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### Lara Ngom ii Acoli: Identifying Root Causes and the Impact of Cultural Cataclysm on Land Conflict Resolution in Nwoya District, Northern Uganda

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*Lara Ngom ii Acoli:*

Identifying Root Causes and the Impact of Cultural Cataclysm on  
Land Conflict Resolution in Nwoya District, Northern Uganda

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Nwoya District, Northern Uganda

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Academic Director: Martha Nalubega Wandera

SIT Study Abroad, Uganda Post-Conflict Transformation Spring 2013

*For the men and women of Acoli today faced with seismic uncertainty over the land beneath their feet and the inhumanity of a justice system that has lost its way, but who still find it in themselves to what?*

*To go on digging.*

*And, for a new translation of lara ngom: "to hold the land."*

## Acknowledgements

This research would not have been possible without the individuals who donated their time and energy to making this all come together, so I am deeply grateful to the following people for everything they have done to make this a success.

The generous communities of Nwoya district who welcomed me onto their land and shared their stories; I hope this report can play some little part in easing your struggle for justice and returning peace to this exquisite place.

For LC 3 John Bosco Okullo, Rwot Oyat Oketta and James Komakech of Koch for letting me observe firsthand the dynamics of land conflicts and sharing your insights.

To my advisors Barnabas Denis Otim from Refugee Law Project and Emmanuel Omara from the Nwoya District Local Government. Beyond connecting me to respondents, you showed me the research ropes and asked the tough questions.

To my Gulu home stay mother Aparo Alice, who gave me the Acoli name that eased my transition into the rural communities with laughter.

For the Ature clan. Mamature Martha and Nerature Simon and Meddie for your tireless love and willingness to answer the phone at odd hours. Obira Valentine, Nimaro Rachel, Laker Sarah, Omara Oliver, and Aciro Kristen... *wacako kacel, watumo kacel.*

And finally, an eternal thank you to my family for always choosing the road less traveled.

*Apwoyo matek.*

## Table of Contents

Dedication	2
Acknowledgements	3
Table of Contents	4
Acronyms	5
Maps	6
Abstract	8
Chapter One: General Introduction	9
1.1 Introduction	9
1.2 Statement of Objectives	10
1.3 Justification and Rationale	10
1.4 Methods	11
1.5 Research Ethics and Limitations to the Study	14
1.6 Literature Review	16
Chapter Two: Background	18
2.1 Land Use and Ownership in Uganda	18
2.2 Conflict in Northern Uganda	20
2.3 Introduction to Nwoya District	23
Chapter Three: Findings and Analysis	26
3.1 Causes of Land Conflicts	26
3.2 Influence of Culture and Custom on Land Conflict	37
3.3 Land Conflict Adjudication and Resolution in Nwoya District	46
3.4 Land Conflict Deterrence and Prevention Mechanisms	58
Chapter Four: Synthesis and Conclusion:	62
4.1 Conclusion	62
4.2 Recommendations	63
Works Cited	65

## Acronyms

ADR – Alternative Dispute Resolution

ALC – Area Land Committee

ARLPI – Acoli Religious Leaders Peace Initiative

CAO – Chief Administrative Officer

CCO – Certificate of Customary Ownership

DLG – District Local Government

DLB – District Land Board

DLO – District Land Office

DLT – District Land Tribunal

DNRO – District Natural Resources Officer

EVI – Extremely Vulnerable Individual

IDP – Internally Displaced Person

GoU – Government of Uganda

LC (1-5) – Local Council (1-5)

LEMU – Land and Equity Movement

LCMT – Land Conflict Mapping Tool

LRA – Lord's Resistance Army

NGO – Non-Governmental Organization

OPM – Office of the Prime Minister

PRDP (I & II) – Peace, Recovery, and Development Plan (phases I and II)

