*If I kill someone, or they kill me, you all will be my witnesses.*”¹⁷⁶

In this way, the root crime (attempting to take land that does not belong to you) is ignored for the sake of its symptoms (murder, malicious damage, robbery, assault, etc.). It is firefighting without dousing the source of the fire.

Prisons: On remand... over land

Another breakdown in the state system is the mindset of prison as only on the ‘receiving end’ of the justice system, rather than an integral part in its cycle by sending people back home. In this study, 58.5 percent of inmates indicated that they or their families are involved in a land dispute back home—a dispute which is likely simmering until their release. The vast majority (84 percent) of these inmates are also on remand—many whom likely never offended at all—but are either ineligible for or unable to pay bail. Meanwhile,

“Anger continues at home while some inmates are incarcerated. Because the household has a bad heart – why did you take our son or daughter only? Why not take all of us? Mediation should be done instantly, should begin immediately rather than wait for [the dispute] to go from bad to worse.”¹⁷⁷

A joint initiative was begun in April 1994 by the Uganda Prisons Service and the United Nations African Institute for Prevention of Crime and Treatment of Offenders (UNAFRI) in response to the 47 percent recidivism rate among the country’s inmates. Dubbed “From Prison Back Home,” this program offered mediation to reconcile offenders with their communities to reduce reoffending and decongest prisons.¹⁷⁸ Yet at the time of interview (May 2013), Gulu Central Men’s Prison housed 1044 inmates—triple its capacity—with two Welfare and Rehabilitation Officers on staff and only three inmates successfully resettled through the program in the past year. *Practically,*” a senior Prisons Official explained, “*reintegration doesn’t always happen*”¹⁷⁹ due to funding, staff, and resource constraints. Thus, a major opportunity for land dispute resolution, and crime prevention, lies dormant in northern Uganda’s prisons.

¹⁷⁵ See Case Study 7 at the end of this report.

¹⁷⁶ Interview, Respondent – *Quinton vs. Mario*, Paicho Subcounty, Gulu District, 22/05/13

¹⁷⁷ Senior Police Officer, Kitgum Stakeholder Forum, 03/07/13

¹⁷⁸ UNAFRI & UPS (1996), “*From Prison Back Home: The social rehabilitation as a process*”

¹⁷⁹ Interview, Senior Prisons Official, Gulu, 25/05/13

Customary Tenure: A goat among elephants

A recent Oxfam report¹⁸⁰ calculates that over 98 percent of plots in northern Uganda are under customary tenure. Yet despite its role as the ‘glue’ of livelihood security across Africa, and especially in Uganda, customary land tenure remains misunderstood, undermined, and not fully recognized.¹⁸¹ The prevailing opinion among District Lands Officers, police, and court officials in northern Uganda is that the customary system must fend for itself. Data suggests that breakdowns in customary tenure occur due to internal and external factors.

Internal Threats

The most widespread threats to customary tenure security in Uganda seem to be internal: from family members, relatives, clan members, and local elites. Cultural institutions have become highly politicized, which has weakened their public legitimacy in Acholi, Lango¹⁸², and Teso. Moreover, commoditization of land¹⁸³ has led to a surge of demand for a market in customary land, which is ‘customarily’ not for sale. Thus, perpetrators run to rights-based groups seeking legal aid since “the clan is preventing me from selling my land.”¹⁸⁴ Despite the fact that there may be a very good reason to prohibit certain sales¹⁸⁵, this may be at odds with neoliberal agendas.¹⁸⁶

Further, the custodians of the customary system often act in self-interest without realizing what is at stake. A top-cited motivation for land grabbing is to sell and earn quick cash, which clashes against the customary norm that land is held in trust for future generations. Yet clan leaders sometimes collude with sellers to obtain a portion of the proceeds, and may use their position to disenfranchise a widow or sanction the sale of an orphan’s inheritance. The resulting situation—where “protectors become predators”—fosters landlessness, distrust of customary or local authorities, negative

¹⁸⁰ Burke, C. & D. Kobusingye (2013)

¹⁸¹ Banda, J. (2011), LEMU Policy Discussion Paper 4: *Does customary tenure have a role in modern economic development?*, Uganda National Land Policy (February 2013)

¹⁸² In late April, the Won Nyaci of Lango was voted out of office by dissident clan leaders (most of whom adhere to opposing political parties) and a new regime was changing the cultural institution’s name from Lango Cultural Foundation to Te Kwaro Lango.

¹⁸³ De Soto, H. (2000). *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else.* London: Black Swan.

¹⁸⁴ In *Joy vs. Ongom* (Case Study #6 at the end of this document), the clan reluctantly allowed Joy to sell land, but the root of the problem (land grabbing at Joy’s marital home) was not addressed. Now, years after multiple sales, Joy and her sons live on a portion one eighth the size of the original land (less than half an acre). The researchers counted 6+ huts squeezed on this tiny plot.

¹⁸⁵ In *Maruni vs. Yusuf* (Aliakamer, Katakwi District), Maruni is a grandmother who separated from her husband and moved to Busoga. When her husband died, she returned to her marital home to claim her late husband’s land, which she began selling. Community members allege that Maruni has often expressed interest in selling her marital estate and moving back to Busoga, where she has another home. She has already sold the portions given to her, now vying for her grandson’s (Yusuf’s) land. Maruni is the one who reported the case to NGO-V, saying the clan is refusing her to sell.

¹⁸⁶ “We need a long term strategy: to change the system of tenure, so people can dispose of land at their discretion, without the need to consult the clan.” (Senior Police Officer, Soroti, 26/04/13)

perceptions of customary tenure, poverty and food insecurity, and a widening of gap between haves and have-nots.¹⁸⁷

Clan members and clan leaders alike criticized certain traditional authorities for their lack of integrity¹⁸⁸ and for not doing their jobs¹⁸⁹ when it comes to land management and protection. Despite widespread awareness of these failures, the lack of defined accountability mechanisms within clans and between clans and cultural institutions¹⁹⁰ entrenches the norm of *tok tok*, or *'an rwot ki ota'* (I am chief in my own house).¹⁹¹ The mixed up hierarchy between recently installed apex cultural institutions (Ker Kwaro Acholi, Iteso Cultural Union, and Lango Cultural Foundation) and natural clan structures causes confusion as to who supervises who. *"Unless this is understood, believe me,"* says a Senior Lands Administrator who doubles as a Senior Member of Ker Kwaro Acholi, *"[the situation of land grabbing] will not get better."*¹⁹²

Furthermore, low transmission of cultural values to the younger generations is fostering a rootless generation. A recent Action Aid study shows that youth comprise 63 percent of Uganda's population. If the majority of young Ugandans are not interested in customary responsibilities—yet still interested in making money with little effort—this has major implications for the future of customary tenure in the country.

External Threats

The legal framework for customary tenure in Uganda is not currently applied. To date, there are no set guidelines or accountability protocols for customary mediators or adjudicators, clans have no place in legal dispute resolution appeal structure from LC 2 to Grade 1 Magistrate Court, and there is no legal provision for enforcement of customary laws or decisions.¹⁹³ Clan authorities may therefore make decisions based on goodwill or sympathy, but not land rights. Thus, decisions of the clan are only *"effective for those who appreciate it."*¹⁹⁴

¹⁸⁷ Adoko & Levine (2008)

¹⁸⁸ *"Rwodi should be respected – but when you see the ones we have at the moment, you see they aren't worthy of respect. They are even now engaged in land disputes, so will you take your own dispute to him?"* (Participant, Gulu Stakeholder Forum, 06/06/13)

¹⁸⁹ Minutes of Lango PPRR Review meeting with Lango Cultural Foundation & LEMU (15 February 2013)

¹⁹⁰ Who supervises who? There is clearly confusion regarding the reporting structure of Rwot Kweri, clans, KKA, Rwodi, etc. Different participants at the Kitgum Stakeholder Forum argue that, *"I think Rwot Kweri should be supervised by the clan leader,"* while others say, *"I see that Rwot Kweri has more power than clan leaders,"* and still others observe that Rwot Kweri has authority over a few households, but a clan leader has authority over an entire clan spread out across multiple locations. The hierarchy is not clear. *"We are not aware of the structures and the 54 chiefs (Rwodi) – each one has implications of the structure. But this structure is not connected to the clan."* (Participant, Kitgum Stakeholder Forum 03/07/13)

¹⁹¹ *"So many household heads pay no respect to mediator on the account that, who is the mediator to come and sit in his seat in his house?"* (Church Leader, Gulu, 27/05/13)

¹⁹² Senior Lands Administrator, Kitgum Stakeholder Forum, 03/07/13

¹⁹³ *"Clan decisions cannot be executed. They can only establish ownership. The court can use clan decisions as evidence to be evaluated. The clan decision helps court, but it's not a judicial decision."* (Interview, Senior Court Official, Lira, 09/05/13)

¹⁹⁴ Interview, Senior Court Official, Lira, 21/06/13

This enables powerful perpetrators to ignore the customary system as ‘beneath them’ and insist on being taken to formal courts, which favor those that can afford it. *“Without this authority from the law, all clan judgments are not respected and are taken lightly.”*¹⁹⁵ This results in a social dilemma, however:

“If the problem fails at the clan, then where are you going? Even if you go to court, you will still come back to the clan land to live. The land is for the clan, it has to be resolved with the clan.” (Clan leaders, Katakwi, 04/04/13)

In addition, the tenure system has no functional documents (CCOs have many wrinkles to be ironed out¹⁹⁶), thus no widely recognized evidence of ownership. This lack of proof is often cited as the reason why law enforcement must first take land grabbing allegations through the civil process to establish ownership before initiating criminal proceedings.

Data strongly points to the conclusion that Uganda’s land administrators and law enforcers doubt the viability of customary tenure based on a variety of misconceptions.¹⁹⁷ At the same time, these stakeholders rarely assess the viability of radically changing all customary claims to freehold titles through widespread Systematic Demarcation and formal registration.

The required apparatus for customary tenure to function effectively (a Registry for Customary Lands in the Ministry of Lands, Housing, and Urban Development, functional CCOs, publications of customary land rights, inclusion of the clan in dispute resolution hierarchy, and enforcement of clan ADR decisions) is absent. Without the tools to do its work, customary tenure is an endangered animal. To paraphrase the words of a Lira District Surveyor,

*“How can a goat playing among elephants be seen?”*¹⁹⁸

¹⁹⁵ Interview, Clan leaders, Asuret Subcounty, Soroti District, 17/04/13

¹⁹⁶ See NULP Issue Paper (May 2013) for written feedback to MLHUD: “Certificates of Customary Ownership in northern and eastern Uganda: a challenge worth thinking through”

¹⁹⁷ *“The most practical thing that I envisage is changing of the tenure system. Having a whole community own land is hectic, tedious, and slows down development processes. More so, customary tenure system is the easiest to manipulate due to documentation... Changing the law to include taking the land away from the people could actually help. This is because people have massive lands which they don’t actually use.”* (Senior Political Figure, Kitgum, 26/06/13) It should be noted that land under customary tenure is divided into three major types: individual lands, family lands, and community lands. Customary does not mean “community-owned”, but this is not fully understood by stakeholders.

“Customary tenure is the problem. Land isn’t demarcated.” (Senior Police Officer, Soroti, 26/04/13)

“We need to decide which type of land tenure we want.” (Senior Security Officer, Kitgum, 06/06/13)

“Maybe it’s time to bury this child we love so much called Customary Tenure, and accept the fact that it is dead.” (Interview, Senior Lands Administrator, Lira, 07/05/13) In response, the researcher inquired: “But what if it’s not dead, just very sick?” The Lands Administrator replied, “Well, dead, sick... it’s basically the same.”

¹⁹⁸ Interview, District Surveyor, Lira, 19/06/13

Corruption in Land Administration

A major point of breakdown apparently concerns the integrity of the Lands Administration itself. Although Area Land Committees are the “eyes and ears” of the District Land Board—thus vital to the process of land surveying and registration at the grassroots—these bodies remain under-facilitated, unsupervised, and unsurprisingly corrupt.¹⁹⁹ So, “*if the ALC feeds us wrong information, then we as the District Lands Office can make bad decisions to grant titles that should not be granted.*”²⁰⁰ There is no set fee structure for their services, which leaves prices to be negotiated between the developer and the ALC member and provides the opportunity for bribery. As a Senior Lands Administrator observes,

*“There’s no supervision of ALCs. So they go and do the work the way they want... because they’re human, sometimes they’re stubborn. On the basis of relationship... they can favor somebody. There may be a boundary dispute that was really not resolved – but in their report they say the dispute was ‘decided.’”*²⁰¹

Likewise, the national Lands Registry is notorious for its corruption and inefficiency. Another Senior Lands Officer refers to the Commission of Land Registration as

*“...a nightmare. The Land Registry overdemand money! Your file can be lost if you don’t pay them. I have to be very bold with these people, and tell applicants what really goes on. The corruption is highly coordinated, you can’t penetrate it. They look at you as if you are stupid if you don’t hand them extra money. I think the reason why no official fee structure exists has to do with the people behind private survey firms. If survey rates become fixed, then they lose business.”*²⁰²

Faith-Based Insulation

The first systemic gap established through interviews with members of various faith communities is the fact that, when asked about what role the church plays in instances of land conflict, religious leaders almost always identified the church’s role as that of a *victim*, or a party to a dispute, rather than a shepherd proactively mediating conflicts among community members. While retracting a land gift from a school or church is a popular justification for land grabbing, such answers reveal how land disputes distract faith leaders from the church’s role as a bearer of the ministry of reconciliation.

The second breakdown identified is a general compartmentalization of social issues apart from spiritual ones. Homilies, sermons, and messages tend to be abstract and diverted away from the practice of faith in close-to-home topics such as land grabbing and land wrangles. Even where ministers do preach about land justice in religious services or events, such a message may not reach the ears of those who need to hear it most. “*Today, most people going to church are women and children,*” explains a

¹⁹⁹ “*If I want to do something, you have the knowledge, I have the money. Money is very evil. However principled I am in my work, there’s some degree to which I will bend. All government offices are strained. No department says they have enough facilitation to do their work... We need to agitate, put it to the government that resources be looked at. Facilitating the ALCs alone will not solve the problem. Instead of centralizing the court, where people cannot afford travel costs (80-100km away), can we facilitate departments to do their work?*” (Senior Security Officer, Amuru District, 06/06/13)

²⁰⁰ Interview, Senior Lands Administrator, Gulu, 21/05/13

²⁰¹ Participant, Gulu Stakeholder Forum, 06/06/13

²⁰² Senior Lands Administrator, Acholi Region, 21/05/13

pastor in Kitgum. “So even if we preach about land justice, men won’t hear it. We need to reach out to men.”²⁰³ This “reaching out” has historically been in the form of home visits, where clergy, catechists, and lay leaders call upon congregants where they live, but financial and transportation resources are said to limit this. If churches and mosques remain insular in their approach, their messages of repentance and reconciliation will hardly impact a land grabbing society.

NGOs and Quality Control

NGOs set their own quantitative targets for donor funding. Naturally, these tend to be high to impress potential funders—who also want to convince their countries’ parliaments and publics that their aid money is making the most impact in light of austerity measures—but the resulting pressure to deliver certain quantities limits the *quality* of ADR interventions.

NGO-V, for example, has committed to sensitizing 1,000 people and filing 10 court cases per month, in addition to the annual goal of 100 successfully mediated cases. A legal officer from NGO-V candidly admits that, at the moment, “*none of our cases today are completely resolved*” with a written mediation agreement. With such pressure, organizations like NGO-V find it very difficult to follow up on cases that have been initiated, but not concluded. “*Most [CSO-led] mediation processes are not completed,*” observes a District Official from Lamwo. “*They initiate the mediation, but stop halfway, full stop. Once a mediation is initiated, it should be finished.*”²⁰⁴

Other reported gaps include:

- The mandate of NGOs is unclear, since they sometimes operate as if they are accountable to their donors, but not the District.²⁰⁵ NGOs do not always consult with District officials before planning programs. This sometimes results in duplicated efforts.
- NGO-brokered mediation agreements lack legal weight in court. This could be changed, however, if NGOs bring both parties to the courthouse and file the signed agreement as an official Consent Agreement.²⁰⁶
- NGO-appointed mediation teams are not always respected. This may be due to perceptions of bias, exclusivity, or competence. “*They forget to involve the appropriate actors,*” one participant in the Kitgum Stakeholder Forum states. “*They assume they know best, but key people are left out.*”²⁰⁷
- NGOs send mixed—and at times, incorrect—messages about land rights. This may be because NGOs set themselves up to ‘sensitize’ communities about things they themselves do not fully understand. One NGO in Amolatar

²⁰³ Church Leader, Stakeholder Forum, Kitgum, 03/07/13

²⁰⁴ District Official, Lamwo, 03/07/13. At the same meeting, a Senior Court Official in Kitgum added, “*The results of the mediation are just a glimpse of how you could resolve your dispute, but it’s not carried through.*”

²⁰⁵ Senior Lands Administrator, Amuru, Stakeholder Forum, 06/06/13

²⁰⁶ Interview, Retired Court Official, Lira, 06/05/13

²⁰⁷ Participant, Stakeholder Forum, Kitgum, 03/07/13

District, for example, teaches communities that women have land rights at their marital and maiden homes at the same time.²⁰⁸ This is the opposite of what other NGOs teach regarding women's land rights in Lango sub region—that women cannot 'double dig', but can only claim land from one place at a time. These mixed messages confuse the public.

- Different NGOs respond to land grabbing in various ways, usually through referral. This facilitates forum shopping and promotes unnecessary referrals between organizations.

SUMMARY: EXISTING APPROACHES

- ADR actors were found to respond to bad faith in five general ways: Neutral Evaluation, Mediation, Arbitration/ Conciliation, Crime Stopping, and Referral.
 - Land ADR actors typically refer cases to law enforcement (police and courts), and sometimes to clans.
- Community approaches to land grabbing are varied, and may be influenced by community perceptions of how powerful a perpetrator is.
 - Overall, there is rarely any punishment of consequence for land grabbing. Rather, most community ADR actors consider it sufficient to simply reestablish the status quo before the grab took place.
- Key systemic blockages include:
 - *Mixed up roles, mutual referrals, and poor enforcement*
 - *Law enforcement sees land cases seen as purely civil*
 - *Customary tenure faces internal and external threats*
 - *Corruption in land administration*
 - *Faith communities compartmentalizing social concerns apart from spiritual issues*
 - *NGOs' focus on quantitative performance limits the quality of interventions*

²⁰⁸ Such was the 'neutral evaluation' that informed the course of *Justine vs. Joseph & Ahmed*, Awelo Subcounty, Amolatar District



RQ 4:

What outcomes result from each of these approaches?

- a. How does the referral of unconcluded cases impact:
 - i. The land?
 - ii. The parties and their families?
 - iii. Vulnerable persons?
 - iv. The NGO?
 - v. The justice system?
- b. Are mediated agreements holding up over time? Why/why not?

Pros and Cons

Different approaches yield different results, and each has observed positives and negatives. The boxes below represent a distillation of case study and interview data for the five major ADR approaches practiced by NGOs and community actors.

Approach 1	Positive Outcomes	Negative Outcomes
Neutral Evaluation	<ul style="list-style-type: none"> • Promotes the rule of law by appealing to rights, not opinions; process seen as more objective • Some perpetrators back down; opens their eyes to consequences of their actions; perpetrators can no longer claim 'I didn't know it was wrong' • Informing parties of their dispute resolution options clarifies roles of stakeholders, reduces ignorance • Including a 'sensitization' teaches land rights to many people at one time; conflict becomes a learning opportunity through a living case-study 	<ul style="list-style-type: none"> • The 3rd party may be either incompetent or biased, and may thus give an incorrect or not-so-neutral evaluation • Non-binding; unrepentant parties continue to grab land • Clan leaders or parties may not agree with the understanding of customary land rights as defined by the 3rd party
Approach 2	Positive Outcomes	Negative Outcomes
Mediation	<ul style="list-style-type: none"> • Process is less confrontational; more relaxed because parties have more control over the process; parties' relationships are maintained • Parties take ownership of their decisions • Gives room for non-land issues to be discussed; roots of the conflict are addressed • Land boundaries are negotiated, clarified, and demarcated • Builds capacity of local leaders when they are invited to mediate 	<ul style="list-style-type: none"> • No enforcement if one party breaches the agreement; other party loses trust in the process • Requires endless rounds of mediation sessions over a long time • If done halfway, worsens conflict by not provoking emotions but offering no closure • Creation of new boundaries between parties fragments land • Agreements are not based on land rights

		<ul style="list-style-type: none"> • Power dynamics go unmitigated (stronger parties pressure weaker parties to agree for the sake of closure); Compromise/appeasement facilitates a land grab ('steal two acres, give one back')
Approach 3	Positive Outcomes	Negative Outcomes
Arbitration / Conciliation	<ul style="list-style-type: none"> • Clan/local leaders assert their authority in a positive sense • If security is present (Panel Arbitration), perpetrator backs down due to fear of consequences • Parties leave with a final decision; eliminates uncertainty 	<ul style="list-style-type: none"> • Parties forced to 'agree' to what they do not want, own, or believe in; this coercion may lead to backlash or resentment • If arbitral decision is not respected by one party and there is no enforcement, arbitrator (clan) loses credibility • Assigns 'winners' and 'losers'; loser perceives arbitrator to be biased, claims process was not fair
Approach 4	Positive Outcomes	Negative Outcomes
Crime Stopping	<ul style="list-style-type: none"> • Violence quickly stopped (law enforcement brought in) • Builds short-term capacity of law enforcement (gives them leads on serious cases) and collaboration among ADR actors • Perpetrators back down due to fear of consequences • Promotes the rule of law and deters would-be offenders 	<ul style="list-style-type: none"> • Perpetrators withdraw only temporarily; sustained vigilance is required but not always possible • The moment the ADR actor isn't watching, the perpetrator returns and the conflict begins afresh • Arrest only delays the conflict; evokes resentment since only one side is detained while the other goes free • Does not resolve the personal grievances that led to the crime

	<ul style="list-style-type: none"> • If practiced by a critical mass of ADR actors (enough cases pushed through law enforcement bottlenecks), their collective demands for appropriate intervention lead to system change 	<ul style="list-style-type: none"> • Law enforcement does not respond appropriately or at all; arbitrary protocols determine law enforcement's response (may not see land grabbing as a crime or be allowed to investigate)
Approach 5	Positive Outcomes	Negative Outcomes
Referral	<ul style="list-style-type: none"> • Enables parties to work with a stronger, more appropriate, actor • Increases coordination with different actors • Allows different ADR actors to share the workload; reduces case backlog 	<ul style="list-style-type: none"> • Case bounces indefinitely, never concludes; this leads parties to frustration, trauma, giving up, or taking the law into their own hands • Exposes victims to further vulnerability at place of referral (clerks cheat, file is misplaced, court adjourns and resources dwindle to continue transporting witnesses back and forth, etc.) • Exposes victims to further vulnerability on the ground (blamed for taking the case to court, having the other party arrested, etc.) • Occurs when an actor is not able to enforce laws (referring victims 'up the ladder'); perpetrators who realize this feel they are untouchable • May be a sign of institutional weakness: "We can't handle it. Here, you try!"; this undermines public confidence in institutions • Actor who referred the case does not follow-up; no value is added; conflict gets worse or goes silent

The Referral approach features the most uncertain outcomes, since the case is usually passed from a 'lower' actor who has a more understanding of the background of the conflict but has little capacity to stop the land grabbing, to a 'higher' actor who may neither understand nor be able to enforce land rights. As one NGO mediator admits,

“Court cases are not determined in one day. Some we refer to court, but it keeps being adjourned. We can’t determine if the referral helped.”²⁰⁹

In situations where actors refer cases, disputants were found to lose confidence in the ability of the NGOs and other institutions to resolve their cases or reach decisive outcomes. Data suggests that, besides being an indicator of institutional vulnerability²¹⁰ in the face of land grabbing, referrals may even be associated with an increase in criminal events, because parties perceive that nothing meaningful is being done at the ADR level.²¹¹ This is often precisely what a perpetrator wants.

Melly, a widow in Katakwi District whose case reached an agreement in an NGO-facilitated mediation that was later blatantly²¹² breached by the other party, sees her late husband as stronger than the NGO:

“I have kept quiet until now. Even if they [NGO] refer me to court, I have no money. Anything we had, we sold for the treatment of my late husband... Once your life is threatened, you cannot do anything. You just give up. I think [the NGO] just gave up, too... This conflict wouldn’t have happened when Jolly [my husband] was still alive. He was strong.”²¹³

This is the land grabbing problem: the richer party can keep the court case going until the poorer party has to drop out.

Referrals to court amount to a recreation of *files*, a recreation of *trials*, and a recreation of *costs*. The repetition of hearing the same case by different actors, case study data shows, rarely adds value to the dispute resolution process.²¹⁴ This is the land grabbing problem: the richer party can keep the court case going

until the poorer party has to drop out.²¹⁵ The prolonged legal battle also gives more time for crimes to be committed on the ground and deteriorates the relationship

²⁰⁹ Interview, NGO-X Community Mediator, 26/04/13

²¹⁰ Joireman, S. (2011), pg. 308

²¹¹ In *Apaka vs. Bosco* (Pailyec Subcounty, Amuru District), Apaka (a widow) found herself and her land threatened by her brothers-in-law after the death of her husband. Apaka took the case to Rwot Kweri, who ruled in her favor, but was unable to enforce his arbitral award. Bosco and his brothers reportedly beat Apaka to the point that she was admitted in Lacor Hospital, and the case was brought to the LC 1. When the brothers refused three times to attend the LC 1 meeting, the LC 1 referred Apaka to police. Police came to the scene but did not make any arrests for the assault. When police left, Bosco and his brothers chased Apaka off of her land and sold it to a neighbor. Apaka left and had to rent a small house in the trading centre. She reported to NGO-W, who mediated her case on 20 February 2013, and the brothers agreed to refund the sale money so Apaka could return. But after the agreement, the brothers failed to refund the money to the buyer or return the land to Apaka. Today, Apaka is very confused and has no money to sustain a long court battle.