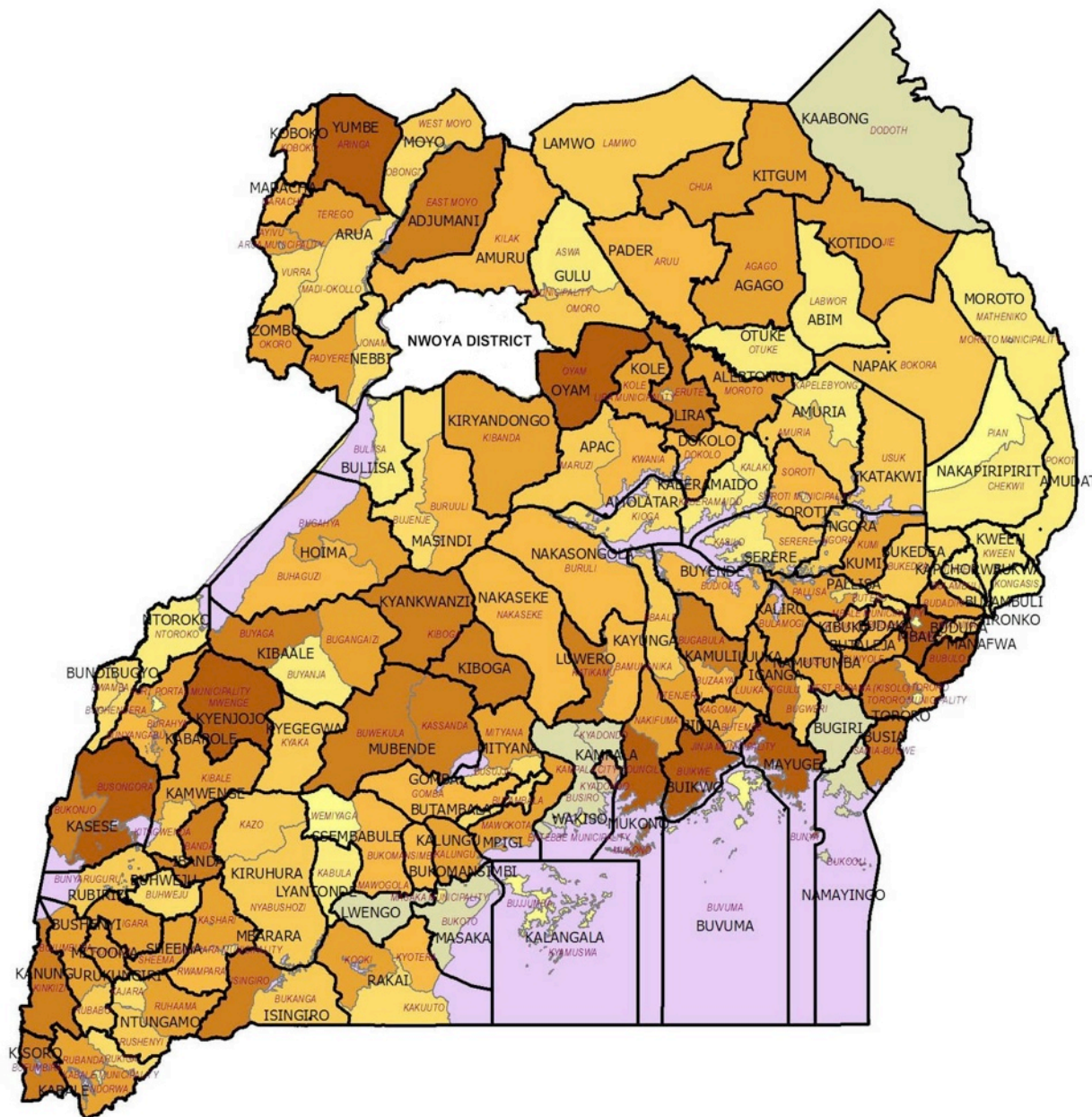
RDC – Resident District Commissioner

RLP – Refugee Law Project

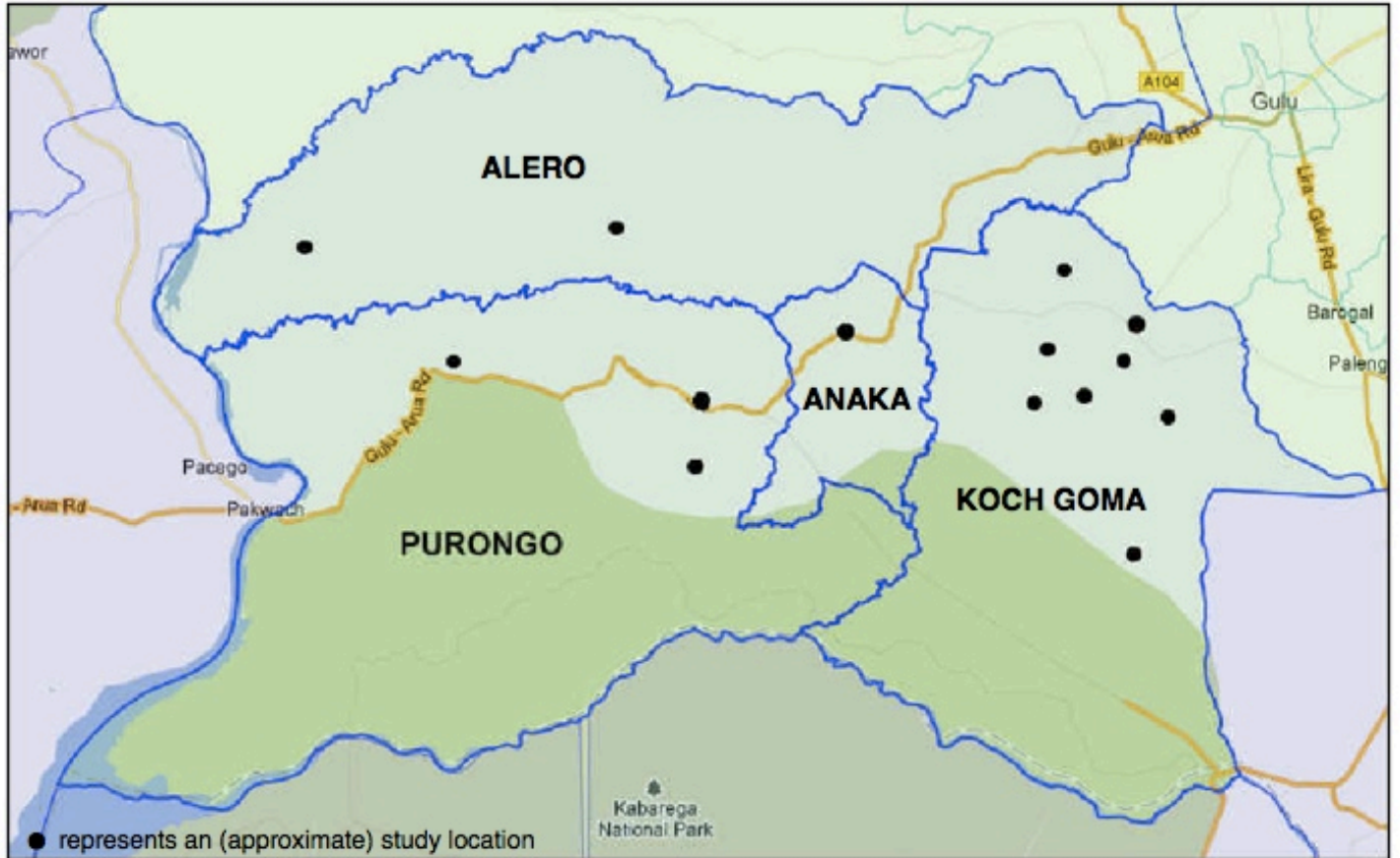
ULA – Uganda Land Alliance

WCC – War Child Canada

### MAP OF UGANDA (NWOYA DISTRICT HIGHLIGHTED)



# MAP OF STUDY LOCATIONS, NWOYA DISTRICT<sup>1</sup>



<sup>1</sup> Map taken from Land Conflict Mapping Tool, Human Rights Focus.



## Abstract

Endemic land insecurity is a critical aspect of the negative peace presently felt by the Acoli sub-region in the wake of two decades of conflict,<sup>2</sup> as well over two thousand instances of land disputes have been recorded in the region since the cessation of hostilities in 2006.<sup>3</sup> This study examines the dynamics of land conflicts in Nwoya district, Northern Uganda. The research was conducted over four weeks of independent research in Nwoya district, and incorporates the perspectives of various actors involved in land conflicts and the dispute resolution process. Findings incorporate field-based information gathered primarily from interviews with key stakeholders, focus group discussions, and participant observation of six mediations in different Sub-counties of the district, though some secondary sources were included to provide context.

This report endeavors to argue the following: 1) That Nwoya district faces unique challenges surrounding land, and that it is likely to be lit as the next turbulent stage for land conflicts; 2) That Acoli traditional customs and the recent cultural cataclysm resultant from internment in IDP camps have had a notable impact on the land conflict resolution process; 3) That ADR has the potential to be a strong force for land conflict justice and mitigation, but that it is currently undermined by distinct weaknesses; and 4) That the lack of standards and extensive corruption make the justice system essentially moribund in its current state. Based on these findings, this report concludes with recommendations intended to inform and improve the currently operating land conflict resolution and adjudication mechanisms, in order to better protect the land rights of vulnerable parties in Nwoya district.

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<sup>2</sup> Komakech, Daniel. "The Nature of Armed Conflict." Lecture, Post-Conflict Transformation from School for International Training, Gulu, Uganda, February 18, 2013.

<sup>3</sup> Angwech, Pamela. "The Socio-Economic Impacts of the Northern Uganda Conflict." Lecture, Post-Conflict Transformation from School for International Training, Gulu, Uganda, February 14, 2013.

## **Chapter I: General Introduction**

### 1.1 Introduction

In the wake of twenty years of armed conflict between the Government of Uganda (GoU) and the Lord's Resistance Army (LRA), residents of Northern Uganda still live under conditions that researcher Sverker Finnstrom has termed *piny marac*, or "bad surroundings."<sup>4</sup> Endemic land insecurity is a critical aspect of the negative peace felt by the Acoli sub-region in particular (Komakech 2013),<sup>5</sup> as well over two thousand instances of land disputes have been recorded in the region since the cessation of hostilities following the signing of the Juba Peace Accords in 2006 (Angwech 2013).<sup>6</sup> Long-term displacement in Internally Displaced Persons (IDP) camps has left many community members unsure of the boundaries of their former land holdings, while others have found their land grabbed in their absence. As most of the land in the region is allocated based on customary tenure, very little documentation exists to support ownership claims, which has led to violent disputes between individuals, clans, and investors.

In Acoli, the rapidly escalating issue of land conflict is epitomized by the local term *lara ngom*, used specifically in reference to land grabbing. Translated literally, the word *lara* carries paradoxical connotations: variously inflected, it can mean to 'seize,' 'grab,' 'cling to', or even 'save' the *ngom* (land). These contradictory interpretations correspond today to the treatment of land by conflicting stakeholders following massive societal upheavals associated with the conflict, and have significant bearing on the application of resolution strategies.

A number of mitigation, mediation, and justice mechanisms are in place to subdue land conflicts when they arise. These fall generally into two categories: the formal justice system, and alternative dispute resolution mechanisms (ADR) such as mediation and dialogue. The efficacy of these structures and the participating actors is the primary subject of this study. Secondly, the

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<sup>4</sup> Finnstrom, Sverker. *Living with Bad Surroundings: War, History, and Everyday Moments in Northern Uganda (The Cultures and Practice of Violence)*. Duke University Press Books, 2008. Kindle Edition.

<sup>5</sup> Negative peace can be defined as the cessation of outright hostilities, without a corresponding end to structural and cultural violence. Elements of negative peace include continuation of sexual and gender-based violence (SGBV) and corruption. Komakech, Daniel. "The Nature of Armed Conflict." Lecture, Post-Conflict Transformation from School for International Training, Gulu, Uganda, February 18, 2013.

<sup>6</sup> Angwech, Pamela. "The Socio-Economic Impacts of the Northern Uganda Conflict." Lecture, Post-Conflict Transformation from School for International Training, Gulu, Uganda, February 14, 2013.

research seeks to identify key cultural and linguistic factors influencing the implementation of land conflict resolution mechanisms and evaluate their impact. Emphasis is placed on cases of land conflict in Nwoya District, Northern Uganda, where the majority of field research was conducted.