²¹² This party reportedly uprooted boundary trees on two different occasions and threatened the NGO mediator, who assured the research team that she does not intend to pick up the case again.

²¹³ Interview, Complainant – *Melly vs. Morris*, Usuk Subcounty, Katakwi District, 06/04/13

²¹⁴ In the case of *Areket vs. Ekiding* (Atutur Subcounty, Kumi District), a female heir reported her case to 13 different actors before her case was authoritatively addressed.

²¹⁵ Special thanks to Simon Levine for this apt quote. This is linked to the institutional failure of courts not to award costs pending appeal. Courts have the legal right to do so, but choose to maintain the ‘*status quo ante*’ until the appeal is judged – though the *status quo ante* had not included the winner of the case having to shell out large sums of money they could not afford.

between the parties.²¹⁶ Cases may be dismissed, go silent, or be ruled upon but not enforced. At this point, many parties involved in such processes lose trust in the justice system and consider taking the law into their own hands. One complainant in Amuru District shares a chilling reminder of this:

*“If the government does not take action in attempting to resolve this conflict, we are already poor and we don’t have anything more to lose. They have already yielded machetes and spears at us. We too have spears and machetes of our own. **If no sensible forum can be organized to listen to us, we will also pick up our spears and machetes, and we will go and sort this land dispute man-to-man.** The person who lives after the fight gets to keep the land.”²¹⁷*

When disputants act upon this urge—as data clearly illustrates they sometimes do—violence is an automatic ticket to arrest, regardless of land rights.²¹⁸ Thus, victims and perpetrators alike are sometimes ‘referred’ by their actions, or the accusations of others, to prison. While in prison, resolution of their land disputes waits for their release. A Senior Police Officer in Teso region laments, *“We’re handicapped by the law, because our intervention ultimately doesn’t solve the land dispute. It can actually aggravate the dispute – if one person is sent to prison, the parties become enemies and start killing each other. While in prison, someone else can grab the land.”²¹⁹*

Interestingly, the research team did not find instances of referrals to the clan, though court officials and clan leaders reported that this does happen.²²⁰ This may be because courts do not refer land grabbing cases—due to the criminal ‘warning signs’ associated with them—back to the clan. Rather, courts may view such rule-of-law cases as their prerogative.

Prison as a societal barometer

“It is for real that very many of the inmates here came in for land related crimes. But I cannot tell how many, or what percentage unless we do a census to find out.”²²¹

Following various leads in case study and interview data which pointed to the prevalence of land-related crime, the research team embarked on a randomized survey of 467 male and female inmates at three prisons²²² in northern Uganda: Gulu Central

²¹⁶ As one pastor in Lira remarked, *“You may win your court case, but you won’t win your brother.”* (Pastor, Stakeholder Forum, Lira, 19/06/13)

²¹⁷ Interview, Complainant, *Apong Family Cases*, Amuru Subcounty, Amuru District, 03/06/13

²¹⁸ Interview, Senior Police Officer, Katakwi, 05/04/13

²¹⁹ Interview, Senior Police Officer, Soroti, 26/04/13

²²⁰ Clan leaders indicated receiving cases from Magistrates court, conducting arbitration and/or conciliation, and then reporting this outcome back to court for ratification. This is an instance of cooperation where the formal system lends support and legitimacy to the customary system so that it can do its job well.

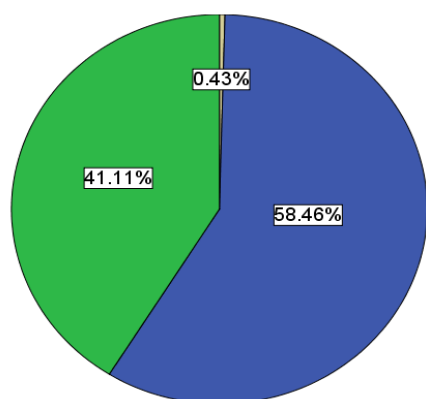
²²¹ Interview, Senior Prisons Officer, Gulu, 25/05/13

²²² While testimony from incarcerated persons (an extremely vulnerable population) presents significant ethical challenges, the researchers recognized that offenders themselves were the only source of some of the information about the impacts of land grabbing and related responses, and the interviews and surveys carried low risk. (See Institute of Medicine Committee on Ethical Considerations, 2007)

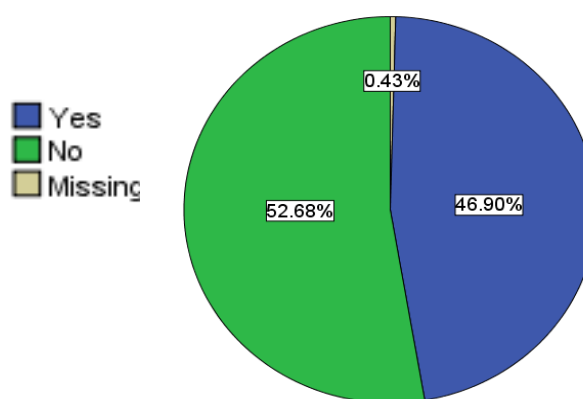
(n=193 out of 1099), Lira Central (n=193 out of 572), and Kitgum (n=81 out of 210). Findings are illustrated below at the 95 percent confidence level. These shed light on the impact of referrals and incarcerations on the land, parties and their families, vulnerable persons, NGOs, and the justice system.

	# of Male Inmates	# of Female Inmates	Total Inmate Population	Sample Size (n)	Sample size needed for 95% confidence
Gulu Govt. Prison	1044	55	1099	193	208
Lira Govt. Prison	505	67	572	193	191
Kitgum Govt. Prison	195	15	210	81 ²²³	113
TOTAL:	1744	137	1881	467	512

Are you, your family, or your community directly impacted by a land dispute?



If Yes in Q4.0, do you think your being here is connected to the land dispute?



Between 51.5 – 65.5% of inmates surveyed say they are directly impacted by a land dispute back home.

- The majority of inmates in Lira, Kigtum, and Gulu prisons say that they, their family, or their community are directly impacted by a land dispute. This is commensurate with other studies²²⁴ that put land dispute prevalence between 29 to 59 percent in Acholi sub region alone.

Between 39.9 and 53.9% of inmates say their charges are connected to that very land dispute.

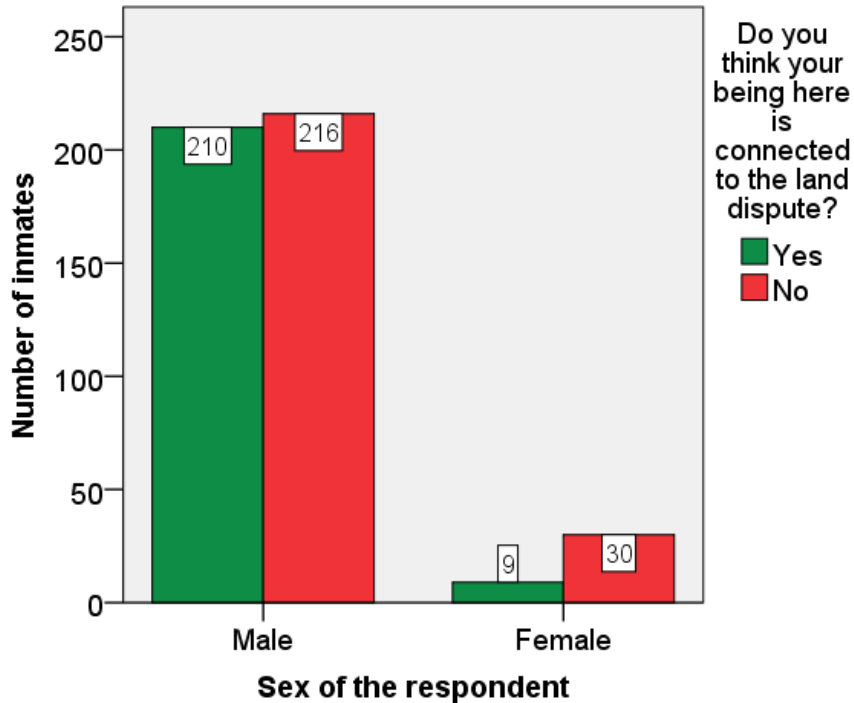
- *“Many people who are in prison are actually owners of the land. I suggest that all these people be left out [of prison] to resolve their land issues... If somebody is brought in the prison and knows that the land is hers, she will go back [upon release] and continue claiming it.”* (Senior Prisons Official, Lira, 14/06/13)
- *Imprisonment is not a permanent solution. Whether someone is convicted, at some point you need to be released back home. Land issues don't end with one*

²²³ The sample size gleaned from Kitgum Govt. Prison (81) was significantly less than the target (113) because male inmates displayed a high level of suspicion towards the research team. Interactions revealed how many inmates were unwilling to speak to the researchers for fear that we had been sent by “the other side” in their land conflict to collect information which would be used against them.

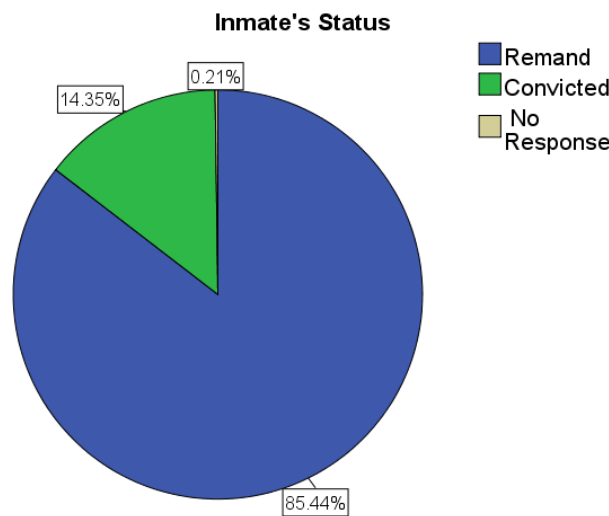
²²⁴ See Atkinson, R. & J. Hopwood (2012); Burke, C. & E. Egaru (2011), pg. 4; Rugadya (2009), pg. 3

person. Let's try and ensure that the land conflict is solved back in the community. One person who is violent doesn't mean that the rest are happy.
 (Participant, Gulu Stakeholder Forum, 06/06/13)

Males are twice as likely to report being incarcerated in conjunction with a land dispute as females (49.3 percent of all male inmates compared to 23.1 percent of all female inmates).

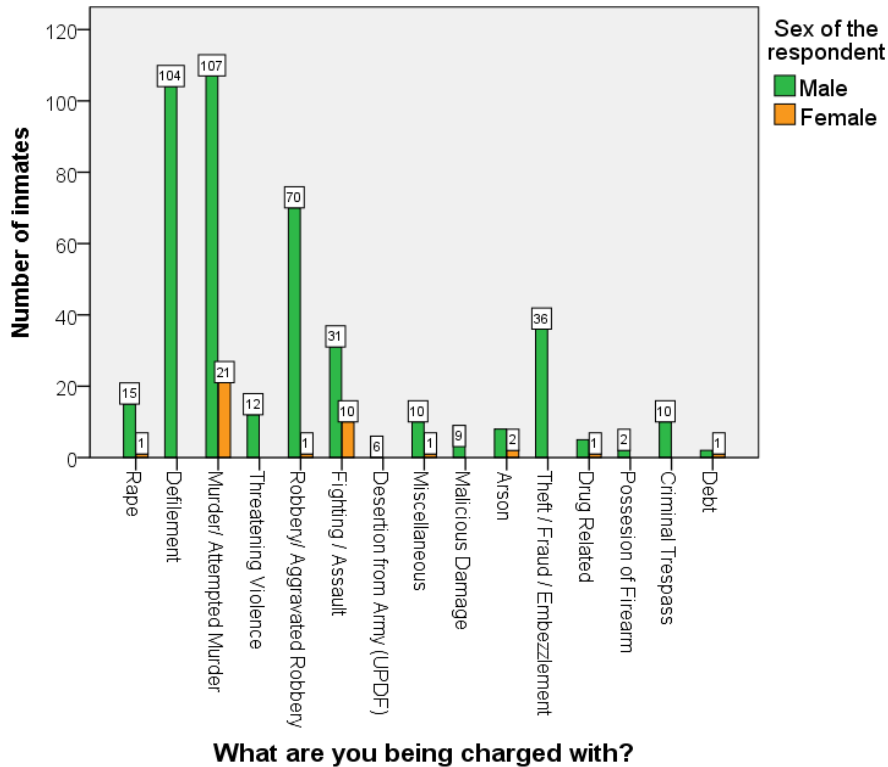


Between 78.4 – 92.4% of inmates surveyed are on remand²²⁵, while only between 7.3 - 21.3% have been convicted of charges against them.

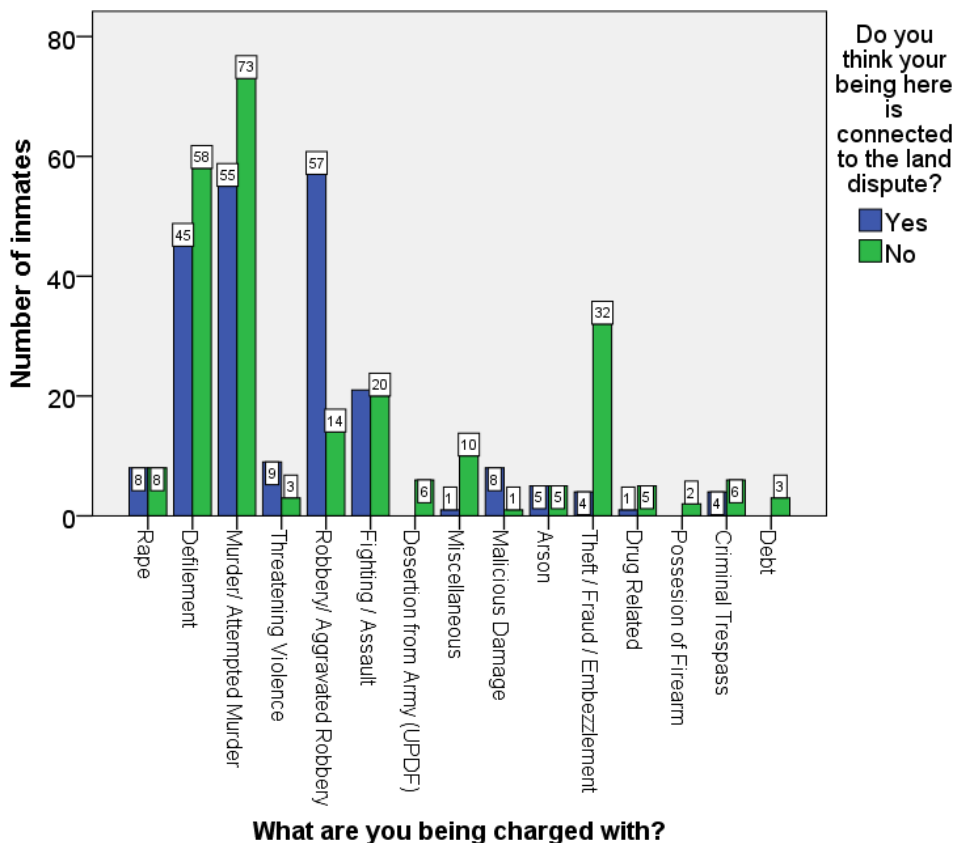


²²⁵ This means that court has not yet found these persons guilty or innocent of the accusations against them; their cases have either not yet been heard by a judge or deliberations are still pending.

In general, the most common crimes inmates face reportedly include murder, defilement, robbery/aggravated robbery, fighting/assault, and theft/fraud/ embezzlement.

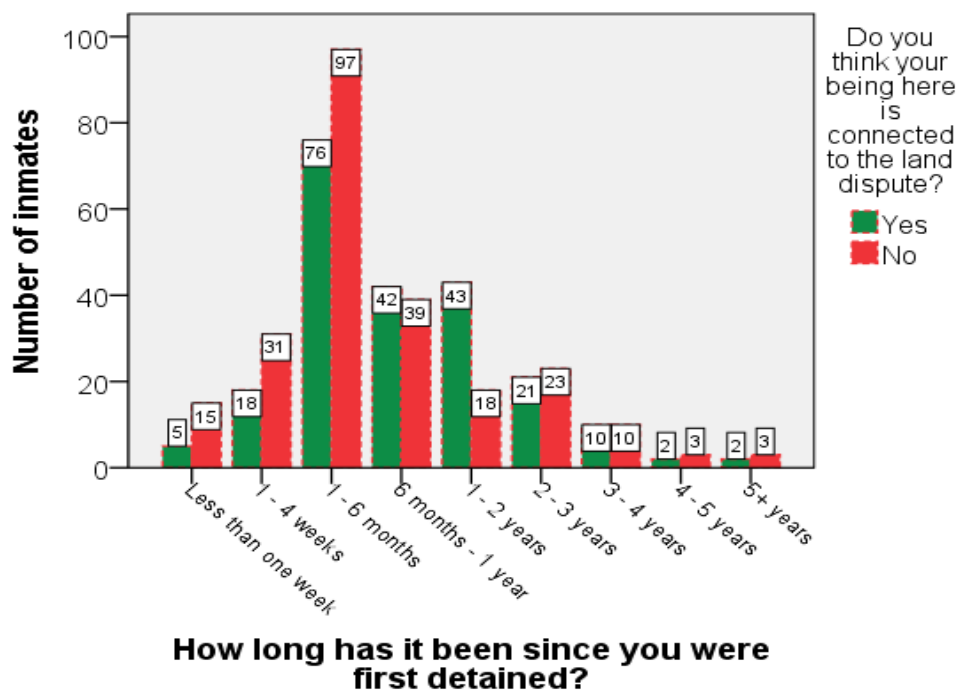


Among inmates who face charges connected to a land dispute, the most common crimes reportedly include: Robbery, murder/attempted murder, and defilement.



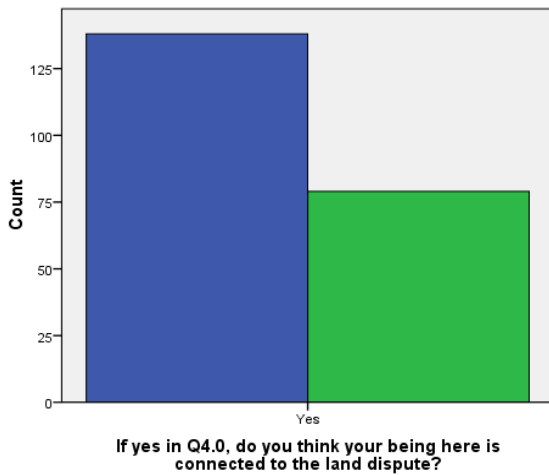
Survey data shows that land disputes are reportedly correlated with:

- **50 percent of rape cases**
 - **44 percent of defilement cases**
 - **43 percent of murder cases**
 - **75 percent of threatening violence cases**
 - **80 percent of robbery cases**
 - **50 percent of fighting/assault cases**
 - **89 percent of malicious damage cases**
 - **50 percent of arson cases**
 - **40 percent of criminal trespass cases**
- **The length of incarceration for inmates facing charges connected to a land dispute is reportedly longer** than that of inmates whose charges are not connected to a land matter.
 - For those inmates who say their charges are NOT connected to a land dispute, the median length of incarceration is 1-6 months.
 - For those inmates who say their charges ARE connected to a land dispute, the median length of incarceration was found to be between 6-12 months.²²⁶



²²⁶ If a person is later proved innocent or the case is dismissed, inmates who served for long periods without trial can sue the state.

Among inmates who report facing charges linked to a land dispute:

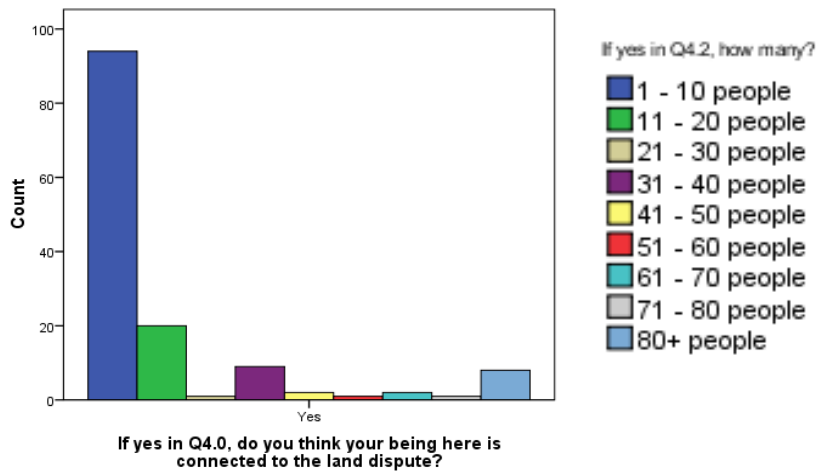


If yes in Q4.1, are there other people also here because of the same dispute?

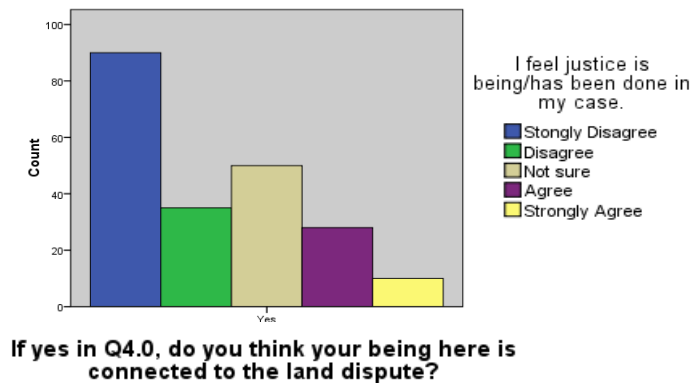
- Yes
- No

Approximately **two thirds** report being arrested along with other people for the same land-related case.

At times, over 80 people are arrested and put on remand for the same land-related case. This was found in Lango and Acholi, and may possibly be the case in Teso²²⁷ (where, due to time limitations, the survey was not conducted).

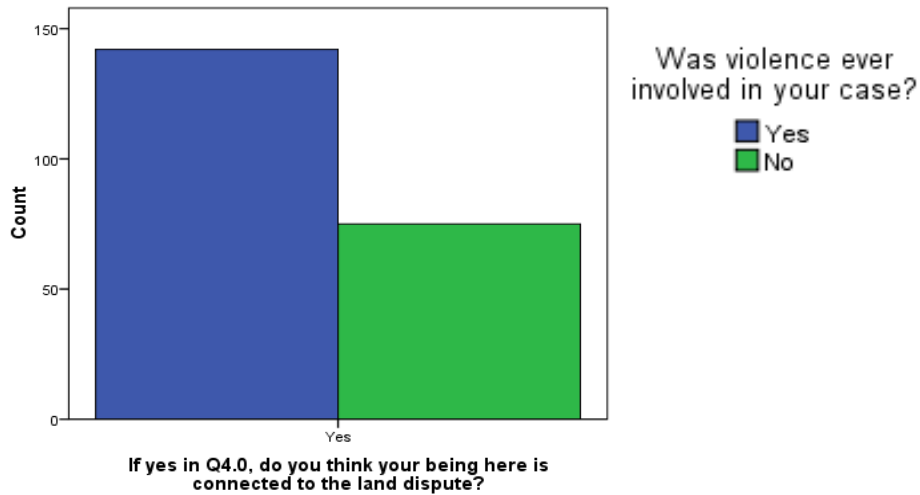


The majority feel that justice is not being done in their case.

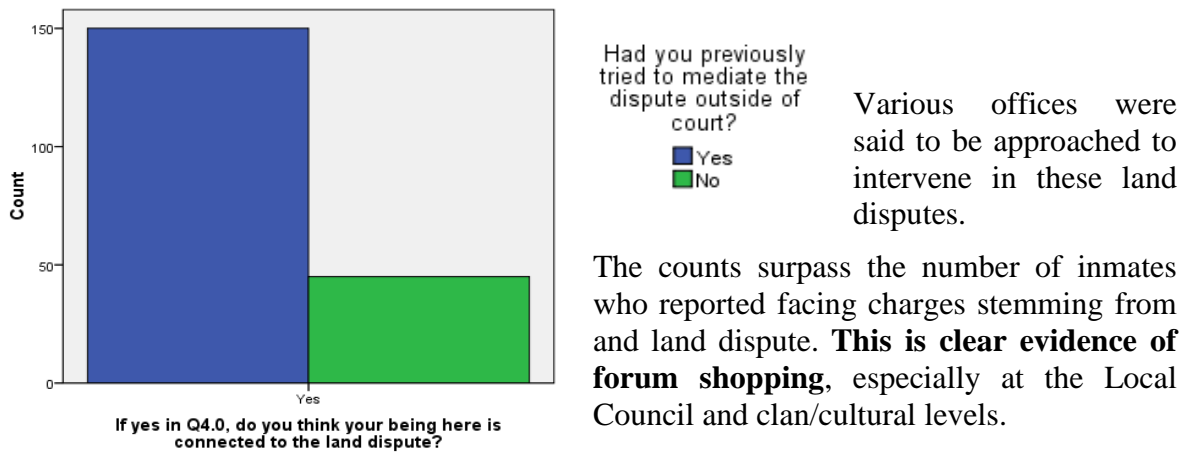


²²⁷ “When an individual fails to respect the clan’s judgment, they run to police who in turn run to arrest the entire clan into police custody. I urge police to work with the clan and the community who know more about the land issue than being manipulated by the rich.” (Senior Member, Iteso Cultural Union, Asuret Subcounty, 17/04/13)

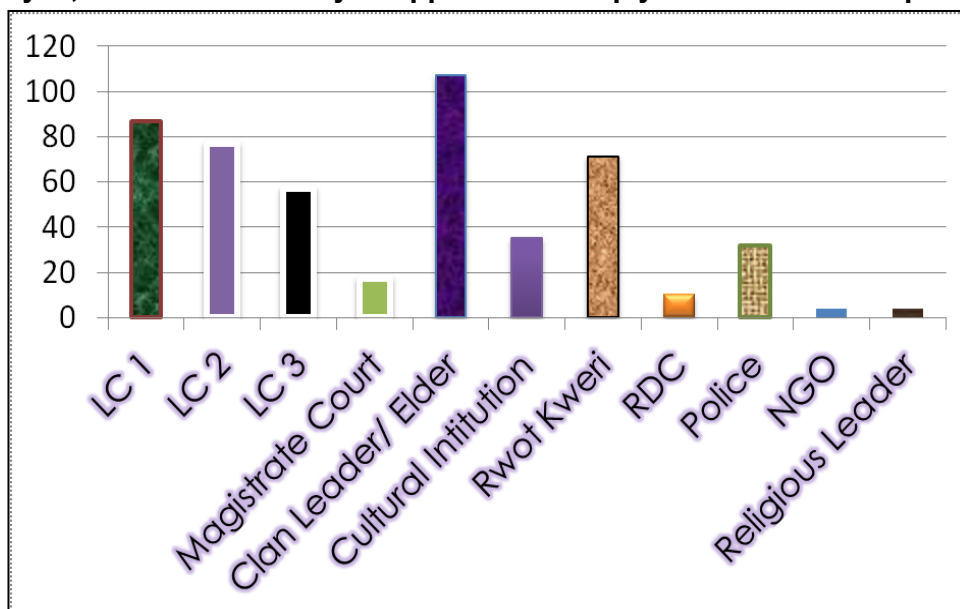
Two thirds indicate that violence was involved in the land-related dispute.