## 1.2 Statement of Objectives

Over the course of four weeks of research, this study aims to:

- Identify key causes of land conflicts within Nwoya District, Northern Uganda.
- Identify cultural and customary factors that influence the application of land conflict adjudication within Acoliland.
- Assess the strengths and weaknesses of the existing land dispute resolution mechanisms.
- Articulate strategies for addressing the challenges to implementation of land conflict resolution and prevention mechanisms.

## 1.3 Justification and Rationale

Land conflict has been identified by a number of program lecturers for the School for International Training in Spring, 2013 as the most critical issue facing Northern Uganda today. A few have gone as far as predicting that without adequate mitigation and mediation efforts, land disputes could lead to another regional conflict with significant casualties. There has been significant research on the causes of land-related conflicts, mainly conducted by local humanitarian organizations and academic institutions such as the Refugee Law Project (RLP), the Uganda Land Alliance (ULA), and the Land and Equity Movement in Uganda (LEMU). Some of these studies specifically focus on the efficacy of mediation, mitigation, and justice methods used to handle land-related disputes. However, there is no thorough assessment of land-related issues in Nwoya district, where this study will focus. Furthermore, as land conflicts are a contemporary issue with constantly evolving challenges, especially with recent oil exploration in the region,<sup>7</sup> further research is needed to address the changing nuances and build on the body of existing work. This will not be a comprehensive study by any means, but by reaching out to

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<sup>7</sup> This is discussed in further depth in section 3.1.3 on Natural Resources

parties involved at different points in the spectrum, it aims to elucidate various perspectives on some of the challenges facing the land conflict justice system now and suggest methods for improvement. These recommendations ideally will prove valuable to the Refugee Law Project, the District Local Government, and other peace-building bodies in their efforts to study and mitigate land conflicts in future.

## 1.4 Methods

### 1.4.1 Interviews

Interviews were a key source of information for this research. In the course of this research, twenty-eight individual interviews were conducted with various stakeholders, including a) community members directly involved in land conflicts, b) clan and village chiefs (*rwodi*) and other prominent cultural leaders, c) government and law enforcement officials, d) members of the formal justice system, and d) academics with expertise in the area of study. As the study is exclusively qualitative in nature, most interviews were loosely structured, to allow for more freedom of response. The majority of these interviews were formal, though several anonymous interviews were carried out informally in the field. In cases where the respondent was a community member directly involved in land conflict, interviews were mainly conducted informally and have been kept anonymous in this report. When speaking to officials and academics, however, interviews were arranged formally to access more information and receive permission to disclose identities within this study. When possible, interviews were conducted in English so that there was more direct communication between the researcher and the respondent; however, a translator was used when the respondent was more comfortable speaking in his/her native language.

### 1.4.2 Participant Observation of Community Dialogues and Mediations

As the main focus of this study is the process of land conflict adjudication, participant observation of six community dialogues and mediations was an integral aspect of the field research conducted. Many peace-building actors (including the Local Councils (LCs), Refugee Law Project (RLP) and the Ker Kwaro Acoli Cultural Institution) use either mediation or

community dialogue as a tool for establishing truth and providing a forum for reconciliation between parties. These processes and the actors involved change somewhat depending on the type of land conflict,<sup>8</sup> so specific mediations were selected for observation based on representing different types of conflict. The first week of research was spent mainly observing the process of mediation in Koch Goma Sub-county, Nwoya district, and interacting informally with community members and mediating actors in this forum, sometimes with the assistance of a translator. Due to challenges of accessing rural areas, most of the engagement with community members occurred during observation of mediations.<sup>9</sup> This report draws heavily on observation of these sessions to provide case-based details about specific land disputes.