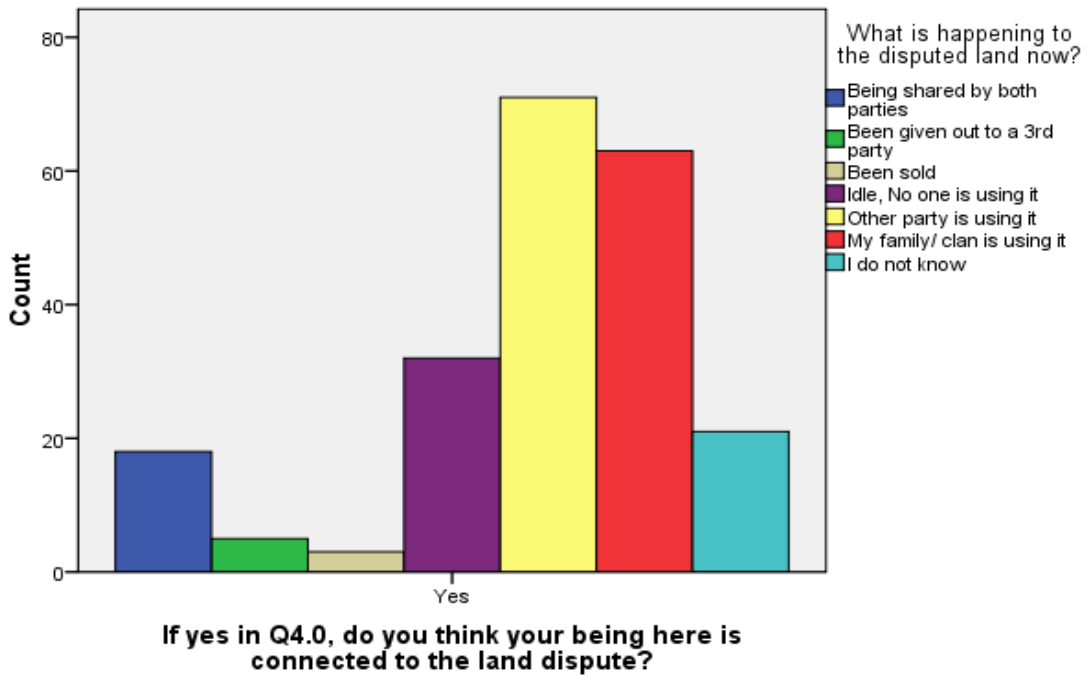
Notably, three quarters reported that they had previously tried to mediate the land dispute outside of court.



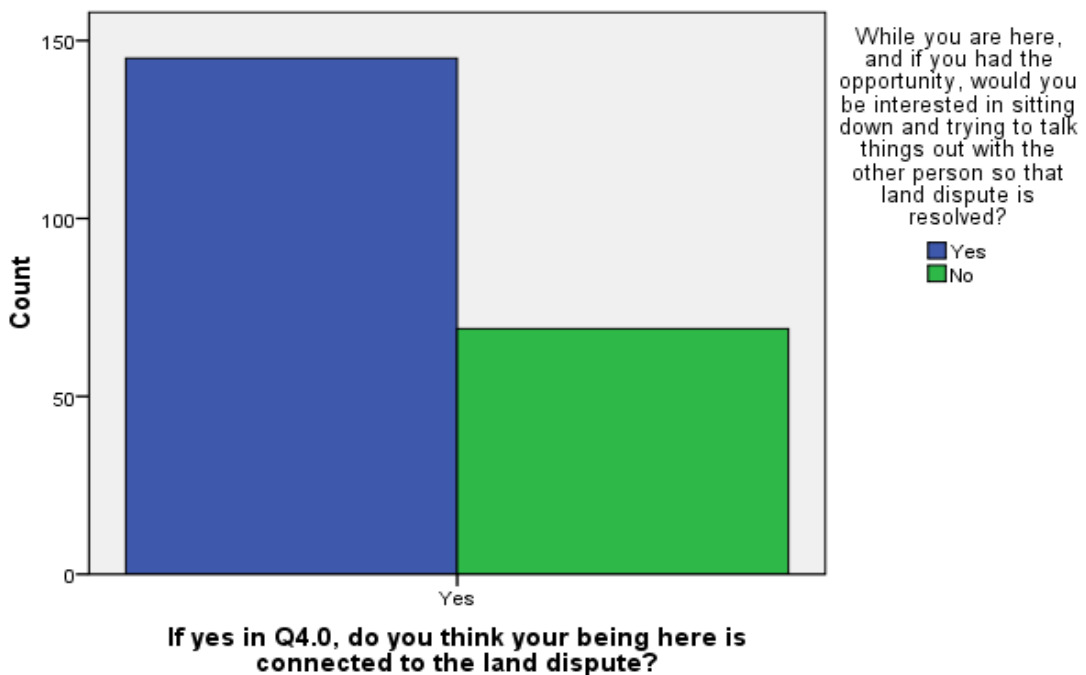
If yes, which offices did you approach to help you resolve the dispute?



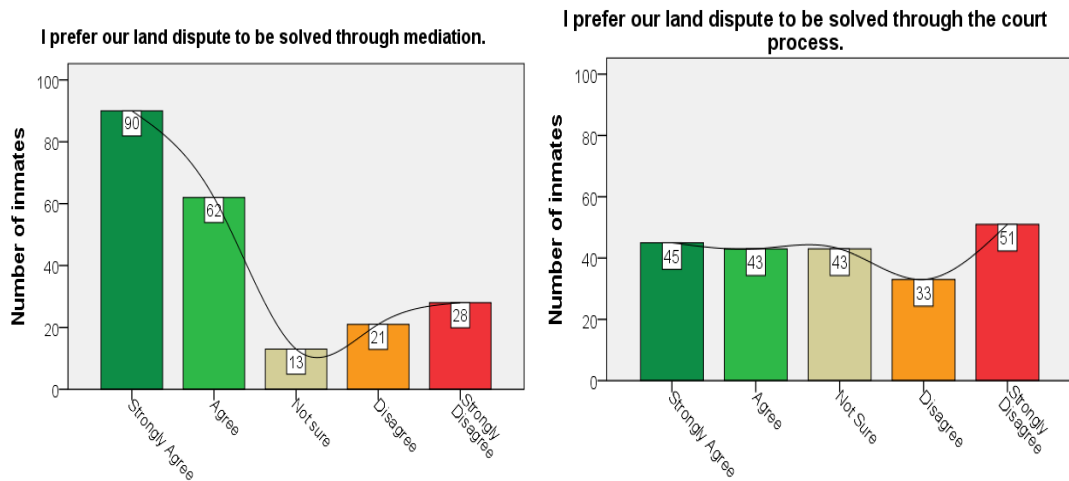
A plurality reports that the other party is currently using the land in dispute. This confirms that imprisonment may sometimes be a tactic to put rights-holders “out of circulation” so that another party can use the land.



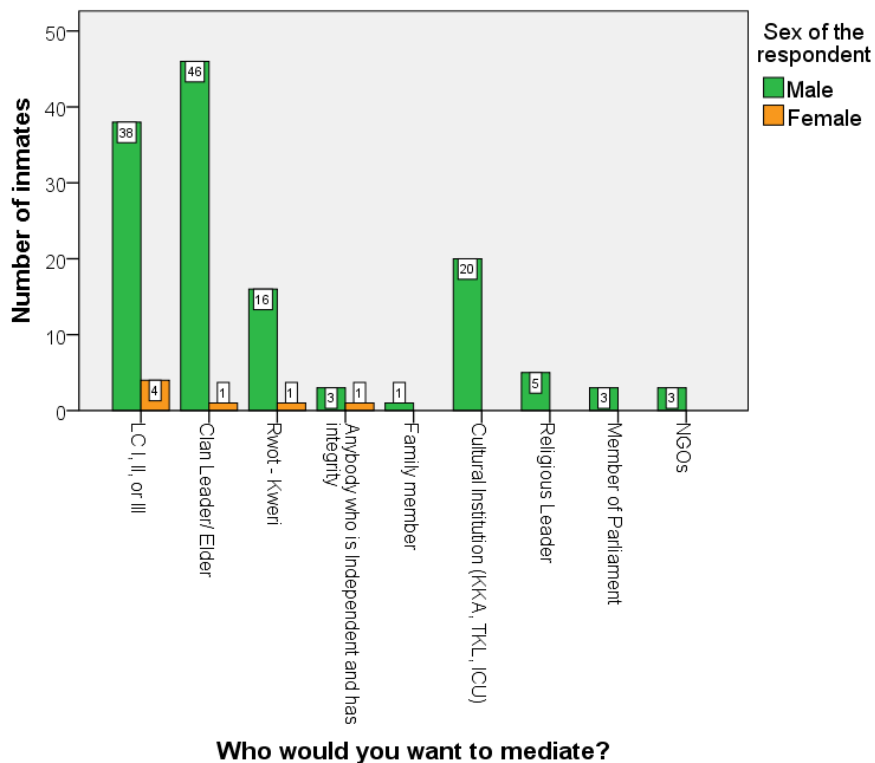
Over two thirds say they are still interested in dialogue to resolve the land dispute.



A majority of inmates (71.0 percent) who face charges linked to a land dispute indicate that they prefer mediation, while significantly less (40.1 percent) say they prefer to resolve their land dispute through court. The graphs below reveal generally strong feelings both ways about the appropriateness of mediation in resolving the dispute, while at the same time a general ambivalence regarding court as a dispute resolution avenue.



The majority of male inmates prefer their land disputes to be mediated by cultural and clan leaders, while most female inmates appear to prefer Local Councilors as mediators. While the number of female respondents is too few to draw concrete analysis, it raises interesting questions about the confidence women have in the current customary dispute resolution framework.



Impact of referring unconcluded cases on:*The land*

- Case study evidence shows that while in dispute, land may be either used by only one party, shared begrudgingly between the disputants, left idle, or sold to a third party. If blood is shed on the land, it may even be considered cursed.
- Leaving land idle is a tremendous cost for people whose main source of livelihood is their land. If such people are able to rent other land to cultivate, this is similar to imposing a substantial tax on their entire income. If there is no land for rent, then they will likely rely on uncertain daily casual labour – inevitably putting them well below the poverty line.²²⁸
- The longer the dispute lasts throughout multiple referrals, the more likely the land falls out of control of the rights-holder, since they may be too poor or vulnerable to successfully defend the grab attempt for sustained periods of time.
- The productivity of disputed land is usually only assessed in terms of seasonal crops, not long term investments. This is because some encroachers have an interest to keep an exit strategy—should they be forced to leave the land they have grabbed, they can gather their harvest and go. Likewise, victims who feel insecure as to whether they will be able to keep their land are less likely to invest in costly developments, since they cannot be sure that they will be able to enjoy the fruits of their labor in the future.

Parties and their families

- The relentless search for justice may add further trauma to already traumatized people. A clinical officer at the Mental Health Unit of Lira Regional Referral Hospital acknowledges that a significant portion of the population experiences some type of ongoing anxiety or stress disorder as a result of displacement and the insurgency. As one complainant in Mucwini Subcounty, Kitgum District recounts his experience with a neighbor:

“It was a very traumatizing experience for me. At that time, money was coming really slow. And the knowledge that you are in dispute with someone, wasn’t easy for me. I had to sell most of the assets like livestock that I had to cover some of the travel expenses to and from court. It was expensive, but since we both couldn’t afford lawyers, we acted as our own defenses. Between 2003 and 2008 that we were going to court, the insecurity here was at its peak. It was so risky for us to be traveling up to Gulu. We were lucky to survive... I know what I went through going to and fro in court. It is not an experience that I would wish anyone. It is difficult and expensive on all fronts.”²²⁹

- If referral results in a miscarriage of justice, this may give rise to a legacy of bitterness between the families involved. One church leader in Lira warns that: *“If we mishandle it and justice is not done, it will go down into history. My children, because land has been grabbed from me, will know that so and so grabbed my land. It will be a permanent wound and hatred between our families. We badly*

²²⁸ Thanks to Simon Levine for pointing this out.

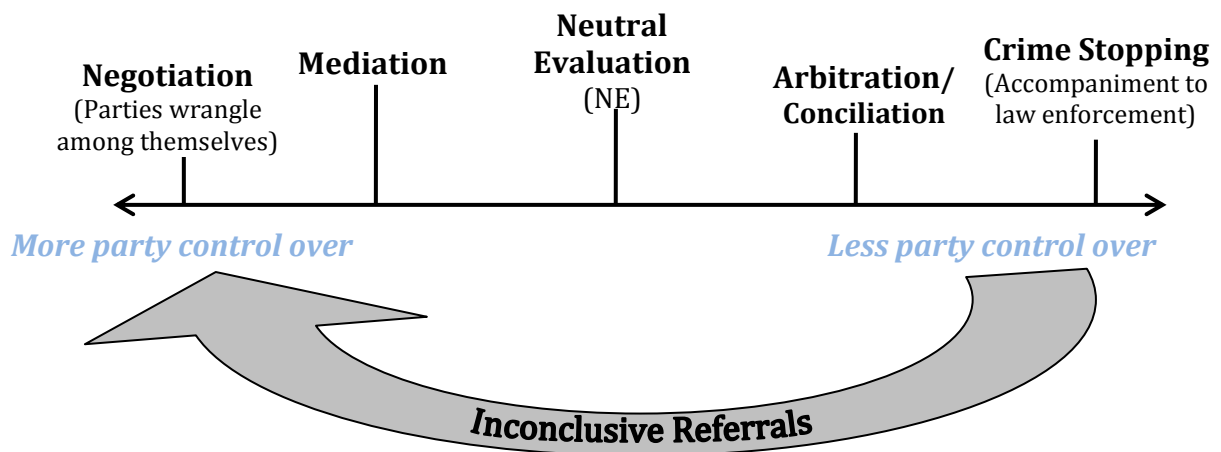
²²⁹ Interview, Complainant, Mucwini Subcounty, Kitgum District, 01/07/13

need an amicable solution.”²³⁰ The inheritance of conflict is suggested in the words of one out-of-school youth in Lira Town:

*“My mother told me that when her father died, their land was grabbed. People fought, but since the uncle who was grabbing their land was a witchdoctor, we decided to let go of the land to avoid conflict and loss of lives.”*²³¹

- Referral does not conclude the conflict; it merely passes it on. The grievances which sparked the conflict therefore remain unaddressed, and compound over time.

“Anger continues at home while some inmates are incarcerated. Because the household has a bad heart – why did you take our son/daughter only? Why not take all of us? Mediation should be done instantly, begin immediately rather than wait for it to go from bad to worse.” (Senior Police Officer, Gulu, 06/06/13)



Vulnerable Persons

- Referral without follow-up may expose victims to further vulnerability at the place of referral.

Court fees, unexpected technicalities, and frequent adjournments—each with its own transport cost implication—can prolong and worsen precarious living situations. This is particularly damaging to vulnerable individuals whose sole piece of land is in dispute (or facing a grabbing attempt). As Adoko & Levine (2008) observe, and as case study data suggests, a perpetrator often possesses other plots of land to use during a long court battle. If an injunction is placed on the suit land, the vulnerable person becomes landless and may give up before the case concludes.

A case in point is *Lucy vs. William* (Oyam District). From 2010 (when the appeal was filed in Lira Chief Magistrate Court) to September 2012, Lucy explains that they “bounced” 14 times because of adjournments. Meanwhile, her land in the trading centre—on which her pit latrine sat—is in use by her neighbor.

“Now I don’t have a toilet or a bathroom. We’re just borrowing from a neighbor. (weeping) When the toilet is dirty, it’s my kids who have to clean it... I think William and his people could even come and kill me. Three

²³⁰ Church leader, Stakeholder Forum, Lira, 19/06/13

²³¹ Interview, Out of school youth, Lira, 21/06/13

times, he came with others, laughing at me. “Look at her!” they said. I always report this to the local leaders, but they say there’s nothing we can do, the case is already above us. It’s in court... I wish court could just come and see what is happening. I don’t have any other land.”²³²

On the other hand, she is very glad to have been given legal support:

“I like NGO-U so much, they are like my father and mother. They took me from a position of not knowing what to do. They gave me a lawyer. They held my hand and we went to court. I didn’t even know where the court was. I believe everything will be fine – considering where they got me from, I know they’ll be able to finish.”

Corruption among court staff and officials only makes things worse. Anecdotes from key informants such as the one below are illustrative:

“What I’ve seen is from court clerks. They will call one party and falsely tell them, ‘You don’t come tomorrow. Magistrate has gone for a workshop.’...The party may then be arrested for failing to appear in court and be remanded ‘until.’

I’ve also seen in this very court how a clerk went to the field one time, told the community members he was coming to visit the locus. He assured them he was the Magistrate of the area, and took people’s money. The people were very happy, and awaited judgment. When time passed and no judgment came, the community found out that the genuine Magistrate had no idea of the case. The clerk had impersonated the Magistrate in the field. No disciplinary action was taken against the clerk, and he later died.” (State Prosecutor, Teso Region, 05/04/13)

Even after a court ruling, victims may face social costs for having circumvented the clan and traditional structures by going to court. As one NGO legal officer explains,

“In a case in Pader, I represented a widow in court against her brother in law. The widow won the case, but from that day on she received no social support from her in laws, and unfortunately her child died [and burial expenses were needed]. Then she saw the disadvantage of court.”²³³

- Likewise, referring a case to police may not have the intended effect, especially where police do not consider it in their mandate to investigate land-related cases.²³⁴ Such land grabbing cases were reportedly either referred again to customary authorities²³⁵ or other NGOs, never investigated and therefore grew cold²³⁶, or the file may have been made to ‘disappear.’²³⁷ Reporting one’s opponent to police may also bring unintended social consequences, especially in a context where no reliable form of witness protection exists.²³⁸

²³² Interview, Complainant, *Lucy vs. Ongom*, Minakulu Subcounty, Oyam District, 02/05/13

²³³ Interview, NGO-Z Legal Officer, Gulu District, 03/06/13

²³⁴ See “Land seen as a purely civil matter” under Research Question 3: Responses

²³⁵ See, for example, *Kokas vs. Onoto* (Kachumbala Subcounty, Bukedea District)

²³⁶ See, for example, *Magdalena vs. Musa* (Aduku Town Council, Apac District)

²³⁷ As was allegedly the case in *Otolo vs. Yakobo* (Atatur Subcounty, Kumi District)

²³⁸ Senior Police Officers, Soroti Stakeholder Forum, 26/04/13

“One widow we helped was isolated after she reported threats on her life to the police. “See that lady, she’s the one who reported us to police and we were detained,” the other side would say. When the bro-in-law came back from prison, he had to keep quiet because he knew that if anything happened to that widow, it would appear to be his doing...”

The NGO

- When NGOs refer unconcluded cases without following up or without parties fully understanding the process and recourses they may have, parties may lose confidence in the NGO to help them or others like them. The NGO thus garners a negative reputation, and parties become even more confused.²³⁹
- Three separate NGOs (U, X, and Y) intervened in the case of *Constance vs. Gorreti* (Aduku Subcounty, Apac District) but were unable to resolve it fully, even after the parties had signed a mediation agreement facilitated by NGO-U and boundary trees were planted (these were later uprooted). After nearly five years of struggling to resolve the case, Gorreti is now disappointed and confused. *“Some of these NGOs will make us kill ourselves,”* she said in an interview.²⁴⁰ *“They come and stir the case, then disappear.”*
- Perpetrators may come to see a regular practice of referral as evidence that an NGO is weak or incapable and feel emboldened by this. One respondent allegedly scoffed at a complainant in Teso Region when he found out she had taken the case to an NGO that did not have a strong track-record with mediation cases: *“Sure, take your case to [that NGO] – see if that will help!”*

“Some of these NGOs will make us kill ourselves. They come, stir the case, then disappear.”

— Respondent, Apac District

The Justice System

- Referring unconcluded cases to court may be a necessary step in the process, but the inconclusive authority of lower level land dispute resolution structures adds more pressure to already backlogged court dockets.
 - Data from Lira Magistrate Court is illustrative. According to the data below, at the current rate (factoring in newly registered cases and cases completed) this court disposes of roughly one-eighteenth (about 100 out of 1,800) of its net land-related caseload per year.

²³⁹ In *Anna vs. Dagkene* (Paicho Subcounty, Gulu District), Anna reported that she frequently comes court to inquire about her case, but each time the court officials tell her the case is closed. Since Anna did not understand, she took the issue to NGO-Z[NGO], where she apparently felt condescended to and disregarded by a certain staff member. This case highlights the importance of making sure parties understand why things are happening, and what recourses are available. Otherwise, the party will not feel “helped.”

²⁴⁰ Interview, Respondent, *Constance vs. Gorreti*, Aduku Subcounty, Apac District, 18/06/13

2013 Caseload Data - Lira Magistrates Court ²⁴¹						
	Pending as of 1 st Jan, 2013	Registered	Completed	Pending as of 31 st Dec, 2013	Net processing rate per year	% Caseload Completed
Land Claims	619	47	87	579	40	6%
Land Appeals	795	125	232	688	107	13%
Land Misc.	431	81	109	403	28	6%
Total	1,845	252	428	1,670	175	9%

- State law enforcement actors do always view the referral of unconcluded land cases to them as appropriate. Thus, referrals in the context of unharmonized statutory and customary justice systems raise an identity crisis: each feels the other is better suited to handle the case. *“The reason so many cases are in court is because the clan system has died out,”* declared a Senior Regional Police Officer at a Stakeholder Forum. *“Most are not handled by the clan, they are just pushed to court... We need to strengthen the clan system.”*²⁴² One court official echoes this by calling for a system whereby clan courts are recognized as the courts of first instance for land disputes under customary tenure.

*“We should make it a law, an Act of Parliament. Without that, the clans are just there and nonexistent in the eyes of the law...Some people are stubborn because they have money. Court is the worst [in this regard] – I work with court! To me, it does not provide proper justice... if you are poor, people who are rich will buy others.”*²⁴³

- The justice system may also be impacted in the long term, since in civil cases to determine land ownership, *“The [civil] case is dismissed if the owner of the land is in prison.”*²⁴⁴ Although recorded as “completed”, these cases are not resolved and may resurface again in the form of newly registered cases or criminal acts due to parties’ frustration. If a perpetrator has the victim put in prison for a criminal offense, the civil land case could theoretically be dropped and the perpetrator could have free reign over the disputed land.
- These challenges, delays, and technical loopholes may cause citizens lose faith in the justice system and give up or seek remedies elsewhere.

Key context factors that influence ADR outcomes

Effective ADR practice requires an enabling legal, political, and social environment; without this, ADR outcomes may face significant limitations. Several key challenges

²⁴¹ Used with permission. Special thanks to Lydia Ayo and Kasakya Muhamadi.

²⁴² Senior Regional Police Officer, Lira Stakeholder Forum, 19/06/13

²⁴³ Court official, Lira, 19/06/13

²⁴⁴ Senior Prisons Official, Lira, 14/06/13

are identified below in the northern Uganda context and are offered as advocacy points.

- **Parallel state and customary justice systems.** Without harmonizing gaps and contradictions between these systems, forum shopping, court backlogs, marginalization of customary authorities, competition between clan leaders and LCs, and inaccessibility of justice for the most vulnerable Ugandans is likely to remain.
- **Political interference,** especially regarding ‘orders from above’ and the selective enforcement of laws and court judgments.
- **The new National Land Policy is neither popularized nor implemented,** especially regarding customary land rights, legal backing of traditional dispute resolution, and protection of community lands.
- **Lack of appropriate and accessible education** to build a high-quality workforce of productive and civically engaged citizens.
- **Land viewed as a civil matter only.** As long as land grabbing is not seen as a crime under S.92 of the *Land Act*, it will continue to be a no-risk activity where would-be perpetrators can try their luck.
- **Police protocol of not investigating land-related cases** means that land grabbing is neither legally prosecuted nor punished.
- **Abdication of responsibility** among all stakeholders, especially advocates, court officials, clan and cultural leaders and elders, fathers of children out of marriage, faith leaders, and central government.
- **Corrupt elites setting a negative example** and inspiring others to take advantage of the breakdown of law and order in society.

Are ADR agreements holding up?

This investigation finds that **ADR agreements are often unsuccessful in ending land grabbing attempts** because to prevent future offending requires constant vigilance, which neither law enforcement nor NGOs can reliably provide. As a senior court official in Gulu asserted, “*NGO mediation can only stand if parties still have good faith.*”²⁴⁵

A surprisingly small number of case studies (less than 3 out of 110) were found to be sustainably resolved. Upon analysis, this is most likely because:

- The case had not yet been mediated fully (either the NGO had not had time to pursue the case to its logical conclusion²⁴⁶ or had hurried the process and concluded the case prematurely);
- The parties’ relationship remained unreconciled;

²⁴⁵ Senior Court Official, Gulu, 14/05/13

²⁴⁶ Nevertheless, in virtually all cases, clan and local leaders had almost always already attempted some kind of ADR. The manager of one NGO field office in Teso admits that, “*None of our cases today are completely resolved.*”

- One party felt that they had support from a powerful entity who made them ‘untouchable’;
- The mediator referred the case but never followed up, or the referral added no value;
- The perpetrators backed down when threatened with consequences, but renewed;
- grabbing efforts once this threat seemed unlikely or the case grew cold; or
- A key party was detained in prison.

Restoring the relationship between the parties is of utmost importance for the ADR process. Even when a land dispute is settled, latent ‘adrenaline’ or bitter resentment (and, in this context, most likely traumatized) between parties may ignite into conflict later.

Anecdotal data shows that once a perpetrator’s underlying reasons for bad faith are meaningfully addressed, the land dispute is likely to resolve itself once and for all. This suggests that a more holistic approach to ADR—one that grasps concrete land rights as well as the relational dimension—is needed. If the most sustainable way to eliminate bad faith is to transform it, then now is the time to innovate ways to ‘get the adrenaline out.’

In the strong majority of the 110 NGO-handled cases investigated which were labeled “resolved” or “concluded” in the office file, the on-the-ground assessment through interviews with the parties proved the dispute was still ongoing. Of the ones with agreements that were still holding, most were mediated recently and thus parties had not had time to mature in their positions. This provides the following analysis that NGO-supported ADR agreements are sustainable:

■ **USUALLY**, when:

- Parties participate in good faith (any previous bad faith is released and parties meaningfully reconcile concerning the core issues of the dispute)
- Boundaries and land rights are publicly clarified
- Perpetrators demonstrate acceptance of land rights
- Victim concedes at least something to the perpetrator (appeasement)²⁴⁷
- Consequences for future offending are present and credible
- Parties and the surrounding community feel the ADR process and the neutral third party were fair
- The community is united in support of the rights-holder

■ **SOMETIMES**, when

- Perpetrators are warned that the ADR actor will support the victim in court, or that they will face law enforcement who will respond with

²⁴⁷ In such cases, both parties may keep the ADR agreement, but such resolutions set a negative precedent for other would-be perpetrators in the community and symbolize the ‘bowing down’ of vulnerable persons to those with more power.

credible consequences (but data shows this requires constant vigilance²⁴⁸ and may not be sustainable)

- Boundaries and land rights are publicly clarified
- A mediation team of various stakeholders is used

■ **RARELY**, when:

- ADR actors pressure parties to agree to a certain outcome²⁴⁹
- Decision is based on sympathy, not land rights (thus parties' tenure security is tenuous and dependent upon good behaviour)
- Perpetrators feel they have support from an “invisible hand” that is more powerful than the mediator or the NGO, and feel confident that they can act with impunity
- Perpetrators have won a court decision and have no incentive to renegotiate
- Historical grievances between the parties (including harm done during the land dispute) are unaddressed

SUMMARY: OUTCOMES

- Each ADR approach yields potentially positive and negative results (see boxes on pages 78 – 81).
- Referrals produce some of the most uncertain and potentially unfavorable results, since they prolong the dispute and are sent to agencies that lack either clearance to investigate land issues or power to enforce land-related decisions. This can result in parties becoming frustrated, giving up, or taking the law into their own hands.
- Anywhere from 51 to 65 percent of inmates in Lira, Gulu, and Kitgum prisons are directly impacted by a land dispute back home. Between 40 to 54 percent of inmates say they are facing criminal charges that stem from that land dispute.
- The largest share of inmates report the disputed land being used by the other party—which suggests that imprisonment is used as a land grabbing tactic to put victims ‘out of circulation.’
- While these inmates are in prison, their land disputes are not likely to be resolved; yet the vast majority of the inmates detained because of a land dispute are interested in mediation.
- ADR agreements are largely unsuccessful in ending land grabbing attempts because perpetrators are deliberately acting in bad faith. To prevent future offending requires constant vigilance, which neither law enforcement nor NGOs can provide.

²⁴⁸ When asked whether he thought their ADR agreements were holding up, one community mediator responded, “*I think they are... If the agreements weren't holding up, someone would have come to office to complain.*” Unfortunately, however, many of the parties interviewed who had gone through mediation but the agreement was later broken had not approached the NGO again. This may have been due to a desire to ‘not rock the boat’ and maintain social harmony, or because the victim had given up after trying so many options and finding each one to be flawed.

²⁴⁹ This contravenes the spirit of S.89(5) of the *Land Act*, which states that “*the mediator shall not compel or direct any party to a mediation to arrive at any particular conclusion or decision on any matter the subject of the mediation.*”



RQ 5:

What practices lead to successful resolution and prevention of land grabbing cases?

- a. Strengths: Through analysis, what strategies are working, and why?
 - i. Is ADR ever appropriate in cases involving bad faith?
- b. Weaknesses: What strategies are not working, and why?
- c. Opportunities: What opportunities exist for communities and land ADR actors?
- d. Threats: What issues require policy change?

Best Practices

Throughout case studies, interviews, observations, and stakeholder forums across Lango, Teso, and Acholi, the following strategies surfaces as having the most potential to resolve cases involving bad faith. To effectively describe these, the author contrasts them with current practice in the hope that this may inspire a revisit of these approaches.

1) Disarming bad faith through holistic probing

Bringing powerful parties to—and keeping them engaged with—the ADR process is a delicate task. This is where trust comes in. If the mediator(s) can win the trust of both parties by proving to be objective and fair at every point, the parties are more likely to have confidence that at last, they have found a place where their dispute will finally

be resolved. The sustainability of a resolution lies in the parties' personal trust in the process and commitment to find closure to their issues.

To win this trust and disarm a party's bad faith, a mediator must be keen to investigate and assist parties to unpack the non-land issues surrounding the dispute. Land disputes always occur in context. Unless a mediator understands the real genesis of the dispute, his or her intervention will only address symptoms.

"We focus on land only. We cannot dwell on people's personal history if someone has a grudge for killing a family member. We sensitize them about not letting grudges remain. But we don't try to resolve these issues. We tell people to move on." (NGO-X Mediator)²⁵⁰

At what point did the parties' relationship break down, and why? The answer to this question may help unlock the reasons for a perpetrator's bad faith. Is it because of a sense of vengeance for a past wrong? Greed for wealth or the desire to provide material security for one's growing family? Is it out of a sense of pride, to assert dominance and become feared in the community? When these human interests are considered, a mediator may discover that bad faith points to unmet needs.

As the earlier example from NGO-Z illustrates, disputants may be entrenched in their positions because of personal grievances or character dynamics (greed, anger, arrogance, fear) which a dialogue about land may not uncover. Through holistic probing²⁵¹, however, the mediator was able to identify the need for forgiveness and reconciliation to take place first. After this was done in the form of *mato oput*, the perpetrators' land grabbing motive promptly dissolved through a confession: *"This is not our land. Now the adrenaline we had has come out."*²⁵²

During interviews, the research team asked each party in the case study to think about why the dispute came up in the first place. Their answers point strongly to non-land concerns.²⁵³ A few include:

- Greed and fear about being able to provide an inheritance for one's children (*Rose vs. Preston & 3 others*, Lira)
- Carrying out the greedy interests of an unseen senior political figure and being rewarded for doing so (*Apong Family Cases*, Amuru)
- Political battles: Having lost to the other party in a clan leadership election, the winner chase his/her opponent out of the community (*Winnie and Son vs. Allori & Akao*, Katakwi)
- Desire for recognition for having served as caretaker (*Areket vs. Ekiding*, Kumi)
- Clan members wanting to assert dominance against foreigners from another clan who have moved into their territory and begin earning money from a stone quarry on their land (*Rupert vs. Jok-kene*, Gulu)

²⁵⁰ Interview, NGO-X Community Mediator, Teso Region, 26/04/13

²⁵¹ Data shows that mediators save time, resources, and energy when they dig to find out why any previous attempts at ADR were unsuccessful. ADR actors can then determine whether they can provide any value addition, and explain available options to the Complainant. If this assessment is not done, the mediator may fall into a trap.

²⁵² Interview, NGO-Z Legal Officer, 03/06/13

²⁵³ A senior member of Ker Kwaro Acholi states that, *"The facts behind most, if not all land disputes, [in Acholi] are actually hatred from the camp, continuing in the villages."* (Interview, Gulu, 17/05/13)

While ADR actors may not be able to flip bad faith into good faith, mediators ignore the hidden—but very real—reasons for bad faith at their peril.

2) Using Neutral Evaluation to introduce meaningful accountability

Neutral Evaluation is, essentially, the rule of law. Neutral Evaluations help to level the playing field in terms of power and vulnerability by using customary and/or state law as a commonly agreed point of reference. Thus, any evaluation delivered is seen as objective rather than based on some mediator's opinion.

The catch is that parties must attend the ADR session in the first place (see 1 above), and that the third party is and remains neutral.

Case studies and interview data indicate that some element of Neutral Evaluation is needed in any effective land ADR process. Without it, agreements may be perceived as unfair or arbitrary by at least one side, making the 'resolution' untenable. By using a publicly available text such as the *Principles, Practices, Rights, and Responsibilities (PPRR) for Land under Customary Tenure* and state laws, a Neutral Evaluator prevents similar disputes in the future by clarifying, for all present, the land rights of different persons in that community. In this way, the assumption of ignorance is disqualified and social accountability is introduced (community members can check each other on what they have all just heard). Neutral Evaluations, if delivered impartially, open parties' eyes to the factual consequences of their actions and may evoke the response, "*We won't get away with this.*"²⁵⁴

3) ADR: Using established team structures

A process that involves a variety of respected, independent local leaders serving on the mediation team is often seen to be more neutral and thus carries more weight. The members of this committee represent different objective viewpoints, and in situations of power or intense hostility, can embody the adage of "strength in numbers." A focus group discussion in Soroti featured this conversation between clan leaders:

Clan leader A: "*Somebody who is taking land refuses to come when I summon him. When I see him, he threatens me. What can I do?*"

Clan leader B: "*Go with your [clan] committee, so you don't feel alone. It's easy to silence one person, but harder to get rid of a committee.*"²⁵⁵

Clan leader A already had access to a team structure, but had not thought of applying it. Likewise, NGOs that oversee a team of partner civil society groups—such as Action Aid International, Kitgum NGO Forum, and Uganda Land Alliance—have existing teams of community actors that have a stronger impact collectively than they do individually. In the same way, District Mediation Teams, such as the one for Lamwo District, feature cultural leaders, security officers, District officials, LCs, and civil society leaders who conduct panel mediations for serious cases. At each successive round of talks, the panel reads over minutes from previous meetings and strives to be as objective as possible. Although costs of transporting and facilitating a group of mediators is clearly more expensive than that of an individual mediator, the

²⁵⁴ Interview, Respondent, *Rose vs. Preston and 3 others*, Agweng Subcounty, Lira District, 11/06/13

²⁵⁵ Focus Group Discussion, Clan leaders, Asamuk Subcounty, Soroti District, (17/04/13)

benefit of a concerted community effort to resolve a case outweighs the cost in shillings and human lives.²⁵⁶

The Executive Director of NGO-Z shares how her NGO worked “through” their District Peace and Reconciliation Team to resolve a case which prevented an entire clan from returning home from their displacement camp—the only camp in Gulu that had not officially closed by that time. The case had taken two years to mediate because one party, a university lecturer and politician, was not interested in the mediation process. Through this experience, she says, “*We realized that communities [and stubborn parties] sometimes listen more to their own leaders, like the District Speaker, than to NGO staff.*”²⁵⁷ This is why it is important to use *existing* structures rather than creating new alternatives. “*We don’t need to roll over the roles of these leaders. Rather, we need to build their capacity – we leave them now to do the work.*”²⁵⁸

4) Crime Stopping: Pushing cases through the system

Accompanying, rather than referring

The difference between referring a rights-holder and accompanying a rights holder lies in who steps through the courthouse, police office, or clan leader’s door. Is the person alone, or are they accompanied? Data suggests that the Crime Stopping approach—going with victims to the next stage and demanding that justice be done—is effective because it reduces parties’ vulnerability at the place of referral (where cases could get lost or bribes may be demanded), holds institutions accountable to fulfilling their mandates, and shows perpetrators that they “won’t get away with it” so easily.

Examples of this include NGO-X, whose legal team collects case law of the use of customary land rights in formal court decisions. Their lawyers then use this as precedence to defend victims in court.²⁵⁹ Another example of this is where an NGO goes with a widow to the police station to report her land grabbing case. A week later, the NGO staff goes back to follow up and when police explain that the file has been “misplaced,” the NGO mediator pounds her fist on the counter and demands that the file be found, or else she will contact the officer’s superiors. The next day, the widow’s file miraculously appears and the perpetrators are brought in for questioning.²⁶⁰

²⁵⁶ “*If you move like this in a team, the decision will always be respected. But if you’re in a hurry, you won’t come to a conclusion.*” (Interview, Senior Police Officer, Padibe East Subcounty, Lamwo District, 29/06/13)

²⁵⁷ Interview, NGO-Z Executive Director, 22/05/13

²⁵⁸ Interview, NGO-Z Legal officer, 03/06/13

²⁵⁹ Another instance is where a NGO-V legal officer speaks up in court, requesting that the judge not continuously adjourn the case so as to burden his client who is poor and travels a far distance to attend. One unrepresented widow (Lucy in Oyam District) reported that, since 2010, she has bounced from the Chief Magistrate Court 14 times due to adjournments (Interview, *Lucy vs. William*, Oyam District, 02/05/13).

²⁶⁰ The research team is grateful to the staff of International Justice Mission, who affirmed the recommendations of this study with their own, third-party experience in land rights work at the July 2013 meeting of the Northern Uganda Land Platform.

Working through existing structures

By demanding that cases be pushed through the system, ADR actors (especially NGOs) can assist to clean systemic clogs from within, rather than creating their own bypass routes that last only as long as the life of their project. A state attorney in Lango sub region proposes that,

“Let the NGOs hide behind the clan and LC structures. It is the clan and LCs who will own the agreement... If NGOs are only involved in a piece of the process, how will you verify that justice is done?”²⁶¹

Existing clan and LC structures are valuable resources in the quest to eliminate impunity and land grabbing in northern Uganda. To a certain extent, clan leaders have some influence over their members²⁶² and LCs can provide administrative openings that may change the course of the mediation. One LC 3, for instance, works through existing security mechanisms to adjust the enforcement environment when things get too heated:

“When fights break out, I approach the elders from each side and direct them to cool their teams. I say, ‘Let’s stop for today at this point.’ On a later day, we reconvene and change the venue to a more neutral place [like the Subcounty offices]... On that day, I remind them, ‘Today you are sitting on the laws – because the Subcounty is an element of the State law. The people I tell this to usually become polite, because they know that the Subcounty and the police will be on them if they do not cooperate.’”²⁶³

5) Targeting the ringleaders

At times, certain parties do not act on their own—rather, a powerful unseen third party is motivating their actions. In other (especially inter-clan) wrangles, some elders mobilize youth in their communities to carry out the ‘dirty work’ of intimidating victims to seize their land. Both situations involve opportunists who are interested in personal gain. *“When there’s a dispute, people see it as an opportunity to gain,”* observes one community member. *“So NGOs should find out the interests of the opportunists who want to fuel the conflict. Even if mediation is successful, the opportunists can keep the conflict alive.”²⁶⁴*

ADR actors must target these errant elders, leaders, and “opportunists”—some of whom have knowledge in military tactics as ex-soldiers or security officials—by approaching them from various fronts. Rather than initiating a community-wide mediation which could erupt into mass violence, a District Mediation Team in Lamwo reports moderate success by starting with negotiations between 5 ringleaders from each clan, then gradually expanding the size of the delegation to 10 each, then 15, then finally the whole community.²⁶⁵

²⁶¹ Interview, Senior Court Official, Lira, 09/05/13

²⁶² If a party with bad faith becomes violent, mediators are wise to meet with the clan leaders of that person, to see whether they have the same attitude as their clan member. This can identify bad faith and/or enlist the clan’s support in addressing the situation.

²⁶³ Interview, Local Councilor, Lamwo District, 29/06/13

²⁶⁴ Interview, Complainant, Padibe East Subcounty, Lamwo 01/07/13

²⁶⁵ Focus Group Discussion, NGO-T Community Mediator and Senior Police Officer, Lamwo District, 29/06/13

When perpetrators refuse to attend a mediation process because they feel they are too powerful or untouchable, one strategy suggested by different community mediators in Teso and Acholi is to work through the perpetrator's overall commander or supervisor (or the one responsible for hiring/firing the "invisible hand" behind the conflict). Unfortunately, this strategy only works where the top authorities are not complicit²⁶⁶ in the land grabbing attempt.

6) Periodic Follow up

This practice is about giving a mediation the time it requires to unfold. When ADR actors rush through the process in order to meet a monthly quota of mediated agreements, they may end up concluding a case halfway or with an unsustainable 'settlement' because parties have still not reconciled. "*Don't show you're results-oriented,*" a NGO-W staff member cautions his colleagues. "*Rather, show you care. People can tell when your heart is not for their interests, but your donors' interests. There's a clash: Donors want results, but communities*

"Don't show you're results-oriented. Rather, show you care. People can tell when your heart is not for their interests, but your donors' interests."

There's a clash: Donors want results, but communities want peace... Communities set their own deadlines."

—Staff member, NGO-W

want peace... Communities set their own deadlines."²⁶⁷ Only one NGO—Z—was found to have a set follow-up strategy for concluded cases. Their timeline was after 6 months and again after 12 months to check-in with both parties and see whether any new problems have arisen and how the parties' lives have improved.

Is ADR ever appropriate in cases involving bad faith?

Since bad faith is not always immediately apparent, **ADR may be appropriate when used as a litmus test to detect and document bad faith.** The process of gathering facts, listening to community members, and hearing from the parties themselves provides ample room to *identify* and *document* the warning signs.

Once bad faith is detected and the criteria for land grabbing are met (land rights analysis, demonstrated intent, perceived ability/opportunity), then the ADR process must shift into a higher gear. Crime demands the rule of law. As one community mediator puts it, "*Mediation won't help if the person is deliberate. It needs an iron fist.*"²⁶⁸

²⁶⁶ An important consideration, given the variety of reports that rank Uganda as the most corrupt country in East Africa and among the most corrupt in the world. See Burnett, M. (2013), "*Letting the big fish swim: Failures to prosecute high-level corruption in Uganda.*"

²⁶⁷ Interview, NGO-W Staff, 07/06/13

²⁶⁸ Interview, NGO-X Community Mediator, 26/04/13. He went on to say: "*In cases of injustice, don't push people to resolve. It's unjust. Not all cases have to be resolved in mediation. If someone continues to be unjust, we write a legal opinion and must refer it. Can you rely on ADR to provide the justice? Not 100 percent of the time. You try other means, like court, if you have the evidence. Court is the only*

Opportunities for other actors

To innovate methods of appropriate dispute resolution in northern Uganda, ADR actors must start with what they already have. The findings of this study illuminate several opportunities for actors seeking to cultivate communities where impunity and land grabbing are replaced by accountability and mutual responsibility.

Both **civil society** and government actors have an opportunity to re-strategize their efforts to prevent and eliminate land grabbing by engaging key, but often overlooked, players: prisoners and youth. As data from Gulu, Lira, and Kitgum prisons reveals, a majority of inmates are directly tied to a land conflict back home and may contemplate taking revenge upon release. By the same token, youth comprise the largest share of the population²⁶⁹ and are often cited as primary actors in land disputes.

Prisons and **schools** are meeting places for a wide array of people and exist to shape minds through correction or instruction. Today, many NGOs, Lands Offices, and police ‘mobilize’ community members for sensitization sessions about which the community may feel ambivalent. Thousands of people may be ‘sensitized’, but it is questionable whether this strategy actually changes behavior. If, on the other hand, these ADR actors engaged these ‘captive audiences’²⁷⁰ in relevant, life-giving discussions about land rights—meeting them at a point of need and/or in an environment where participants are already geared to learn—then it is possible that many potential conflicts would be averted.

Whereas customary tenure governs the vast majority of land in the region, only a few civil society actors are actively advocating for effective customary land administration. This represents another important opportunity to stem the systemic gaps and confusions that give rise to land grabbing.

Clans, the custodians of customary tenure, face opportunities to curb the incidence of land grabbing in several ways. Publicly establishing the clanship and land rights of children born out of marriage is one way to significantly reduce vulnerability, as is demarcating local land boundaries. Clan partnerships between police and lands administrators would also enhance the effectiveness of land rights enforcement and systematic demarcation efforts.

While **police** stations are already equipped with Land Desks and Child and Family Protection Units, an opportunity for coordination exists between the two. Children who have been neglected or abused are vulnerable to land grabbing, but this would be partially mitigated if a pathway between the CFPU and Land Desk ensured that the

available option. I just wish someone could present me with another option. Court takes years. But ADR can't force somebody to be just."

²⁶⁹ ACCS (2013, citing Esuruku) reports that young people comprise nearly 78 percent of today's 34 million Ugandans (pg. 26)

²⁷⁰ Ethical issues considered, of course. Olga Grinstead, Ph.D., adjunct associate professor at the University of California, San Francisco's Center for AIDS Prevention Studies, says: "My experience has really been that prisoners want access to innovative intervention programs. They want to change. They want to have access to the things that are going to help them, and that is one reason why people become involved, at least in working with us... From the issue of equity or the issue of justice, there are advantages to being involved in research. We need to be aware that prisoners are motivated to be involved in research. They are motivated to give back, and that should be taken into account too." (Institute of Medicine, 2007).

clanship and custodians of these children are publicly defined. Upon coming of age, these children's rights to land would be more likely to be preserved.

In societies across the world, **faith communities** and scripture put into practice have become catalysts for social change. In northern Uganda, faith communities can validate traditional ethics by appealing to customary land rights in the call to stand up for the rights of others and how to respond when a neighbor encroaches. Moreover, by using scripture to equip congregants to restore relationships in their own lives²⁷¹ and the lives of others, grassroots land disputes may begin solving themselves.

In the recent past, when disease spread rapidly among displacement camps, churches and religious leaders played a noteworthy role in disseminating messages about HIV/AIDS and other public health concerns. Today, land issues are occasionally mentioned from pulpits, but there is need to go beyond mere criticism of land grabbing to addressing the spiritual and relational roots that underlie it.

“The church has been in the forefront of sensitizations on some major cross cutting issues like HIV. Prevalence has reduced. When brought up to speed on land rights, the church can still play a very big role in accomplishing the same.” (Church leader, Gulu, 28/05/13)

Perpetrators and would-be perpetrators are found among the ‘churched’ and ‘unchurched’ alike. One Senior District Official in Soroti laughingly explains that, in his office, he is “now viewed as a pastor” when people bring him their land disputes. His question, “Why do you do bad things to others that you don’t want done to you?” reportedly resonates with people from all walks of life.²⁷² *“Today, most people going to church are women and children. So even if we preach about land justice, men won’t hear it,”* a pastor in Kitgum observes. *“We need to reach out to men.”*²⁷³ This observation is interesting, given the gender disparity in prison populations found in this study.²⁷⁴

²⁷¹ As one church leader in Katakwi advises his colleagues, *“Let people know the truth by starting with their neighbor. Reconcile with their neighbor. Only after you reconcile can you come and seek God.”* (Stakeholder Forum, 11/04/13)

²⁷² Senior District Official, Stakeholder Forum, Soroti, 26/04/13

²⁷³ Church leader, Kitgum Stakeholder Forum, 03/07/13

²⁷⁴ See prison population data on pg. 84 of this document



V. CONCLUSION

Bad faith, up by the roots

The ‘system-incentives’ for NGOs are to have an agreement reached and to classify a given case as successfully settled—not to uphold land rights. As long as NGO ADR interventions are not grounded in land rights, such ‘mediations’ become dangerous opportunities for the powerful to skew outcomes in their favor. This furthers the rule of power, not the rule of law. It cultivates vulnerability, not justice.

So what does appropriate land dispute resolution look like in post-conflict northern Uganda? How can ADR interventions achieve justice at the grassroots while corrupt leaders act with impunity? And if all human beings have the potential for both bad faith and good faith, what causes some people to switch from the former to the latter?

ADR actors have an important role to play in answering these questions. As case study and interview data show, mediation processes are most effective when two things are present: the credible rule of law and authentic reconciliation. Once a perpetrator is faced with real threat of consequences, and any underlying reasons for bad faith are identified, challenged, and satisfied in an alternative and more constructive way, the land dispute is likely to resolve itself once and for all. This suggests that **a more holistic approach to ADR—one that grasps concrete land rights as well as the relational dimension—is needed.** If the most sustainable way

to eliminate bad faith is to transform it, then now is the time to innovate ways to ‘get the adrenaline out.’²⁷⁵

Leading by example

Data suggests two basic types of perpetrators: Leaders and Followers. Leaders are typically in positions of power and leverage impunity to disregard the ADR efforts of lower-level actors. This group is termed “Leaders” because their visibility or standing in the community (whether or not they are publically known to be involved with a land grabbing attempt) sets an example for others to emulate.

Followers, on the other hand, are considered ordinary citizens who are just trying their luck at land grabbing to see whether they can benefit—thus, they are not as daring and may back down when threatened. If they see, however, that Leaders have gotten away with similar land grabbing attempts, then Followers are likely to persist. Interview data reveals that if Leaders are stopped through punishment or law enforcement, then Followers may be compelled to desist from their actions. This supports the results of a 2012 public poll conducted by TracFM which asked citizens across the country to identify the top cause of corruption in the country. “Corrupt elites giving a negative example” was cited as the top cause, receiving almost half of all votes.²⁷⁶

Settling minds, resolving disputes

Virtually all case studies of land grabbing in this study involved parties who were neighbors, relatives, clan members, or someone they otherwise knew. But when a person is psychologically unsettled, they are less likely to regret their actions, value relationships, or think long-term. One person’s vulnerability becomes another’s opportunity for gain. But while the level of trauma in the population remains substantial, many mediators fail to assess the impact this has on a party’s attitude toward the ADR process. Trauma is no excuse for bad faith; data simply suggests it is one of several explanatory variables.

“Land dispute mediators don’t take this trauma into account. You cannot talk to a traumatized person like you would an ordinary person. These people don’t like being victimized or being told they are wrong.”
(Senior District Official, Lamwo, 01/07/13)

Reaching communities with these mindsets therefore requires a different, more appropriate approach to ‘sensitization’. Instead of ADR actors bringing a message to “tell the community,” what would happen if these actors did the listening instead?

As a NGO-Z staff member found, communities sometimes listen most intently to their own leaders or fellow members. ADR actors may consider using the very people they mediated in previous cases to speak to other communities as living examples of how an end to land grabbing is possible, through personal choices to turn from bad faith to good.

Analysis suggests that the most sustainable way to eliminate bad faith is to transform it.

²⁷⁵ See Section 1 under Best Practices

²⁷⁶ Sawlani, S. “Uganda: The human side of corruption,” *The Observer*, 15 August, 2013.

One psychologist sees a possible role for counseling as a precursor to the land ADR process: “*The simplest way to address land wrangles is by treating the mental bit of it, through therapy... we can only handle land disputes well when people’s minds are settled.*”²⁷⁷ Since broken or unvalued relationships breed bad faith and land grabbing, restoring the relationship between the parties is of utmost importance for the ADR process. Otherwise, even if the current land dispute is settled, the “adrenaline” in parties’ hearts may ignite into conflict later. A surprisingly small number of bad faith case studies (3 out of 110) were found to be sustainably resolved, most likely for this very reason.

If there is a way to restore relations (even an outsider has a relationship with the locals) through self-motivated admission of wrongdoing and forgiveness, this should be pursued—perhaps with support from respected traditional and faith leaders who navigate this territory best—since it builds a lasting foundation for renewed communities in which bad faith has no room to grow.

Pangas into Plowshares

Addressing bad faith in land ADR requires appropriate policy and practice—where each state, traditional, and faith actor sees its role as beating pangas into plowshares from a different, but vital, angle.

Corruption, impunity, and the crime of land grabbing demand the rule of law.

This means a harmonized state and customary justice system that sets and upholds precedents that apply to all people.

This calls for a harmonized, loophole-free legal framework that recognizes grabbing of both customary and registered lands as evidence-based crimes, not mere conflicts.

This involves civil servants and law enforcement who use land rights and laws, rather than unwritten ‘orders from above’, to fulfill their mandates.

This is undergirded by united communities who understand their rights and responsibilities to collectively confront their sister, their nephew, their mother, their son who adds fenced hectare to fenced hectare at the expense of an orphan’s inheritance or a family’s livelihood.

This is facilitated by shrewd and courageous civil society actors who *accompany* rights holders to law enforcement—rather than refer—until justice is done.

With such an enabling environment, ADR actors can confidently work through clan, faith, and state structures so that disputes are not simply settled for the moment, but resolved and put to use to change the broken systems through which they came.

²⁷⁷ Interview, NGO Manager and Psychologist, Gulu, 08/06/13

VI. RECOMMENDATIONS

Key Gap #1: Reliable state law enforcement

Appropriate NGO-facilitated ADR must fit into a functioning justice system as a whole. **Police and courts must recognize the criminal nature of land grabbing cases and prosecute accordingly under S.92 of the *Land Act* (1998).** Such cases appear to be conflicts over land ownership (a civil matter), but the intentional denial of someone's land rights constitutes a criminal offense—not to mention a violation of customary and faith values.

Since land-related cases reportedly account for the majority of crimes reported to police and cases files in courts throughout Lango, Acholi, and Teso, courts and police must prioritize land cases. By applying customary land rights (which have been documented for all three regions²⁷⁸), law enforcement can handle the civil and criminal aspects at the same time. **Establishing rightful ownership and prosecuting the crime of land grabbing in the same court ruling** would significantly reduce case backlog, instead of requiring already vulnerable parties to launch two separate, lengthy, and costly suits.

To do this, police must be equipped to confidently intervene in the customary context, by being **trained in customary tenure and land rights**. Most importantly, however, the Inspector General of Police (IGP)'s **standing Directive²⁷⁹ must be lifted to allow police to investigate land crimes** under S.92 of the *Land Act*. Police would then be free to identify land grabbing using the criteria of land rights, intent, and opportunity.

By the same token, **courts must recognize and uphold customary land rights** that do not contravene the 1995 Constitution of Uganda. Magistrates should seek out and carefully consider previous clan and LC decisions, while foreseeing the dilemma of enforcement of future court judgments. Resident District Commissioners, who are widely criticized for vetting whether or not certain court rulings should be enforced, must recognize that by doing so they are undermining the legitimacy of the national justice system for the sake of short-term 'security'.

Civil society actors should seek constitutional clarity and lobby Central Government respect the Constitution regarding the power of RDCs to interrupt the flow of justice, while at the same time refusing to tolerate corruption, absenteeism, and inefficiency in the judiciary. Likewise, **the IGP must recall and register Crime Preventers** and Special Police Constables (SPCs) who are often untrained, unsupervised, and known for brutality and arbitrary arrests which result in large numbers of clan members put in prison on remand, stoking inter-clan tensions.

The Leader/Follower model applies here as well: The State leads the Customary system by example. If the State is not effectively punishing land grabbing, then clan leaders report they are unlikely to do so, either. Ensuring law and order is the responsibility of both systems; dodging this responsibility is what has led to the status quo.

²⁷⁸ See the Principles, Practices, Rights, and Responsibilities (PPRR) for Land under Customary Tenure for Lango, Teso, and Acholi.

²⁷⁹ It is questionable whether it is constitutional for an IGP to order the police to ignore a certain type of crime.

Key Gap #2: Customary land administration

The internal and external threats to customary tenure are substantial, but the steps to their reversal are quite clear. First, **Central Government and the Judiciary must recognize the role that customary systems play** in citizens' everyday lives throughout Uganda, as aptly reflected in the new National Land Policy.²⁸⁰ To disregard this is to disenfranchise the vast majority Ugandans who do not have their lands registered but whose livelihoods and survival are carefully secured—or jeopardized—by these systems.

Next, the **administrative framework for customary tenure must be fully implemented to clarify and evidence land rights**. Government must open a functioning Customary Tenure Registry in the Ministry of Lands, Housing, and Urban Development (MLHUD), appoint and adequately facilitate District Registrars to process registration of communal lands, increase operational budgets of District Lands Offices, and cater for remuneration and supervision of Area Land Committees. The MLHUD must also iron out the wrinkles in current Certificates of Customary Ownership (CCOs) by tailoring them to reflect continually changing family compositions and recognizing the clan's authority to govern land sales.

Internally, cultural institutions have a major responsibility to exemplify the norms they profess and uphold land rights in their mediation and deciding of land cases. Individual clans must create and implement **appropriate bye-laws for the punishment of land grabbing and removing irresponsible and complicit leaders from office**. If visible clan leaders are no longer able to grab land with impunity, this will set an example ordinary clan members are sure to follow.

Furthermore, communities who share customary grazing lands, hunting grounds, forests, or wetlands should **establish downwardly accountable structures—possibly subject to the law of trusts—for the management of communal lands and resources**.²⁸¹ If high-profile encroachers are legally dealt with, this will send a signal to other would-be encroachers to leave the community land as well.

To address these internal dynamics, **clan heads should clarify land rights** of different persons (orphans, cohabiting women, married men, divorced women, widows, etc.) **and hold their clan members and other leaders responsible for protecting land rights** in line with customary PRRs.

This is especially important for children born out of wedlock, as in practice these children are often claimed neither by the clan of the mother nor the biological father and thus have no secure land inheritance. One way to harmonize customary and state actors around this issue is when **Police's Child & Family Protection Unit** receives paternity or child neglect cases, they **should act with the clan of the available biological parents to define the clanship and land rights of the child** so that he or she does not begin wrangling for land upon coming of age.

²⁸⁰ The Uganda National Land Policy (February 2013), section 4.3

²⁸¹ See the work of the Community Land Protection Program, implemented by Namati and the Land & Equity Movement in Uganda; also Knight, R., Adoko, J., Auma, T. (2013)

Key Gap #3: NGO Mandates in Land Justice

It is not clear from where NGOs derive their mandate or expertise to intervene in serious land disputes. Its origin appears to lie, however, in the thinking that “those who can, do.”²⁸² This short-term mindset—hinging on the available resources at the moment—has major implications for NGO programming and community buy-in. **Since the nature of civil society is both non-governmental and non-customary, NGOs must clarify their purpose in land dispute resolution accordingly.**

Beginning with the Northern Uganda Land Platform (NULP), NGOs must honestly ask themselves whether they are better suited as ADR service-providers or as builders of institutional capacity. Legal aid may always serve an important function in society, but given the findings of this study—that the vast majority of mediated cases labeled ‘resolved’ in the file are not so on the ground, and that NGOs handle a tiny percentage of all land cases reported by prison inmates—**NGOs are advised to use their efforts and resources to reinforce existing traditional and state institutions, rather than create justice alternatives that compete with these long-term actors.**

By the same token, NGOs must tactfully decide what to do when Government or a Cultural Institution is a disputant in a land grabbing case. Being a lone watchdog comes at a price; yet **a set protocol or “Voluntary Code of Practice for Land Dispute Intervention” agreed upon and practiced by many NGOs—such as the members of the NULP—would reduce forum shopping and protect the neutrality and legitimacy of NGOs** who receive such cases.

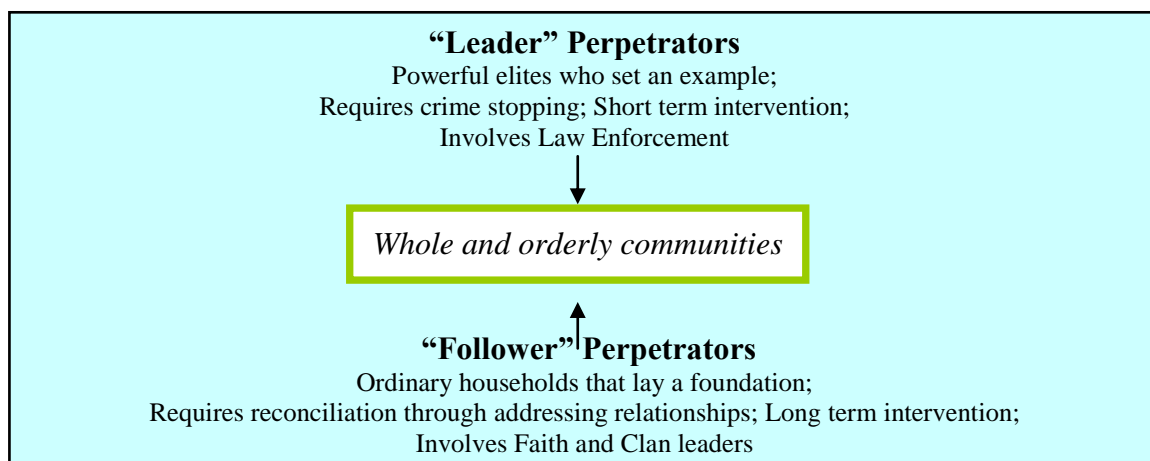
It is one thing for the new National Land Policy to acknowledge the fact that clans are the *de facto* courts of first instance in the land dispute resolution hierarchy; it is a very different thing for Central Government, and the Judiciary to specify customary authorities and make this a reality. **NGOs can and must play an important role in operationalizing this and other provisions in the National Land Policy.**

Key Gap #4: Appropriate ADR

To be effective, mediation and other forms of ADR require an enabling environment. So what does this look like in northern Uganda today? Findings strongly indicate the need for a more holistic form of land ADR in northern Uganda. Rather than “fire-fighting” by focusing solely on land issues, mediators must approach disputants as full people, with experiences, perceptions, and relationships that need to be worked out.

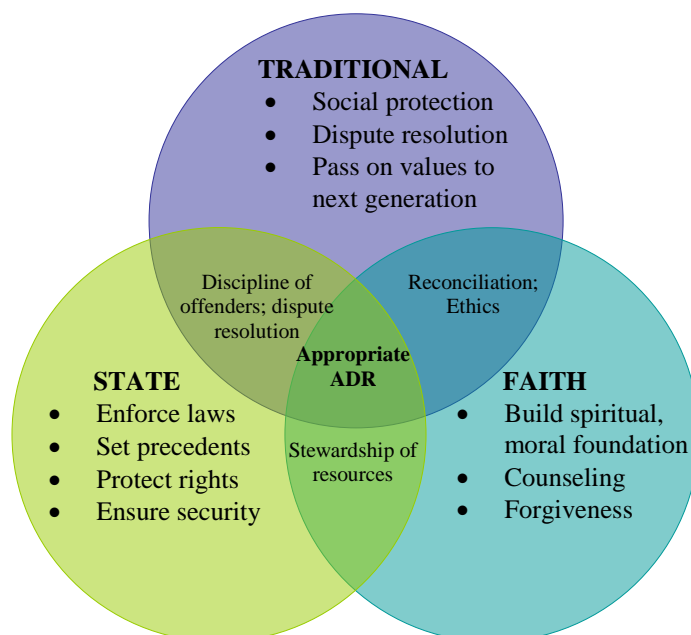
The major sources of the fire in northern Uganda are clear: bad faith and impunity. **To be effective, mediators must combat bad faith with *reconciliation* and impunity with the *rule of law*.** To do this, ADR actors should identify and target two types of perpetrators: *Leaders* and *Followers*.

²⁸² In some ways, this thinking may also underlie land grabbing attempts.



This strategy involves pushing cases through the system²⁸³ to establish precedence (especially with visible perpetrators, or “Leaders”), while also building a foundation of healthy relationships at the household (or “Follower”) level.

The lack of consequences for high-profile perpetrators (Leaders) sets an example for other would-be offenders (Followers) to try their luck and see what they can get away with. This model loses its appeal, though, when elite offenders are prosecuted and their deeds exposed through clarified land rights, boundaries, and accountability mechanisms.



²⁸³ The medical analogy of *arthrosclerosis* (clogging of an artery) illustrates this idea. Different procedures, including stenting and bypass surgery, are possible ways to clear a blockage. Another, arguably more sustainable option, lies in using certain substances called *thrombolitics* (such as antioxidants and other clot-busting drugs) that “scrub” out clogged arteries from within. Today, Uganda has many institutional blockages, but NGOs who push cases through the justice system to establish high-profile precedence act as *thrombolitics* which help the body perform as it was originally intended.

Likewise, anecdotal data shows that bad faith is facilitated by broken relationships; yet once parties meaningfully reconcile and their bitter “adrenaline” is released, the land dispute resolves itself almost automatically. This is only possible, however, if the process acknowledges—rather than vilifies—the perpetrator’s rightful membership in the community. Since locally respected faith and clan leaders are better equipped to facilitate sustainable reconciliation, this does not need to be the role of an NGO. **The ultimate goal of appropriate dispute resolution is therefore not land dispute settlement; rather, it is the rebuilding of whole and orderly communities, with each sector (state, traditional, and faith) playing its part.**²⁸⁴

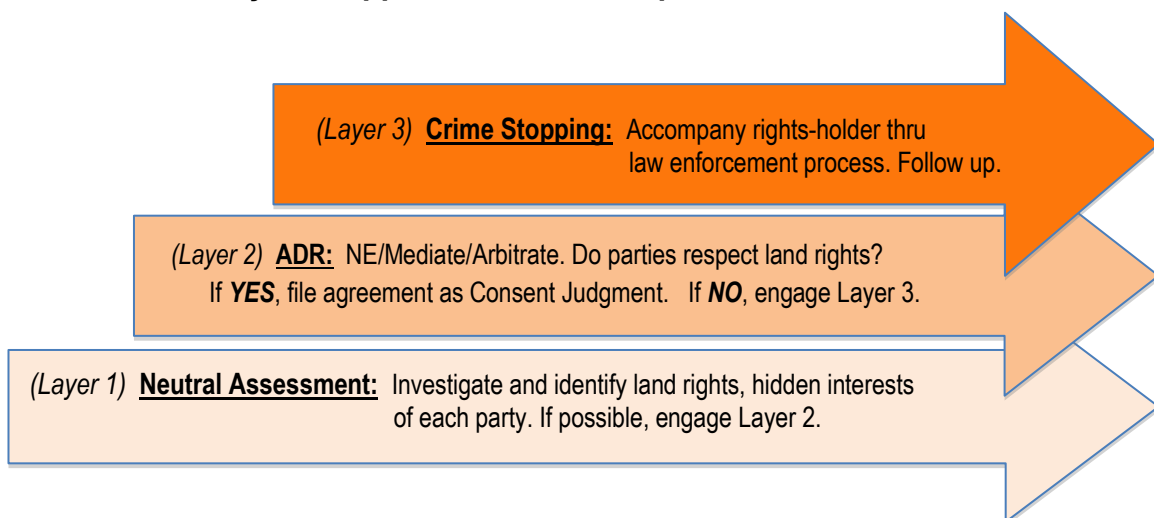
Key Gap #5: Quality of NGO interventions

ADR actors face many competing demands on their time, resources, and efforts. This sometimes leads to a penchant for proving levels of impact through numbers. Yet a quantity of signed mediation agreements or attendance lists is no substitute for quality land dispute resolution on the ground.

ADR actors must strive for excellence in their interventions. **This may be practically attainable through the following Layered Approach, which sets a precedent by establishing evidence for bad faith and builds a foundation by digging into the relational dynamics underlying bad faith.**

This approach is layered because each stage builds on the other with a cumulative effect. For instance, even if a case proceeds to the Crime Stopping layer, the mediator may still conduct assessment of dispute-related events that unfold and keeps the option of ADR open should the perpetrator become repentant. The layers are described in detail below.

Layered Approach to Land Dispute Intervention



²⁸⁴ This Venn Diagram was inspired by Judy Adoko of LEMU, where it is used as a training tool.

- **Layer 1: Neutral Assessment**
 - Investigate on the ground and identify the land rights and hidden interests (material gains, unreconciled relationships, etc.) of each disputant. Document family tree diagrams and witness testimony.
- **Layer 2: ADR**
 - Begin mediation, arbitration, or another form of alternative dispute resolution. At an opportune time, share a Neutral Evaluation of land rights and each parties' claim according to facts on the ground. Gauge how the parties respond to this evaluation.
 - *If the parties demonstrate willingness* to respect each other's land rights, write an agreement and file it with the Grade 1 Magistrate as a Consent Judgment.²⁸⁵ Demarcate the boundary in the presence of neighbors, clan leaders, LCs, and others. Take time to also reconcile non-land issues that may have surfaced.
 - *If one or more party is not willing* to respect the other's land rights, then document evidence for this (Layer 1) and add on Layer 3.
- **Layer 3: Crime Stopping**
 - Recognize that the case is a crime, not a conflict. Accompany rights-holder to law enforcement (police, court, clan hierarchy). Demand that the case be pushed through the system and that justice be done.
 - Throughout this process, continue documenting events that occur (Layer 1) and keep ADR as an option should the other party become repentant (Layer 2).
 - When the case reaches its logical conclusion or is resolved, follow up with both parties after a set number of months to monitor sustainability and gather feedback on the process.

Other practices which can enhance the quality of ADR interventions include **mediating as a team** of diverse, objective stakeholders and **conducting community 'sensitizations' that are relevant** to the daily lives of those listening. A suggested way to do this is to leverage the stories of real-life disputants in successfully resolved cases to share their experiences and lessons learned with other communities.

Key Gap #6: Youth

Youth from 0 to 30 years old make up an estimated 80 percent of the population²⁸⁶ and are frequent parties to land conflicts, but are found to rarely participate in land ADR or customary decision-making. As a 2013 report explains,

"The cohort of Ugandans aged between 12 and 30 years is the largest in history and is growing. The potential for this demographic trend to bolster or

²⁸⁵ One Senior Court Official in Gulu cautions that, *"The process of NGO mediation can only be of value if the parties feel they are bound by the agreement. There is no legal framework binding the NGO resolutions and so [they] are difficult to enforce."* (Interview, 14/05/13)

²⁸⁶ The Advisory Consortium on Conflict Sensitivity (2013) identifies youth exclusion as a key conflict driver in northern Uganda. See pages 25-27.

*undermine national objectives in the areas of governance, economic and social development is real. Societies with rapidly growing young populations often end up with rampant unemployment and large pools of disaffected youths who are more susceptible to recruitment into violence.*²⁸⁷

As long as the median age in northern Uganda is around 13 and 14 years²⁸⁸, child development is directly related to national development. Knowledge and discipline in northern Uganda are often learned by rote, at least in the early years. Students excel at memorizing facts and formulas, but struggle to think critically and creatively solve problems. Likewise, when a child misbehaves, parents and teachers typically respond with swift punishment, but not many adults sit down with their children to explain why the child's action was wrong. Such a child learns to avoid the behavior out of fear of punishment, not out of a self-governing regard for moral values.

This “learning by rote” has implications for those seeking to eliminate land grabbing. People often do what they can get away with, without evaluating whether the action aligns with state, customary, or faith-based values. Case study data shows that perpetrators are more likely to back down or stop grabbing when a strong consequence is introduced, but later reoffend once the threat of punishment is no longer applied or authorities turn their backs. Instead of teaching and disciplining by rote, **parents, educators, clan elders, and faith leaders must intentionally cultivate critical thinking and problem solving skills in their children**—the better to see conflicts from the other party's perspective and innovate constructive solutions. This is likely to mitigate land grabbing far beyond any purely punitive approach.

Rather than assuming that youth learn customary land principles from their parents, elders, or teachers, both communities and ADR actors must **be intentional about involving youth in dispute resolution activities and reviving customary ethics of stewardship and empathy**. To do this, community leaders must recognize the strategic role youth play in influencing their parents who are involved in land disputes and **encourage family round table discussions** at the household level when there is conflict.

Key Gap #7: Prisons

Prisons should be reserved for those who require it – not a waiting area for trial. Findings regarding:

- the disproportionate rate of remand (78 – 92% imprisoned without trial),
- high levels of reported association with a land conflict (40 – 54%) and
- how three-quarters of inmates facing a land dispute previously and unsuccessfully sought the help of a 3rd party to mediate the conflict

underscore the fact that **land grabbing is criminal in nature and non-binding ADR is not enough to stop it**.

The Judiciary, Police, and Prisons should consider these findings as they revisit the “purely civil” nature of land disputes. These law enforcement actors will likely make a greater impact if they **undertake and share regular analysis of inmate**

²⁸⁷ Action Aid Intl., Uganda NGO Forum, Development Research & Training (2013), pg. 16

²⁸⁸ ACCS (2013)

populations—especially as to why people are coming to prison and how they are brought—because doing so sheds light on what is really going on in Ugandan society.

The prevailing view of prisons in Uganda is that they are the ultimate destination of the criminal justice system. This ‘cul-de-sac’ mentality fails to see the critical job of prisons in releasing people back into the community they are believed to have offended. Thus, **prisons should be thought of less as “on the receiving end” and more as a sending agency—especially since around half of inmates will return to land disputes back home.** To take full advantage of this role, prisons, faith-based and civil society actors should work together to utilize the abundance of time they have access to inmates to inculcate norms of healthy relationships and land rights.²⁸⁹

Lastly, many inmates expressed interest in mediating their land disputes while behind bars. While the asymmetry of power may render negotiating with a vulnerable prisoner unethical, this desire for reconciliation should be tapped by **reviving holistic reintegration initiatives such as “From Prison Back Home.”**



²⁸⁹ Under what is called the “needle logic”, prison social workers pursue reconciliation between the offender and their community through means of mediation and/or negotiation. See UNAFRI & UPS (1996), pg. 77

VII. APPENDICES

Appendix 1A

Interview Questions: Local Mediators (LCs, clan/cultural leaders)

Understanding Bad Faith

1. Why do you think there are land conflicts in your community?
2. Are some land conflicts more difficult to deal with? What makes them so difficult?
3. What makes someone, or some land, vulnerable?
 - a. How might this vulnerability be reduced?
4. What motivates someone to decide to illegally claiming land?
 - a. How might these incentives be reduced?

Understanding Responses

5. What is your particular mandate to address land cases?
 - a. Who gives you the authority to handle land cases?
6. What are your responsibilities when it comes to land issues?
7. If I was an (LC/clan leader) and I failed to carry out my responsibilities, what would happen? (In theory... in practice)
 - a. Would I be held accountable?
8. Personally, how do you respond when you hear of someone's LRs being denied?
 - a. (How it is... how it should be)
9. Have you ever successfully dealt with a powerful person taking land from a vulnerable person?
 - a. What happened? What worked?
10. Has anyone in your community ever been punished for attempting to steal land or deny someone's LRs?
 - a. If yes, did the person offend again?
 - b. If not, why not?
11. Is there anything else you feel we should know about how land conflicts are handled in your community?

Appendix 1B

Template for Case Study Analysis

(Complainants, Respondents, Mediators)

INTERVIEW CHECKLIST

- **Relationship of parties** (of Complainant to Respondent)
- **Land Rights** of each party (Family Tree)
- **What is the Respondent's argument** for claiming the land?
 - Excuse or valid reason?
- **Vulnerability** factors/Power dynamics
- **Timeline of life events**
 - **Opportunity** taken advantage of
- **Steps taken to search for justice**
 - **Outcome/impact** at each step
- **Who assisted the victim**, and why?
- **Strategy used** for making the victim give up
- **Impact** of the conflict on the Complainant, on the Respondent
- **What is the situation of the case today?**
 - What happened since it was mediated?
 - **What happened to the land** in dispute?
 - What happened to the Complainant? The Respondent?
- **Why do you think you're having this conflict now?**
- **Proposal** of solutions to this problem?
 - Solution to land injustice in general?

RESEARCHER'S ANALYSIS

- What does this case tell us? (Take-away messages)
 - Root causes
 - Complicating factors that prevented justice
 - Successful strategies
- Why is this case illustrative/useful?
 - Which assumptions about LG don't hold true? Are confirmed?
 - Gaps in responsibility (actors/systems not doing their job)
 - Glimmers of hope/Ways forward?

APPENDIX 2

Randomized Questionnaire for Inmates

Remand Convicted

1. How old are you? 18 or under 18-30 yrs 30-40 yrs 40-50 yrs 50+ yrs
2. How long has it been since you were first detained? _____ weeks/months/years
3. What are you being charged with?
4. Are you, your family, or your community directly impacted by a land dispute? YES NO
 - a. If YES, do you think your being here is connected to the land dispute? YES NO

- b. If YES, are there other people also here because of the same dispute? YES NO
 - i. If so, how many? _____
 - ii. Is the other party in the dispute also here? YES NO
5. Had you previously tried to mediate the dispute outside of court? YES NO
 - a. Please name all the offices you went to to help resolve the dispute: (Tick all that apply)

<input type="checkbox"/> LC 1	<input type="checkbox"/> Clan leader/Elder	<input type="checkbox"/> Police
<input type="checkbox"/> LC 2	<input type="checkbox"/> Cultural Institution	<input type="checkbox"/> NGO
<input type="checkbox"/> LC 3	<input type="checkbox"/> Rwot Kweri	<input type="checkbox"/> Religious Leader
<input type="checkbox"/> Magistrate Court	<input type="checkbox"/> RDC	<input type="checkbox"/> _____
6. Was violence ever involved in your case? YES NO
7. While you are here, and if you had the opportunity, would you be interested in sitting down and trying to talk things out with the other person so that the land dispute is resolved? YES NO
 - a. If YES, who would you want to mediate? _____
8. Do any of these apply to you? (Tick all that apply)

<input type="checkbox"/> Widow	<input type="checkbox"/> Migrant	<input type="checkbox"/> Sick
<input type="checkbox"/> Childless	<input type="checkbox"/> Unmarried	<input type="checkbox"/> Elderly
<input type="checkbox"/> Orphan	<input type="checkbox"/> Divorced	<input type="checkbox"/> _____
<input type="checkbox"/> Born out of marriage	<input type="checkbox"/> Disabled	<input type="checkbox"/> _____
9. Do you feel that the other person used tricks to acquire the land? YES NO
 - a. If YES, how? (Tick all that apply)

<input type="checkbox"/> Money/Bribes	<input type="checkbox"/> Witchcraft/intimidation	<input type="checkbox"/> Survey process
<input type="checkbox"/> Political influence	<input type="checkbox"/> Education	<input type="checkbox"/> Slander
<input type="checkbox"/> Outnumbered me	<input type="checkbox"/> Court system	<input type="checkbox"/> _____
<input type="checkbox"/> Violence, threats	<input type="checkbox"/> Police arrest/prison	<input type="checkbox"/> _____
10. What is happening to the disputed land now?

<input type="checkbox"/> Being shared	<input type="checkbox"/> Idle, no one is using it	<input type="checkbox"/> I don't know
<input type="checkbox"/> Been given to 3 rd party	<input type="checkbox"/> Other party is using it	<input type="checkbox"/> _____
<input type="checkbox"/> Been sold	<input type="checkbox"/> My family is using it	
11. At home, what is your source of income?

Digging	Brickmaking	Charcoal	Selling Wares	Family Support	_____
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12. I feel justice is being done in my case. SD D N A SA
13. I prefer our dispute to be solved through mediation. SD D N A SA
14. I prefer our dispute to be solved through the court process. SD D N A SA

Appendix 3 – Select Case Studies

No.	Case Name	Subcounty	District	Status in File	Status on Ground
1	Dilish vs. Agnes	Atiira	Soroti	Mediated, Referred to Court	Unresolved
2	Magdalena vs. Musa	Aduku	Apac	Mediated, No Agreement	Unresolved
3	Melly vs. Morris & Egur	Usuk	Katakwi	Mediated, No Agreement	Unresolved
4	Neighbors vs. Apong Family	Pailyec	Amuru	Mediated, No Agreement	Unresolved
5	Dawiya Clan vs. Dungo Clan	Padibe East	Lamwo	Mediated, Referred to Court	Unresolved
6	Joy vs. Ongom & Brothers	Lira Municipality	Lira	Mediated, Agreement Reached	Settled, one party may take 3 rd party to court
7	Rupert vs. Jok-kene & Sons	Paicho	Gulu	Pending mediation	Unresolved

Note: “*Resolution*” is defined by disputants themselves, and is usually evidenced by:

- a) Perceptions of fairness in the dispute resolution 1) process and 2) outcome;
- b) Improved relations between the parties and their families;
- c) Low likelihood that future disputes will arise involving the same land/ boundaries/ parties/ families.



Case #1: Dilish vs. Agnes

NGO-X

Atiira Subcounty, Soroti District

Status in File: Mediated: Unsuccessful; Referred to Court

Status on Ground: Unresolved, Pending in Court

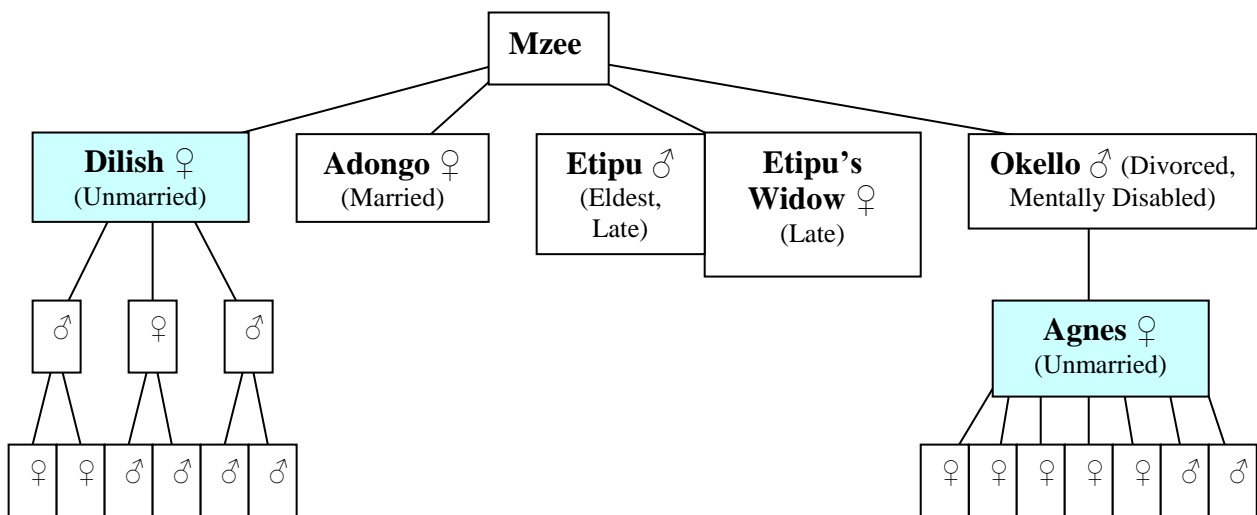
Vulnerability Factors:

Complainant (C): Unmarried woman, Elderly

Respondent (R): Unmarried woman, Disabled father, few male children

Relationship of C to R:

Dilish (C) is an aunt to Agnes (R); Dilish is the sister of Okello, the father of Agnes.



Land Rights of Each Party:

Dilish (62 years), as an unmarried woman who has returned home, has rights to the land of her father (Mzee).

Agnes (30 years), as an unmarried woman who has also returned home, has rights to the land of her father (Okello).

Description of the Dispute:

Dilish and her three siblings—Etipu (the eldest brother), Adongo (a married sister), and Okello (who, being mentally disabled, does not make decisions for himself)—grew up on their father's land in Atiira subcounty. Unfortunately, their father (Mzee) did not allocate land for his four children before he died.

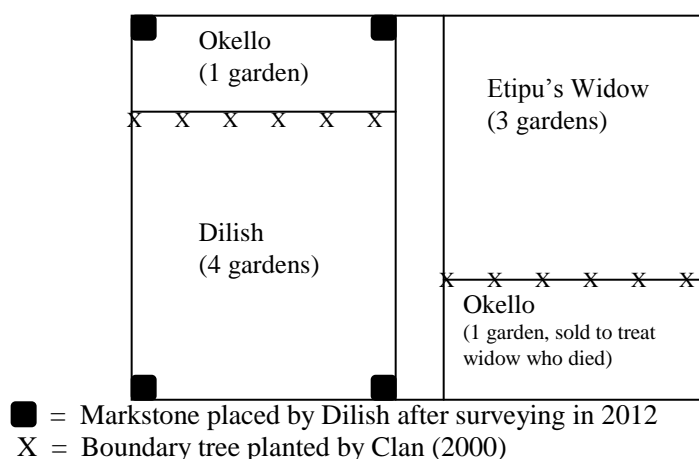
In the course of time, Etipu passed away leaving a widow, Adongo was married off, Okello divorced after producing one daughter (Agnes), and Dilish moved to cohabit with a man in Tororo District. While living in Tororo, Dilish came back to Atiira to collect her niece Agnes and the two returned to Tororo in 1995, where both women gave birth to children outside of marriage: Dilish three, Agnes six. In 2000, Dilish returned home with her children in order to claim a portion of her late father's estate (Agnes would remain in Tororo only to return to Atiira with her own children in 2006).

Dilish's arrival reportedly led to quarrels among the siblings and their families (particularly between Dilish and Etipu's widow), and documents show that the clan sat and divided Mzee's land accordingly, planting *ijumula* along the boundaries:

- Dilish – 4 gardens
- Okello – 2 gardens (1 of which was sold to pay for medical treatment of Etipu's widow, who has since passed away)
- Adongo – none, since she is married
- Etipu's widow – 3 gardens

Dilish was later allegedly held in police custody for two days when she uprooted the trees separating Okello's land from that of Etipu's widow. The case was taken to the clan, where the widow won and Dilish was forced to pay costs. This proved to be especially difficult since Dilish has become the sole caretaker of her six grandchildren (two of her children have passed away, and her remaining son has gone to Kenya looking for work).

Mzee's Land, as divided by the Clan (2000)



In 2006, Agnes returned home to stay with her father (Okello) on his one remaining garden. Both Dilish and Agnes agree that they stayed on the land together without complaint until 2011, when early one morning, Dilish brought surveyors to demarcate the land. Both parties acknowledge that neither the clan, LC 1 Chairperson, nor all interested neighbors were present during the survey exercise. Dilish claims she invited both leaders but doesn't know why they didn't come, accusing Agnes for corrupting the clan in making them not attend. Moreover, Dilish insists that Agnes wasn't present when the clan divided the land and thus doesn't know the correct boundaries (though Dilish admits they are recorded in the clan's book). Agnes, on the other hand, contends that 1) the survey process happened in secret and is therefore illegitimate; and 2) her father's portion was included in the survey measurements.

Dilish argues that Agnes was only apportioned land on the opposite side of the road (bordering the widow of Etipu). However, Agnes claims that the land on the opposite side of the road was sold by her father and Dilish in order to cater for the widow's medical bills. Agnes believes that Dilish, acting as the Head of Family, is taking advantage of Okello's mental disability to claim the land for her own grandchildren (at least 4 of whom are boys), excluding Agnes from any inheritance on the ground that Agnes is badly behaved and moves around 'concubining' with various men. "If

my father Okello wasn't mentally handicapped, he would speak up," she says. Meanwhile, Dilish reports that she has a very good relationship with Okello.

Despite not being able to read or write, Dilish says she is actively pursuing a Freehold Title without any outside help in order to "save the land for the future, for my grandchildren." She reportedly learned about the importance of surveying land in a church function, where a guest speaker taught the congregation that markstones are permanent and thus more secure than boundary trees (*ijumula*) which can be uprooted.

Dilish reported the case to NGO-X in late December 2011, stating that her niece Agnes was trying to grab land that did not belong to her. In February 2012 NGO-X together with the clan mediated between the two parties on the disputed land. NGO-X assessed that Agnes has rights to the land as an unmarried daughter, and the clan took this evaluation as its basis for judging in favor of Agnes. Dilish refused to accept this decision, however, and the next day filed a civil suit against Agnes and their clan leader in the Grade 1 Magistrate Court of Soroti. Agnes says she was just served with notice to come for a hearing in May 2013, the first time she will have gone to court to share her views. NGO-X has since closed the case file under the code 'Referred to Court.'

Residents of the area claim that Dilish has more than 10 cases pending in various courts at the moment, and that she is well known in the community for being litigious and "behaving like a man who has power to do anything." On the day the NGO-X mediator went to assess the case before the mediation, Dilish was found to have arrested and taken to the Subcounty Headquarters several of a neighbor's goats who had allegedly eaten her crops.

Although the matter is still unresolved, Agnes says they still live on the land as they once did, though Agnes now lives within Dilish's survey markstones. Recently, when Agnes gave birth to her seventh child—the baby on her lap during the interview, whose father was also present—Dilish came and celebrated with her. "I still respect Dilish," Agnes says, "since she is my aunt and I know she is fighting for her grandchildren." There is, however, "no freedom" between the two women, and Dilish's younger grandchildren reportedly taunt Agnes when they meet, while the older grandchildren maintain a cold silence. Both Dilish and Agnes acknowledge that tension and fear remains between the two of them, and both women do not rule out the use of witchcraft. Dilish claims that one of her huts was burnt, and the private parts of her 9 year-old grandson were cut, but she is not positive whether these were caused by Agnes or other parties with whom she is disputing.

As for the future, Agnes says that the time has passed for her to be married. "Men won't marry me because I already have seven children. Besides, if I go and marry elsewhere, my kids will be vulnerable." Agnes' children, since they do not know their fathers, must rely on her to inherit land (even if there is only 1 garden to inherit). If Agnes leaves her maiden home, it will be left vacant and able to be taken by relatives who do not appreciate her "children born at home." Thus, the man she is currently cohabiting with says his clan knows Agnes as his second "wife" even though they are not married. When asked whether their newborn child will inherit land from him, he affirmed that "any man who has a conscience must settle down and be responsible"

for the children he produces. Ironically, it seems that failure to do this is what gave birth to this conflict in the first place.

Analysis

This case was selected due to the likelihood of bad faith on the part of Dilish. Warning signs include:

- Surveying land in the absence of both the LC 1 and the clan leader, and not removing survey markstones
- One party (Dilish) has been/is involved in multiple land disputes with others besides the current respondent, and was reportedly arrested earlier for uprooting boundary trees
- Refusal to adhere to NGO-X's neutral evaluation of land rights, instead favoring court (not necessarily bad faith, but a warning sign)
- Relative physical strength in numbers: Dilish has at least four (4) boys of mature age living with her at home, while Agnes only has two (2) young boys

Highlights

- **Family feuds caused by failure to allocate.** When fathers die before allocating land to their children, the siblings are likely to quarrel
- **The clan seems to be passive,** reacting only when crises arise: this clan waited until a dispute arose between Dilish and the widow of Etipu to divide the land and plant boundary trees.
- **Fatherly responsibility.** Clans do not always hold men responsible for caretaking the children they father. If they did, then neither woman would be left with these children to try and claim land from their mother's home. Clans may find it hard to hold such fathers to account when their clan-daughter has moved away out of sight of the clan (i.e., to Tororo).
- **Referral.** NGO mediators may refer cases to court, but the conflict continues on the ground.
- **Between a rock and a hard place.** Having children outside of marriage who don't know their fathers effectively "ties" a woman to her maiden home: if she leaves, she risks the land intended for her children being taken or mismanaged by relatives.

Case #2: Magdalena vs. Musa

NGO-Y and NGO-U
Aduku Town Council, Apac District

Status in File: Referred to NGO; Mediated, No agreement

Status on Ground: Unresolved

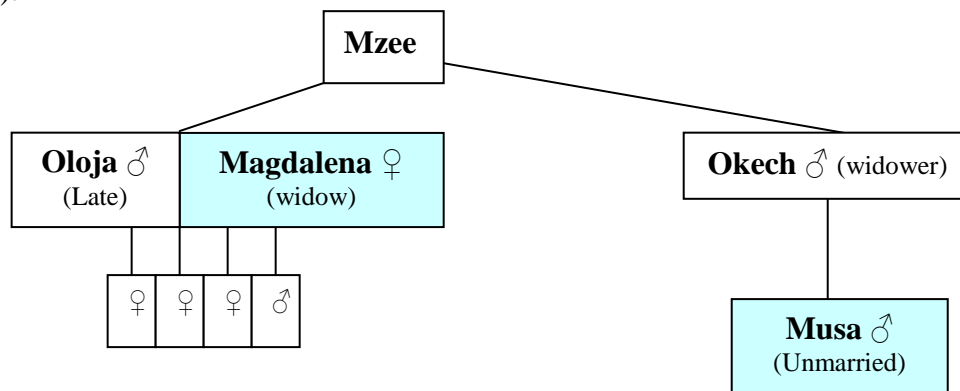
Vulnerability Factors:

Complainant (C): Widow, disabled, elderly

Respondent (R): Political leader (Local Councilor), youth

Relationship of C to R:

Musa (R) is Magdalena's nephew—the son of Magdalena's (C's) brother-in-law (Okech).



Land Rights of Each Party:

Magdalena has customary land rights to her marital land (given to her and her husband Oloja by Mzee upon their marriage).

Musa has rights to land of his father (Okech), but does not have rights to the land of his uncle's (Oloja's) widow.

Description of the Dispute:

Magdalena and Oloja married in 1958 and were given the disputed land by (Mzee), who later died in 1964. The couple lived on the land until Oloja died in 1988, leaving his wife with four (4) children. Immediately after the death of C's husband, Magdalena reports said that Okech and his son Musa, along with other clan members started claiming her marital land—appointing one person to claim land, and if he or she is defeated, appointing another claimant. The clan claims that Musa, a child of the clan, had no land for burying his mother since she was sick and weakly, and deserved to have the land to sell for medical treatment. Musa insists that Magdalena was only left to caretake the land while his father (Okech) was working away from home.

The LC 1 mediated the case on May 6, 2003, and both parties amicably resolved to give Musa a piece of Magdalena's marital land following the clan's request. Musa later sold this plot, however, and began claiming more of Magdalena's land using what she calls "backups" from the clan. With The LC 1 together with a clan leader (Jang Jago) mediated the case again in March 2010, and Musa agreed to leave the land after first harvesting his cassava. The mediation team planted *omara omara* trees along the reinstated boundary.

Afterwards, Magdalena requested assistance from NGO-Y and NGO-U respectively to process a Certificate of Customary Ownership (CCO) for her land. In July 2010, when NGO representatives visited the land to survey it, Musa's wife refused to allow the survey and chased the team away. Magdalena reports that one day weeks later, she found several people offloading bricks and *marram* in one of the gardens which was identified as hers. When the people refused to leave the land, she reported the case to NGO-U, who mediated the case on August 13, 2010. At the mediation, Magdalena agreed to give Musa another small piece of her land.

On January 4, 2011, Magdalena says she found Musa and others standing on the road near her daughter-in-law's garden (part of the marital estate), watching as surveyors took measurements of the daughter-in-law's garden. Magdalena rushed to alert her daughter-in-law, and when two women returned to the garden, they met Musa and some clan members standing on the way. After abusing and insulting the two women, the group of seven (7) people took to kicking, striking, and beating Magdalena with sticks. When the daughter-in-law came to rescue her, she was beaten too. Magdalena says she tried to grab a stick to defend herself, but instead bled and fainted.

At the police station later that day, Magdalena reported the assault and was asked to bring a written statement from the LC 1. She submitted this letter the next day, and police wrote to Magdalena's clan leader (Awitong) asking the clan to mobilize the seven (7) perpetrators for a dialogue meeting. In the meantime, police advised Magdalena to first get medical treatment before they handle the case. Magdalena reported the case to NGO-Y on January 6, and was later admitted in Apac Hospital, where she stayed for three months as a result of a fractured leg. There is no record that the dialogue meeting requested by police took place. Musa made no mention of these events in interviews.

Upon Magdalena's discharge from the hospital in April 2011, NGO-Y invited both parties for mediation. At the mediation, Musa explained that earlier, Magdalena had given him little land, so he felt justified in continuing to use the land anyway. Musa refused to agree at the mediation, claiming that Magdalena was merely left on the land to caretake the estate on behalf of her brother-in-law Okech while Okech was away for work in another part of the country. Musa, a young man who has just completed Senior 6, says that by the time he and his brothers finished school, Magdalena did not welcome them to her home. He explains that Magdalena does not want to give back his father's land because she is bad mannered and "she just does not want us."

The case was then apparently arbitrated by the Awitong (date unsure). Musa explains that when the Awitong divided the land between the two parties, Magdalena had to be "beaten by the clan because she had bad manners and was not respectful." Magdalena insists the clan leader was given a bribe of 4 million shillings and ruled accordingly.

As of June 2013, over two years later, the case remains unresolved. The parties are also not in good terms—as they do not greet each other in passing—and Magdalena says that if her health allowed (she is experiencing medical complications as a result of assault), she would like to "try court" because she feels cheated and says justice is not being done. Musa, on the other hand, is currently using the disputed land and says

he is comfortable with the situation. “The only reason why I appreciate Magdalena,” he says, “is because she did not sell any of the land while we were away.”

Analysis

This case was selected due to the likelihood of bad faith on the part of Musa (R). Warning signs include:

- Launch of the land claim after the death of C’s husband
- Assaults: C sustains a fractured leg and is hospitalized for 3 months after an assault; Beatings continue in a later clan meeting with the Awitong
- In mediation, R acknowledged the land did not belong to him but insisted on using it anyway.
- Offloading bricks and *marram* on disputed land
- Surveying land known to be in dispute without consent of both parties. (It is unclear whether the fraudulent survey resulted in an application for a title, and the status of this application with the Area Land Committee, the District Land Board, and the Registry of Titles in Entebbe.)
- “Bad manners” are not sufficient grounds to claim land

Highlights

- **Land as a “civil matter”.** Police did not investigate the assault case, possibly because it was connected to a land dispute. The protocol of referring to land cases as ‘civil matters’ helps explain why police overlooked the criminal assault and asked the perpetrators—and the very clan leaders who were reportedly biased against C—to mobilize and hold a dialogue meeting. Police asked C to first seek medical treatment before any legal action was taken—as if they needed the victim to be present while they investigated the crime.
- **Patterns.** The results of each successive mediation – that R’s landholding increases while C’s marital estate reduces – reveal a pattern typical of land grabbing: mediate, appease, mediate, appease, mediate...
- **What happens after an illegal survey?** It is not clear what happens to the measurements gathered during the survey of a disputed land, and whether these are used to apply for a title “behind the back” of the other (unaware) person. Since Area Land Committees are known for their pliability in situations of personal profit and their general lack of supervision by poorly facilitated District Land Board, it is possible that fraudulent title applications may be processed without the other party’s knowledge, even where legally proscribed “public notices” for such applications are followed.
- **Referral by (and between) NGOs does not necessarily add value** towards resolution. NGOs and other actors tend to see mediations as one-time-events, rather than a process involving multiple dialogue sessions.

Case #3: Melly vs. Morris & Egur

NGO-V

Usuk Sub-county, Katakwi District

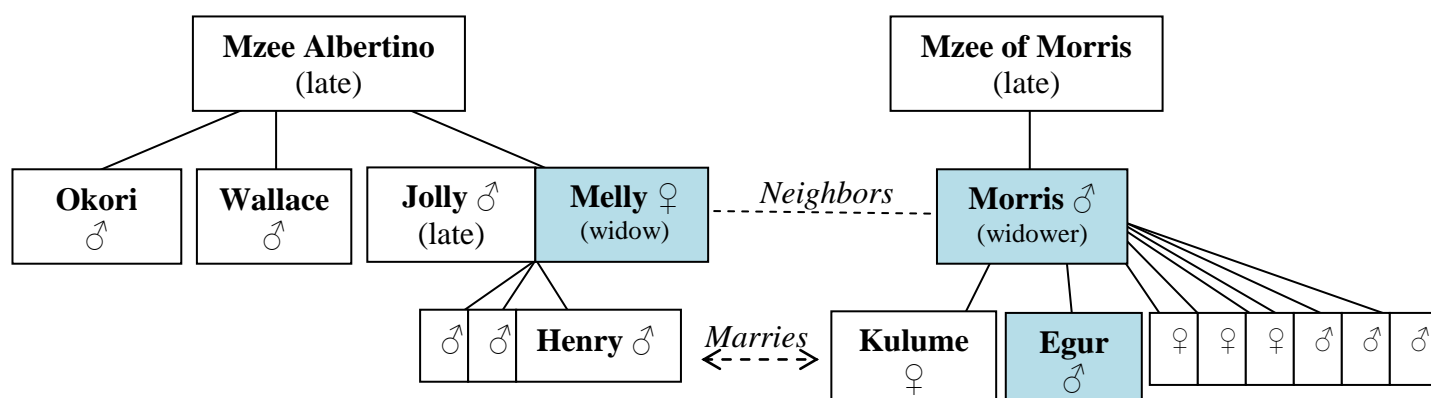
Status in File: Mediated, No agreement; Pending**Status on Ground:** Unresolved**Vulnerability Factors:**

Complainant (C): Widow, elderly, few children

Respondents (Rs): Morris – Elderly, associated with witchcraft; Egur – young and “energetic”

Relationship of C to R:

Melly’s (C’s) son married Morris’ (R’s) daughter. Melly and Morris are immediate neighbors.

**Land Rights of Each Party:**

As a widow, Melly has customary land rights to her marital estate.

Morris has customary rights to the land of his father (who had 11 wives), and claims that his father was the first one to settle on the disputed land, clearing it when it was a bush. Egur and his siblings have land rights to the land of their father Morris.

Description of the Dispute:

Melly’s late husband, Jolly, is said to have been born in the disputed land and inherited it from his father (Mzee Albertino) upon his marriage to Melly some 50 years ago. Morris was born and raised elsewhere, but was later “brought” by a clan uncle to live near Melly and Jolly while recovering from an illness. Morris gave birth to his children (including his son Egur) from here.

The two families lived side by side “as close friends”, according to Morris, with the only disagreements over land between Jolly and Samuel, Morris’ brother. In the hearing of an earlier case between Jolly and Samuel, Morris stood as a witness to testify against Jolly, and believes this may have soured the relationship between the two families. In 2010, Egur and his brothers began clearing a section of land at the boundary and harvested a crop of cassava, apparently without Melly and Jolly’s notice.

Melly says the land conflict arose when Jolly passed away in November 2011. On a Friday in March 2012—when the LC 1 chairman was away for market day—Melly was reportedly clearing one of the gardens that she and Jolly used to plow, when Egur came and beat her with a stick, claiming that the land did not belong to her. Melly reported the assault to police, but no investigation or arrests were made because Melly lacked money to fuel the police motorbike. When the LC 1 returned, he organized a mediation with clan leaders in which the parties reached a settlement and trees (*ijumula*) were planted along the agreed boundary between Melly and Morris' family portions.

In April 2012, Egur allegedly uprooted the newly planted boundary (Egur maintains that the trees died due to “weather conditions”). Melly reported this to the LC 1, who referred her to LC 2. LC 2 mediated the case with leaders from both Melly and Morris' clans present, and the parties agreed and replanted the boundary trees in the same locations as before, with a gap or “no man's land” in between. There was no penalty issued for the removal of the boundary.

Weeks later, when the boundary trees were uprooted again, Melly “abandoned the disputed garden. I didn't want to be beaten again.” Instead, she reported the case to a local organization of women lawyers, who referred her to NGO-V, an active legal aid service provider in Teso sub region. In May 2012, NGO-V came and attempted to mediate. The NGO-V staff mediator (Eunice) explains that when it reached the stage of the mediation to plant new boundary marks, Egur and his brothers became wild and refused to continue the meeting, saying that “If you go ahead, we shall fight.” Heavy rain then disbursed the gathering. It is clear from statements made by Eunice and Morris that Eunice was intimidated by the hostility of Morris' sons who “looked at [Eunice] as a young person of the same clan, with no authority” and “were wild, not respecting their father's desire to compromise.”

As of April 2013, NGO-V had not pursued the case further, and the two families were not relating well. Melly says she has “kept quiet until now. Even if they [NGO-V] refer me to court, I have no money. Anything we had, we sold for the treatment of my late husband... Once your life is threatened, you cannot do anything. You just give up. I think [NGO-V] just gave up, too... Egur saw I have no support now that my husband died. This conflict wouldn't have happened when [Jolly] was still alive. He was strong.” Melly has three children, whose work, she says, “is just to drink... everyone is catering for their own families, leaving me helpless. I feel like leaving that [my marital] place. I want to go back to my [maiden] place. But if I leave, people advise me that the land will be grabbed. When I was attacked, I wanted to go to the grave [of my late husband] and fall in there [with him].” Today, due to the cassava Egur has planted on the disputed land, Melly says she is left with only one garden to cultivate.

Morris, on the other hand, is preoccupied with accusations that he is a practicing witch. Morris began narrating his story to the research team with the assertion that “they think I killed Jolly over this land... they threatened me in the LC 1 hearing: “You shut up, you killed our father!” He insists that he is a “registered local medicine man” only knows herbal medicines that can treat people who have been bewitched. With a smile and averted glance, Morris added, “But doing bewitching to kill someone, I don't do.” The Sub-county Chief of Usuk is allegedly organizing a

community poll soon to determine whether Morris is practicing witchcraft and must leave the area.

The issue of witchcraft features prominently as an underlying concern in this case. Melly and other community members say that Morris bewitched Jolly to death, and that is why, moments after Jolly died, Morris visited their compound and was the first to touch and dress his dead body. (There is a traditional belief that if you've bewitched someone, you must touch their corpse so their ghost does not haunt you.) They also cite how four other men who have complained against Morris' boundary expansions have died mysteriously. The unresolved issue of witchcraft has also therefore had a deterring effect on the NGO mediator.

Analysis

This case was selected due to the likelihood of bad faith on the part of Morris and his son Egur. Warning signs include:

- Timing: conflict begins four months after the death of C's husband
- Assault/beating in the garden
- Uprooting of boundary trees (twice)
- Mediator's testimony of being threatened and intimidated to the point of no return

Highlights

- **The lack of consequences appears to invite reoffending.** Morris and company faced no penalty for the uprooting of boundary trees, and were thus emboldened to continue the practice until the other party gave up.
- **Settlement is different than resolution.** Twice, clan leaders seemed to be effective in settling the dispute, but these settlements did not resolve the underlying motive or the roots of parties' bad faith. Thus, when they left the scene and/or forgot about the case, Egur's encroachment persisted.
- **Successful intimidation of the field mediator** – with no subsequent follow-up by the NGO – sends a signal to the Respondents that they are free to use the land as long as they physically can. It also affirms the Complainant's feelings of helplessness.
- **Threats of witchcraft**, especially those confirmed in community members' minds by strange actions, create a climate of fear for land grabbing to thrive. It may also serve as security for perpetrators who, once exposed, ward off potential consequences with the threat that whoever issues the punishment will be charmed.

Case #4: Neighbors vs. Apong Family

NGO-W

Pailyec Subcounty, Amuru District

Note: Only Complainants were interviewed. The Apong Family is widely reported to be grabbing land from multiple families in their remote subcounty with the backing of a powerful security officer. Upon receiving the interview invitation letter delivered by the LC 1 Chairperson, members of the Apong family not only declined to be interviewed, but 16 of them held the LC1 and his boda driver hostage at spearpoint for over 5 hours, threatening to “beat the hell out of” them if they did not confess who sent them.

CASE 1 of 2 – Okot vs. Apong Family

Status in File: Pending, Mediation attempted but no-show

Status on Ground: Unresolved; C is displaced

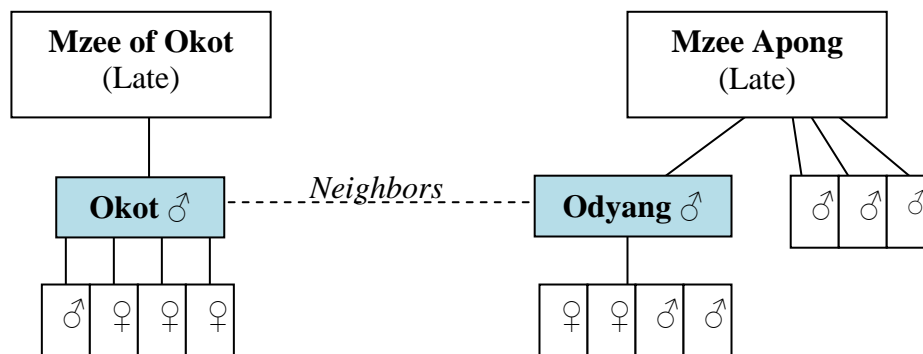
Vulnerability Factors:

Complainant (C): Poor migrant (C’s family is from Madi)

Respondent (R): Uncle is a Senior Regional Police Officer

Relationship of C to R:

Okot (C) is a neighbor to Odyang, the elder son of Mzee Apong (R).



Land Rights of Complainant:

If it is true that Okot and his father migrated to the disputed land – and “cleared the bush” – when it was vacant and unclaimed in 1982, then Okot has rights to his father’s land. Okot claims that Mzee Apong similarly arrived in the area in 1984 and set up on the other side of the river because it was vacant and unclaimed.

Description of the Dispute:

Okot claims that in 1982, his family moved from the land of Madi to this place, which was vacant and uninhabited. He says that Mzee Apong arrived in 1984 and set up with his family on the other side of the river because it was also vacant. The two families reportedly lived peacefully side-by-side with no problems until Okot’s father died in 2007. Odyang and his brothers, sons of Mzee Apong, approached Okot and told him to leave because the land belonged to their “family farm”, evidence of which Okot insists he has never seen. Mzee Apong died in 2011, and months later, Odyang and

brothers came and burnt 11 houses belonging to Okot and “took everything that was at my home” at the time. Okot reports his family escaped narrowly but left the land for fear of their lives.

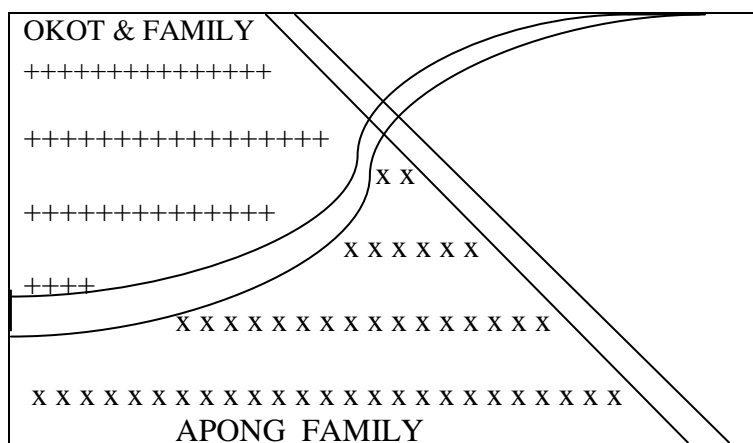
Okot says he reported the arson and malicious damage case to the police and the LC 2, but when police came, they made no arrests. Rather, Okot recalls how the Apong family members attempted to drag the LC 2 from the police car and beat him up, to teach him a lesson so that he no longer receives complaints from people who go ‘bad mouthing’ their family to the local leaders. The LC 2 has since not pursued the case.

A paralegal of NGO-W learned of the case and called for a mediation meeting, but Okot says that he and his family feared a reprisal attack so did not attend on the scheduled day. Okot reports that “from what we hear, the witnesses talked at the mediation and NGO-W advised the Apong family to leave [the disputed land], but they refused saying that the land is theirs.”

Today, Okot and his family are afraid to return to the disputed land where they once lived, since members of the Apong family are seen scouting around the disputed land with hunting dogs, spears, and machetes, threatening to harm anyone who stands in their way. Okot believes that Odyang’s uncle, a Senior Regional Police Officer, is behind their every action, sponsoring bribes of local leaders when needed and instructing subordinate police officers to not act upon anything that Apong family members do. “The just recently deceased DPC Amuru, on many occasions, was heard saying that he has received calls from Kampala,” explains Okot, “telling him that if he interferes with the Apong family’s case, he will lose his job.”

Okot would like to take the Apong family to court, but is hesitant because his family has an extremely low income: “There is nothing we can do. We even fear that the regional officer can compromise the court proceedings even if we were to make it [to court]. So everything we could do is actually futile.”

Map of the disputed land



Okot went on to describe the prospects for the future:

“If the government does not take action in attempting to resolve this conflict, we are already poor and we don’t have anything more to lose. They have already yielded machetes and spears at us. We too have spears and machetes of our own. If no sensible forum can be organized to listen to us, we will also pick our spears and machetes and we go and solve this land dispute as man to man. The person who lives after the fight gets to keep the land.”

CASE 2 of 2 – Francis vs. Apong Family

Status in File: Pending, Mediation attempted but no-show

Status on Ground: Unresolved

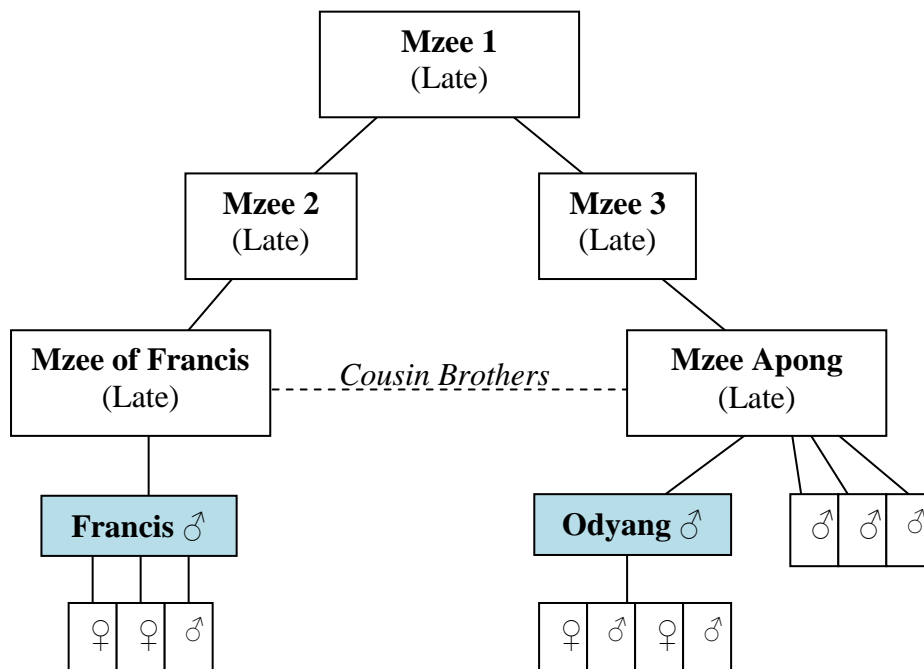
Vulnerability Factors:

Complainant (C): Younger, poor, unable to read/write, did not attend Primary 1

Respondent (R): Older, wealthy, lives in Kampala

Relationship of C to R:

Francis (C) and Odyang (R) are clan brothers: Francis’ father the late Mzee Apong (Odyang’s father) were cousin-brothers. Years ago, Francis’ mother reportedly nursed Mzee Apong when he was ill.



Land Rights of Complainant:

Francis has land rights to the land of his father, and says this is his childhood home and his family’s ancestral land. His mother’s grave is reportedly located on the disputed land. The grandchildren of Mzee Apong (children of Odyang) allegedly claim that their grandfather bought the disputed land from Francis’ father a long time ago, but have yet to produce documents to prove the land sale took place.

Description of the Dispute:

Francis and Odyang (elder son of Mzee Apong) are clan brothers. During the LRA war, Francis ran to the camp to take refuge. Upon return in 2009, Francis says he began rearing cattle on his original land, but Odyang and his brothers told Francis to leave the land, claiming that their late father (Mzee Apong) bought it some time back from Francis' father. By the time Francis and Odyang left the camp, however, both fathers had died. Odyang and his brothers reportedly came later and destroyed the *kraal* that Francis had erected and cut down the trees Francis' father had planted.

Francis took the case to the Secretary of Rwot Kweri, who unfortunately died before handling the case. Francis explains that Odyang and his brothers threatened to kill him and took the case to the LC 1, but the Respondents chased away the LC 1 using bows and arrows. The LC 1 has not pursued the case further. They have even erected "road blocks", Francis reports, to intimidate each of the neighbors that border the Apong Family. No mediation has been attempted, although NGO-W paralegals are aware of this and other similar cases with the Apong Family.

Francis is concerned that, since police have made no arrests in light of the crimes committed, Odyang and his brothers are being used by some "top people in Government" to grab land in the area. Although Francis and his family have left the area out of fear, the disputed land is said to be vacant and idle after four (4) years of dispute.

Further note: *In a separate case with another neighboring family, the Apong Family claimed that Mzee Apong had leased that land to the neighbor's late father, but had no documents to verify such a 'lease.'* After six years of wrangles, the neighbor reports that the case is settled and he is using the land – but due to the minimal and guarded nature of this neighbor's statements, it is unclear what the terms of this settlement are.

Analysis

This case was selected due to the likelihood of bad faith on the part of Odyang Apong and his brothers (Rs). Warning signs include:

- Launch of the land claim after the deaths of both the buyer and seller/lessor, with no accompanying documentation
- Trend of several similar cases reported by neighbors of the Apong Family
- Malicious damage of property (destruction of crops, huts, kraal) in both cases
- Alleged support of a powerful, invisible hand in Government/Security Offices
- Holding LC 1 + boda hostage at spearpoint when delivering letter requesting an interview
- Reported defiance against/physical assault of local leaders – LC 1 and LC 2 – to the extent of intimidating them from pursuing the case
- Aspect of fear and terror – to the extent that Okot and family avoided the NGO-W facilitated mediation because of lack of security/safety

Highlights

- **Selective enforcement.** Police have not made arrests in either case—unusual in light of the volume of crimes committed and the concentration of similar incidents in the area.

- **Local leaders intimidated into submission;** thus no hearing and no justice.
- **Lack of security/safety/witness protection** must be considered when facilitating a mediation.
- **Where to report?** Some complainants know the name of the “invisible hand” that makes the Apong Family “untouchable” – but they do not know where or how to use this information to stop crimes.
- **Use of destructive force and regular displays of power** (hunting dogs, spears, machetes, etc.) are effective in displacing rights-bearers from the disputed land.
- **Guarding for a reason.** Even after evicting the families of Francis and Okot, the Apong Family appears to merely be “guarding” the land with dogs, spears, etc. for an unknown purpose.

Case #5: Dawiya Clan vs. Dungo Clan

NGO-T

Padibe East Sub-county, Lamwo District

Status in File: Mediated/Arbitrated: Settled

Status on Ground: Appealed against/Case filed in Kitgum Magistrate Court; Unresolved

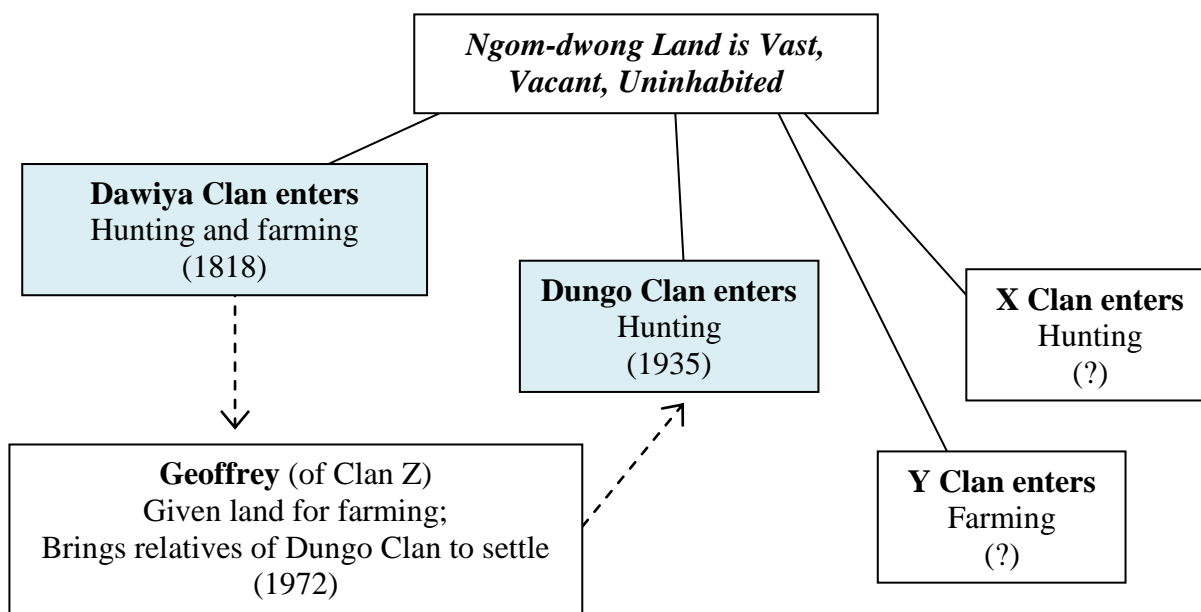
Vulnerability Factors:

Complainants (Cs): Not clear

Respondents (Rs): Have clan “sons” who occupy senior political offices in the District

Relationship of C to R:

Dawiya (C) and Dungo (R) clans have been intermarrying for generations. The Dawiya welcomed a certain Geoffrey (of Clan Z) to cultivate a portion of the land in 1972, who then invited his brothers-in-law from Dungo clan to settle there with him.



Land Rights of Each Party:

The communal land, named Ngom-dwong, is shared by multiple clans—each of whom has a different oral account of how they entered and claimed their respective portion. Under Acholi custom, rights to previously unoccupied or virgin lands are gained by clearing the bush or by multi-generational use. Depending on the oral rules associated with the land, all clan members may have a right to use the communal land.

Description of the Dispute:

Members of the Dawiya and Dungo clans recount different histories of how their great grandfathers came onto Ngom-dwong land. The land (originally used for hunting and farming) is shared by multiple clans – each of which settled in the land at different points of history – so the boundaries of each clan’s territory are said to be customarily marked.

Over the past 50 years, different boundary disputes between clans have been settled—notably between Dawiya and Clan NGO-X in 1979. But in 1998, during the Lord’s Resistance Army (LRA) insurgency, a new disagreement arose between the Dawiya and Dungo clans when members of Dawiya reportedly “noticed” that Dungo farmers had encroached past the boundary set in 1972 (when Dawiya gave land to a man named Geoffrey who later invited his brothers from Dungo to settle near him). Dawiya clan brought the matter to the LC 1, which reportedly investigated, but stopped short of giving a ruling due to written instructions from the LC 3 that LCs should not handle land cases but should instead wait for District Land Tribunals to be formed. Dungo members are said to have withdrawn from the land for the next nine years due to insecurity and the movement of people to internally displaced persons (IDP) camps.

Tensions reignited in 2007 when members of both clans began leaving IDP camps and returning to their “ancestral lands”. Dungo clan members claimed that their grandfathers had used part of Ngom-dwong land since 1935, while Dawiya insisted that the 1972 boundary was the correct demarcation and that the rest of the area belonged to Dawiya.

With ongoing mineral discoveries in Lamwo district, each party suspects the other of claiming the land in order to sell it for private gain. The Dawiya are confident that senior local government officials which hail from Dungo clan are supporting their fellow clan members to acquire land which had been left idle during displacement. Dungo members, on the other hand, argue that Dawiya is teaming up with Clan NGO-X to outnumber Dungo clan and forcefully exclude the Dungo from the whole of Ngom-dwong.

Members of the Dawiya clan first reported the case to the LC 2 in 2007, but agreed to use an LC 2 of a parish different than the one in which on Ngom-dwong is located in order to avoid perceived bias. Dawiya members explain that on the day evidence was presented before this court, three elders from clans NGO-X, NGO-Y, and NGO-Z testified that the disputed land belonged to Dawiya clan. But the next day, when the judgment was to be delivered, the elders are said to have cancelled their statements and instead supported Dungo clan. The LC 2 heeded their testimony and ruled in favor of Dungo.

Unhappy with this surprise ruling, Dawiya members asked the LC 2 for a letter of appeal in August 2007, which the LC 2 reportedly refused to provide. Dungo members recall that during this time, the Dawiya did not appeal but continued cultivating the disputed land.

In September, police of the Local Defense Unit (LDU) arrested 15 members of Dawiya – 2 for possession of firearms and 13 for what they say are unclear reasons related to the dispute. This group remained imprisoned for two weeks and appeared before the Chief Magistrate Court in Kitgum, where in 2008 the case was eventually dismissed and advised the parties to file a fresh suit over the land issue. One female Dawiya clan leader explains,

“While our clan members were arrested, we felt very bad for these people taken to prison. They had responsibilities and dependants at home. It is not good to arrest people in big numbers, take them to stay in prison without clear evidence... It broke the relationship

between Dawiya and Dungo – nobody feels comfortable with the other. If only one clan is arrested, but the other is at home, relaxed and farming, it is not good for the relationship.”

The Dawiya clan retreated from the disputed land until 2010, when they followed the Chief Magistrate’s advice and opened a civil land case with the help of an advocate. Yet Dawiya members feel that this advocate soon became biased against them—evidenced by his taking up the Dungo clan as a client in a separate case and his “dodging” of Dawiya clan members’ communication efforts. The same lawyer later wrote a letter of injunction stopping either clan from using the land until the case was heard—though Dungo clan members continued cultivating the disputed area.

In early May 2012, Dawiya clan members reported the dispute to the Rwodi of Ker Kwaro Acholi (KKA). Dungo clan members reportedly refused the Rwot’s summons due to the fact that the case was in court, which KKA acknowledged and took no further action.

After finding no success with KKA, Dawiya members reported to the LC 3, asking him to write a letter to the LC 2 demanding release of the letter for appeal from the 2007 case. This letter was given, and Dawiya filed a case with the LC 3 court. Both clans appeared for the initial hearing, but upon learning the history of the case, the LC 3 Chairperson determined that the 2007 case was not heard in the correct jurisdiction (since the LC 2 was not of the same parish as Ngom-dwong), so he confiscated the LC 2 ruling and referred the appellants to the correct LC 2. Unfortunately, when this LC 2 summoned both parties to come and give their statements, Dungo clan members refused to come.

“We were totally confused,” says one elder of Dawiya clan, “so we returned to begin working on the land. We told Dungo ‘you’ve been using this land for several years, but it is time for you to leave.’” In response, Dawiya claims that members of Dungo organized with hoes and pangas to beat women and children at home in the morning while men were away in the fields. The men of Dawiya learned of this and ran home to defend their families, and police arrived to “rescue the situation.” At least 8 people were injured.

Four days later, the clans reorganized and ambushed each other with pangas, bows, and arrows, causing many injuries and requiring another round of police intervention. Upon arrival that morning, police officers found they could not contain the situation, so they returned in the afternoon with an emergency response team involving district officials, senior police officers, politicians, and NGO-T. The group moved on foot from the Town Council Headquarters to the site because the police had no fuel for their vehicle.

When the violence had cooled, the emergency response team and the two clans scheduled a preliminary mediation session. This meeting, held on May 25, 2012 at the Town Council Headquarters, featured five core representatives of Dungo and Dawiya clans respectively, and resulted in an agreement to use no more violence until the case was resolved.

The emergency response team reconvened a larger mediation session to inspect the disputed land on June 6, 2012. Neighboring clans (X, NGO-Y, and Z) were invited as

witnesses and led the showing of the boundaries. All of these elders were said to verify the 1972 boundary, and the facilitators resolved that the disputed land belonged to Dawiya. Participants feel that the presence of law enforcement officers at the mediation session helped to prevent fighting during the session.

Dungo clan members were not pleased with either the process or the outcome of the “mediation/arbitration”. As one Dungo elder remarks, “There was nothing good got from the mediation” because “we felt forced to mediate” and “[Dawiya] clan got the land.” He and his clan members were concerned that the mediation panel featured no representatives of Dungo: “We don’t know who selected them, and how they were selected.” Moreover, Dungo clan members were unsure as to what was actually decided, citing the fact that the panel made no clear demarcation of the boundary. “They did not make a specific ruling. They just told us to form a delegation to find a way of sharing the land... the mediators should have made their decision very clear.”

On June 7, 2012, when Dawiya clan went back to digging the disputed land, Dungo members filed a case in the Kitgum Chief Magistrate Court. The case has been pending there since. Dungo feels it has “lost our chance to mediate with Dawiya” and that “court can make a clear ruling to divide the land.” On a monthly basis, a delegation from each clan travels to court, where the case is usually postponed to a future date.

It appears that, although the agreed ceasefire remains intact, the very situation described by the female Dawiya clan leader is repeating itself: Dawiya freely cultivates the disputed land while Dungo members feel they are suffering unjustly. Future ADR interventions must resolve these added layers of grievance in addition to the underlying interests of the individuals who may have turned the dispute into a clan-wide affair.

Analysis

This case was selected due to the likelihood of bad faith on the part of both Dawiya and Dungo clans. Warning signs include:

- Threats, violent assaults, injuries committed by members of both clans
- Credible reports of interference by local government officials
- Accusations of bias/bribery—especially in the LC 2 case in 2007, where the LC 2 reportedly refused to supply Dawiya a letter of appeal (obtained only years later via written request from the LC 3)

Highlights

- **Jurisdiction.** Ngom-dwong is a large piece of communal land owned by multiple clans and villages. If such a piece of land spans several Local Council jurisdictions, where is the appropriate court? This technicality contributed directly to frustration of the parties and worsened inter-clan tensions.
- **This dispute is not between two clans.** Other third-party clans, such as Clan NGO-X, feature prominently in the history of the dispute and have an interest in the administration of the land. To prevent future conflicts and protect the resources of Ngom-dwong for future generations, all owners of this communal land—from various clans and villages—should come together to envision how best to manage the land in the interests of everyone.
- **Equality is paramount** in parties’ eyes. Imprisonment of a group of members from

only one clan damages relations between opposing clans. Likewise, parties may see asymmetric use of disputed land as unfair.

- **The instructions for IDPs to “return to your original (ancestral) homes”** may have been misunderstood or exploited to facilitate the claiming of land which ancestors used long ago but had since migrated away from.
- **The two parties did not understand the outcome of the mediation in the same way.** One felt that a ruling was given (arbitration), while the other felt that the mediation process would be continued to find a “win-win” sharing of the land.
- **Composition of mediation team.** A team-approach to mediation seemed to be effective in getting the attention of warring clans. Yet lack of transparency in the selection of this panel left room for doubt in the minds of Dungo clan members.
- **Giving it time.** The mediation team felt that two (2) mediation sessions were enough to resolve all of the inter-clan issues; Dungo feels it could have benefited from more rounds of mediation instead of “being forced to mediate” in a quick manner.



Case #6: Joy vs. Ongom & Akero

NGO-U

Lira Municipality, Lira District

Status in File: Mediated twice; Agreement reached

Status on Ground: Resolved, but one party considering court

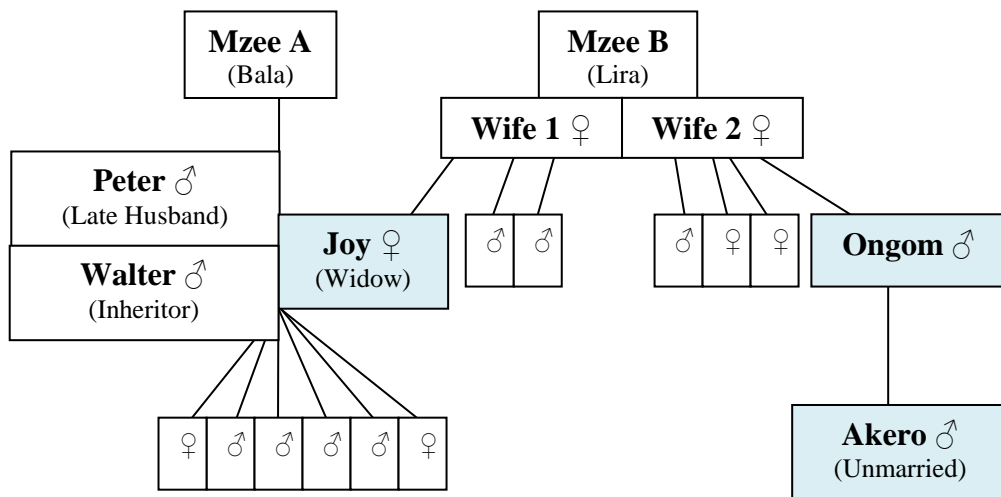
Vulnerability Factors:

Complainant (C): Widow, elderly

Respondent (R): Youth

Relationship of C to R:

Ongom (R-1) is Joy's (C's) step-brother. Akero (R-2) is Joy's step-grandson.



Land Rights of Each Party:

Joy has customary rights to her marital land (given to her and her late husband by Mzee A upon their marriage in Bala). She maintained rights to this land even after being “inherited” by her brother-in-law. All the children she has produced have rights to Joy’s marital estate.

However, Joy also has land rights to the portion that her father (Mzee B) gave her upon relocation to her maiden home in Lira.

Ongom has rights to land of his father (Mzee B). Akero has rights to the land of his father (Ongom).

Description of the Dispute:

Joy and Peter married in 1957 and were given land in Bala by Mzee A (Joy’s father-in-law). The couple lived on this land for seven (7) years until Peter died in 1964. As a young widow, Joy reportedly “got problems with” her in-laws upon Peter’s death, so relocated herself and her three (3) children back to her maiden home in Lira, where her biological father (Mzee B) gave her a portion of land outside the town to settle on and cultivate. One elder explains that at first, her clan advised her to return to Bala and claim land from there, but since the in-law clan was adamant and refused to receive Joy again, the maiden clan “just decided to keep our sister” in Lira.

In 1969, Joy met Walter, a clan brother of her late husband, who later cohabited with (aka “inherited”) her at her maiden home. Together, they produced three (3) more children. Joy now had six children which would need land in the future.

When it came time for Joy’s eldest son to inherit land and start his own family, he tried to return to Bala to reclaim his father’s land. Upon arrival, however, he learned that this land—which was idle while Joy and her children lived in Lira—was since “given” to the Rwot of Peter’s clan. Uncles (Joy’s in-laws) chased the boy away, forcing him to buy land elsewhere, which he later did in Kole.

Meanwhile in Lira, Joy’s father (Mzee B) passed away during the LRA insurgency. In 2008, her step brothers (sons of her father’s co-wife) began disputing with her, Joy says, over their father’s decision to divide such valuable land—now located within the expanding limits of Lira Municipality—to his widowed daughter. Her step-brothers, led by Ongom, argue that what caused the dispute was Joy’s attempt to sell certain plots (which had since become valuable) without the consent of other family and clan members.

In May 2008, Joy reported her brothers’ refusal to allow the land sale to NGO-U, which referred her back to her clan to sort out the dispute. Several meetings were held, and on October 16, 2008 the clan arbitrated and ruled that the disputed land belonged to Joy. It is not clear what the clan decided regarding the sale, but testimony from Ongom and other clan leaders present in the interview insist that the clan recognized Joy’s right to use the land, but not to sell without proper consent.

The conflict resurfaced again when Joy attempted to finalize sale of the Lira plots. In January 2009, NGO-U delivered a “Notice of Intention to Sue” on behalf of Joy to Ongom and his brothers stating that they should “expect no further warning”, to which the Respondents wrote a cordial reply explaining that they were not interested in court and were willing to mediate. NGO-U accepted this and promptly organized a dialogue meeting for February 23, 2009. In the meeting, NGO-U “sensitized” the group about the rights of women and arbitrated that Joy’s land was hers to dispose of as she wished. The brothers, although dissatisfied that the disputed land had been converted from customary tenure into freehold without the clan’s consent, accepted this instruction and allowed NGO-U to demarcate the disputed plots. Ongom revealed in an interview that he and his brothers simply did not want to face their sister—and NGO-U’s lawyer—in court.

With the dispute resolved, Joy sold plots in April 2009 and again in 2012 to separate investors for 15 million and 7 million UG shillings, respectively. With the money, Joy says she purchased another piece of land in Bala, paid school fees for her children and grandchildren, and raised *luk* (a customary fine) for her grandson Akero who faced defilement charges for producing a child with a young girl out of marriage. She now shares the remaining portion, a half-acre plot, with various sons and grandchildren and is reportedly on neighborly terms with her step-brothers, who live nearby. Notably, however, Joy reported to NGO-U another land wrangle with her grand-nephew Akero, which was reportedly dismissed in March 2013.

Ongom and his brothers are no longer disputing with Joy, but are quietly disgruntled by the situation today. They recall that “custom doesn’t allow the sons of marriage to

inherit their mother's maiden land" and reason that the problem started when the children from Joy's marriage grew up in Lira, far away from the land they were entitled to inherit from their father in Bala. "These children do not belong here," Ongom concludes. "I thought it [the arbitration] wouldn't happen the way it has. NGO-U is good, but there are some widows who are so problematic and dangerous. If you give them land, they fall in love with money and begin selling the land, then disturbing and asking for more. They only defend that they are widows, and NGO-U supports them since they're widows. NGO-U sometimes does not consult the clan leaders."

Ongom and the *Jang jago* of Joy's maiden clan are now considering suing the clan of Bala to claim the land rights of Joy's children so that they "don't cause more problems here." Yet later in the interview, participants deduced that "the problem is not the children, but the clan. Is the clan proactive to make sure that kids get land where they belong?"

Analysis

This case was selected due to the likelihood of bad faith on the part of Joy's in-laws in Bala and Joy herself. Warning signs include:

- Repeatedly denying a widow and her children rights to her marital estate
- Insisting on selling customary land without consent of the clan

Highlights

- **One case is settled, but another is born.** Joy's dispute with Ongom and her maiden clan is now resolved, but the clan's realization that the in-laws in Bala acted wrongfully has prompted another court case. In this way, NGO-U's intervention served to divert, rather than eliminate, conflict.
- **NGO-U supported Joy without carefully probing** to find out the source of the conflict. Otherwise, NGO-U would have called both the Bala (marital) and Lira (maiden) clans together to determine the land rights of Joy's children, which may have prevented a court battle between the Lira and Bala clans.
- **Ripple effects.** Bad faith on the part of a third party – i.e. Joy's in-laws in Bala – has negative ripple effects, as seen in Joy's children's struggle to claim the land they were due to inherit.
- **Clan was previously "relaxed"** when Joy brought children home and made minimal efforts to engage the Bala clan to cater for future inheritance of the children.
- **Tenure change?** It is not clear how the customary land Joy received from her father became a Municipal plot held under freehold tenure, since neither NGO-U's records nor interviewees mentioned Joy obtaining a title.
- **The role of an inheritor is to protect the widow** from being chased away from her marital home – but this was apparently left undone. It is also unclear why Walter, Joy's "inheritor" (late) did not marry her and take her and the children to live with him, but rather came to live with Joy at her maiden home.

Case #7: Rupert vs. Jok-kene & Sons

NGO-Z

Paicho Subcounty, Gulu District

Status in File: Pending, Not yet mediated

Status on Ground: Unresolved

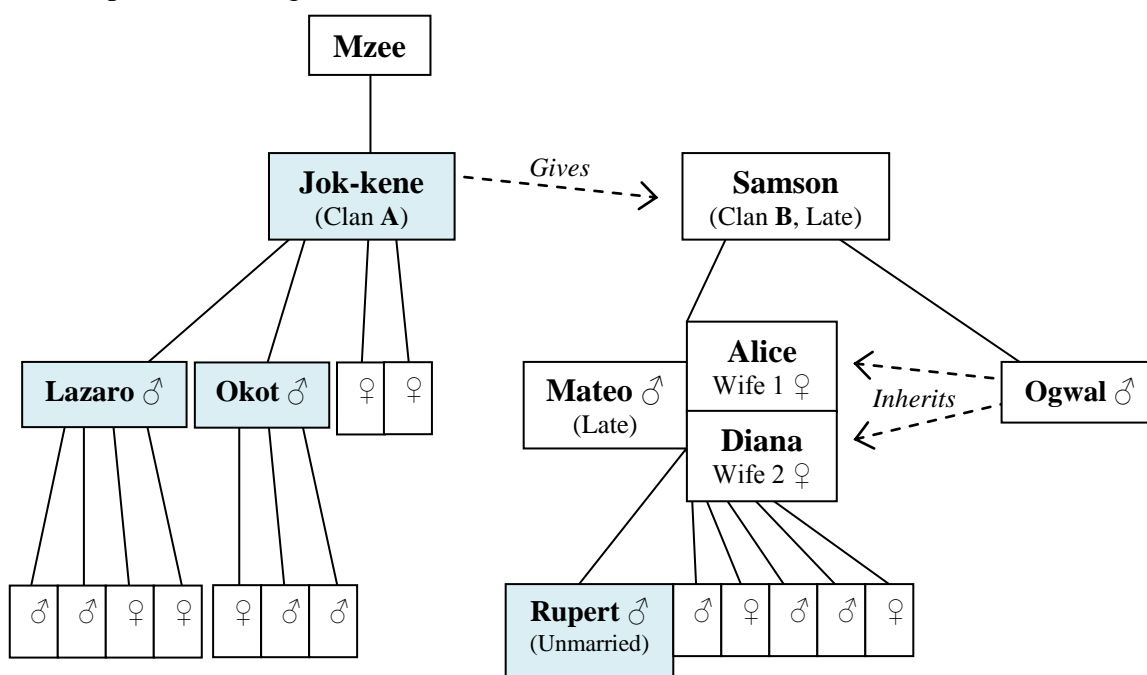
Vulnerability Factors:

Complainant (C): Youth (26 yrs old), of migrant/minority clan

Respondent (R): Elderly (nearly 100 yrs old), of majority clan

Relationship of C to R:

Jok-kene (R) and the late father of Rupert (C) were friends. Though not of the same clan, both parties are neighbors.



Land Rights of Each Party:

Rupert and his siblings have customary rights to the land of their late father (Mateo).

Lazaro, Okot, and their siblings have rights to the land of their father, Jok-kene, who has rights to the land of his father (Mzee).

Description of the Dispute:

Samson hailed from Clan B and was originally from across the river in Pader. But in 1963, Jok-kene of Clan A welcomed Samson and his family, giving them land on the other side (in Paicho) on which to settle. Since land was plentiful in those days, no boundaries were placed to demarcate the land and no terms of the gift were written. The families lived side by side under this verbal understanding as both families grew in number.

When Mateo, Samson's eldest son and the former *Rwot Kweri* of the area, was killed by insurgents in 1988, his younger brother Ogwang inherited his two wives. Shortly thereafter in 1998, fighting between the government and the LRA rebels displaced

Samson and his surviving children and grandchildren (Samson would eventually pass away in the camp). Members of Jok-kene's family boldly decided to remain on their land during this time.

The surviving members of Samson's family returned home from the camp in 2008. Upon arrival, they discovered that Jok-kene had sold the land where they had settled to one Abednego (a clan-mate of Jok-kene), who had since installed beehives throughout the land.

Rupert (Samson's oldest grandson) reported the case to the *Rwot Gang*, who held a meeting to discuss the matter. When questioned about the sale of land to Abednego, Jok-kene allegedly told Rupert and his siblings that "I'm the one who gave the land to your grandfather, so I can take it back... you should look for land elsewhere." (In interviews, Lazaro and Okot (sons of Jok-kene) made a similar statement: "This land was given [to Samson] as a gift. But if you turn out to be stubborn, we can chase you".)

In response, Rupert approached both the RDC of Gulu and Subcounty Chief of Paicho, who wrote letters authorizing the LC 2 to hear and decide the case. The LC 2 carried out these instructions, and on May 31, 2008 ruled that since the disputed land belonged to Samson's descendants at the time of displacement, Jok-kene's sale was null and void. Jok-kene apparently accepted this decision for some time, and gave Abednego (the buyer) an alternative piece of land. The beehives were also removed.

The dispute resurfaced in 2009 when neighbors from Clan A (allegedly sent by Jok-kene) began encroaching on Rupert's family land. Lazaro (Jok-kene's eldest son) eventually reported Rupert to the LC 3 court, which ruled again in Rupert's favor. Although dissatisfied with this outcome, Jok-kene and his sons did not appeal the ruling. Boundaries of the disputed land were apparently not marked.

Relations between the two parties remained strained for the next four (4) years. Tensions reignited in 2013 when Rupert and his brothers began making profit from stone they had quarried from the disputed land. On March 7, Jok-kene and sons reportedly entered the land and insulted Rupert and his siblings while they were quarrying, reminding the youth that they are few in number and "useless" compared to the size of Clan A, and that "if we kill you, nobody will care." Similarly, on May 9, Jok-kene's sons reportedly came to the quarry site with pangas and chased Rupert, his siblings, his mother Alice, and her co-wife Diana away, demanding that they leave and never return to this land.

Rupert did not report this incident to police, he says, because his family lacked money to pay them to visit their remote village. Instead, he reported the dispute to NGO-Z in Gulu town, who registered the case and issued Jok-kene and sons with a Letter of Intention to Sue stating "Expect no further notice!!" dated May 13, 2013. The same letter also requested a dialogue meeting to demarcate the boundaries of the disputed land.

Lazaro and his siblings received this letter – and the research team which arrived a few weeks later – with understandably great suspicion. He and his brothers explain that "this land was given to their [Rupert's] grandfather. They also have land on the

other side of the river; not their whole clan has come [to Paicho]. We can still do anything.” Earlier in the interview with Lazaro and Okot (Jok-kene was not present), the brothers stated that their clan was considering chasing Rupert and his family from the entire area by destroying their huts, citing differences in clanship and the understanding that the land was ‘lent’ to Samson’s family in the 1960s—not ‘given’ as such. Besides, they say, Rupert is acting as the head of family—instead of Ogwal, the inheritor. There is also confusion as to whether a portion of the disputed land originally “shown” to Samson is actually communal farming land shared by multiple families.

“I think Jok-kene believes that since the person who he gave the land to (Samson) is no longer there, he can take back the land,” Rupert figures. “He just wants to sell it off to different people – he’s already sold two other portions.” Samson’s descendants look forward to NGO-Z’s intervention, they say, because it does not charge fees and will come and teach everyone what the law says regarding land gifts. In the meantime, however, Rupert’s final question of the interview reveals his ongoing thought process: “If someone steals what belongs to you, and you go and grab it back, who is in the wrong?”

Analysis

This case was selected due to the likelihood of bad faith on the part of Jok-kene and his sons. Warning signs include:

- Retracting a land gift after the head of family has died
- Ongoing threats of violence, intimidation
- References to “our-clan-only” territorial claims

Highlights

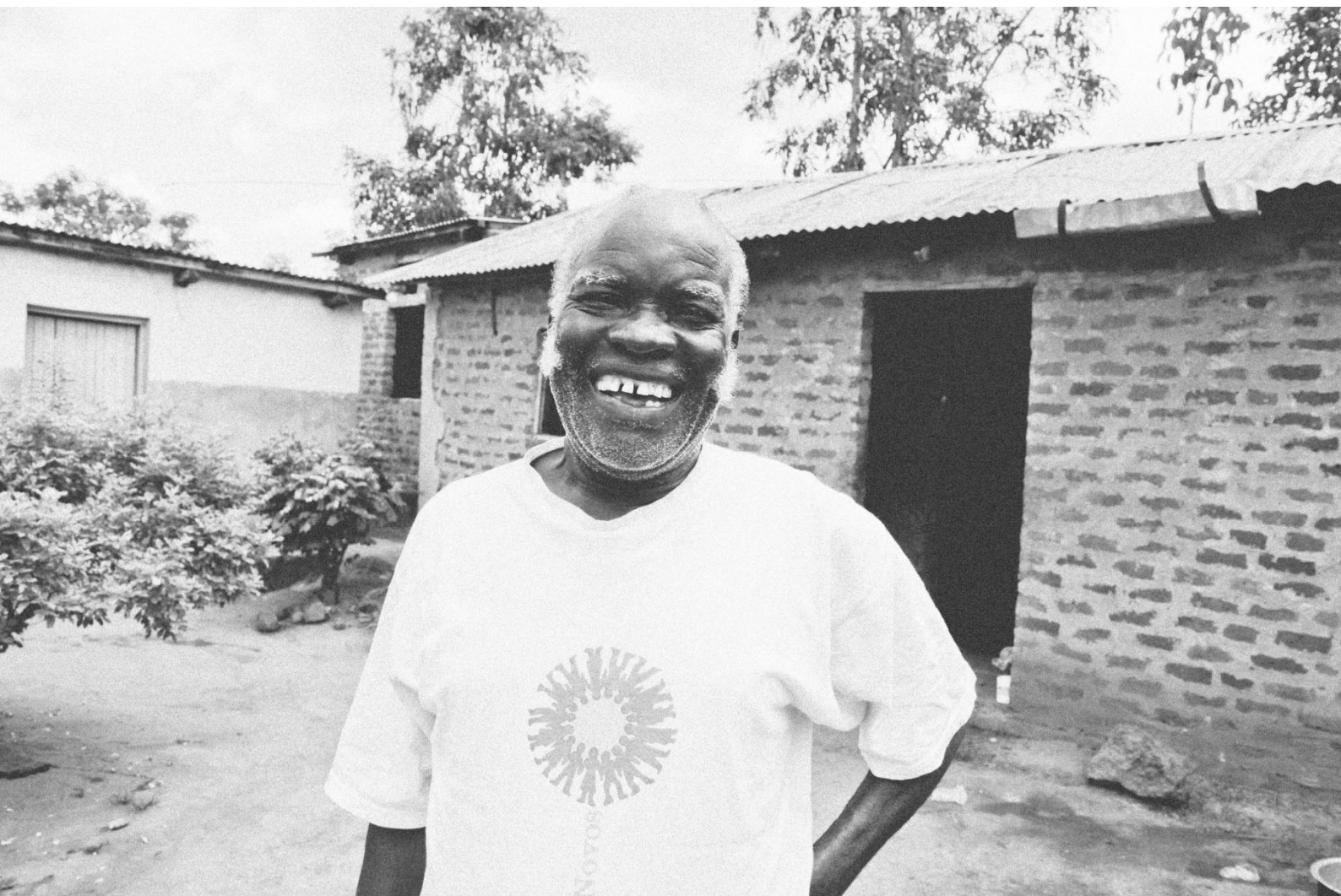
- **Bad faith or ignorance?** Jok-kene may have acted in bad faith by selling the land “out from under” Samson’s displaced descendants, but there is also a possibility that he believed he was legitimately entitled to the land since he outlived the recipient of his generosity. An ADR practitioner must probe to see whether actions were made in bad faith, in ignorance, or both, any why.
- **Customary laws regarding land gifts—and their retraction**—have been clarified in the Ker Kwaro Acholi’s Principles, Practices, Rights, and Responsibilities (PPRR) book, which states in Section 1 that:

“e) Land allocated to a paco/dogola (family) or Ot (household) is never taken back and rights exist in perpetuity.

f) Land will always remain in the paco/dogola or ot (family or household) for emigrant family members (and future unborn) to return to.”

- **Absence due to displacement** created opportunities for the families that remained behind to exploit the customary landholdings of their neighbors.
- **Family or Communal Land?** In this case, the size and terms of the original land gift are not known. It is therefore unclear whether the disputed land is purely family land (bordering a communal land), or whether a part of it is actually communally owned by multiple families. This distinction is critical, and serves as a possible ‘common ground’ for the parties in future ADR sessions.

- **Desperate alternatives.** Parties begin to consider taking justice into their own hands as they realize that, one by one, the offices designed to help them resolve land disputes (Rwot Kweri, LCs, and clans) are ineffectual in enforcing compliance.
- **The discovery of previously unknown natural resources** (stones for quarrying) on disputed land may reignite earlier disputes.
- **Demand Notice before hearing the other side?** In this case, NGO-Z staff issued a Notice of Intention to Sue to the Respondents before listening to their statement and deciding the best course of action (ADR, court, etc.). Jok-kene and sons undoubtedly perceived this letter as up-front bias, and it may undermine NGO-Z's authority to mediate the case.
- **Reconciliation → Sustainable outcomes.** The longer the dispute continues unresolved, the greater the likely number of unpleasant events. It is important therefore for actors like NGO-Z to not only act quickly, but also address the added layers of grievance caused by events where parties intimidated, or demeaned one another. This is a possible role for respected faith actors and leaders from both Clans A and B. If parties have forgiven each other and reconciled their differences, they and their descendants are unlikely to harbor resentment leading to future conflict.



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*⁴ ...They'll turn their swords into shovels,
their spears into hoes.*

Isaiah 2

“Settled” does not mean “Resolved.”

So far, studies have highlighted the causes, impacts, and reactions to domestic land grabs, but little is known about the on-the-ground efficacy of alternative dispute resolution (ADR) interventions in cases involving bad faith.

The purpose of this report is to distill the experiences of victims, offenders, and land dispute interveners to inform current practice and policy advocacy. Conducted in partnership with seven member organizations of the Northern Uganda Land Platform, this investigation assumes that better understanding and coordination of ADR approaches will inspire more appropriate responses to the grave nature of these cases.