#### 1.4.3 Focus Group Discussions

When more specific questions needed to be addressed in a community setting, four separate focus group discussions were organized in communities that have experienced land conflict recently. The intent was to gather groups in all four Sub-counties of Nwoya district, and target different demographics in each group. Unfortunately, this was not entirely feasible. The first FGD was conducted in Alero Sub-county with a group of fifteen primarily male, middle-aged respondents who were currently involved in a land dispute. The LC 3 of Alero assisted as a translator on this occasion. The second was conducted in Koch Goma with the assistance of the *rwot* (clan chief) of Koch. Twenty-three respondents participated in this discussion, half of them were male and half were female, and ages ranged from seventeen to fifty-nine. The last two were conducted in the main trading center of Purongo Sub-county rather than in the communities where conflict was occurring. The youth chairman of Nwoya district assisted as a translator and facilitator in both of these. The first consisted of sixteen youths (all but one were male), most between the ages of 17 and 28. The second was a group of eleven women of all ages. In each of these focus group discussions, the impact of using a translator who also held a position of authority (even as a mediator) within the community was palpable, and unfortunately seemed to limit the responses of participants. Unfortunately, due to the perception of foreigners as

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<sup>8</sup> See the section on classifying land conflicts.

<sup>9</sup> This will be discussed in further depth in the Limitations to the Study, as the tension in the mediation venue may have impacted the behavior and responses of participants.

investors, it proved impossible to access communities without the facilitation of an authority figure, and locating neutral translators was not feasible within rural communities on short notice. Still, conducting FGD's lent a reasonably varied community perspective to the research, and the information gathered in this setting is referenced extensively in this report.

#### 1.4.4 Transect Walks

To have a better understanding of the physical causes and implications of land conflict, thorough transect walks were conducted where possible around the sites of land disputes in Nwoya district, usually in conjunction with observing a mediation. Because the areas in question are usually very large tracts of land, surveys of the area were also carried out via motorcycle when possible. Transect walks helped to contextualize the current land issues and facilitate rapport building with community members, who often helped to explain the situation at hand during a walk. Observing the landscape while conducting extensive transect walks also backed up some of the information gathered using interviews and other methods, specifically that Nwoya district has a great deal of fallow, arable land despite the perception of land shortages among many community respondents.

#### 1.4.5 Lectures and Conferences

Participation in the Northern Uganda Land Platform conference in Lira, Uganda lent a great deal of depth to this study. In this forum, various stakeholders (many of them NGO's) synthesized their role in land conflict mitigation and highlighted current relevant research. These lectures and presentations are used herein to inform both the background research and the findings, as in many cases they confirm and corroborate findings of this study in the broader setting of Northern Uganda. Additionally, lectures delivered through the School for International Training highlight the academic perspective on land conflicts, particularly when those individuals could not be approached for follow-up interviews. Information gathered in this format was also the initial reason for choosing to research land conflicts, as they were identified as one of the major challenges to post-conflict recovery in Northern Uganda today by a number of program lecturers.

## 1.5 Research Ethics and Limitations to the Study

### 1.5.1 Ethics Statement

Ethical concerns were central to conducting this research, as communities within the area of study have been deeply affected by conflicts (land-related and otherwise). Land is of central importance to the Acoli people, particularly in cases when it is an individual's only source of livelihood and economic security. As this study consulted individuals a) whose land has been grabbed, b) who have been evicted from their land, c) who are currently not assured land tenancy, d) who have a sense of land insecurity and fear, it was paramount that interactions be carried out in as sensitive a manner as possible. A number of techniques were used to ensure ethical research practices, as follows.

Rapport building was treated by this study as a crucial element of research for obtaining accurate information in an ethical manner. Interviews were carried out in the language the respondent felt most comfortable with, which in rural communities was largely Acoli. In these cases, research was conducted with the assistance of a translator with knowledge of study objectives, to ensure sensitivity and secure more accurate information. Confidentiality and anonymity are strictly observed in this report, so that all names of community respondents herein (excluding academics, officials, etc.) are either changed or omitted. Respondents were made aware of this, and were asked to sign consent forms or attendance lists (in the case of Focus Group Discussions). To ensure cultural sensitivity, this research was conducted under the supervision of the Refugee Law Project and the District Local Government, who are more familiar with Acoli culture and were able to guide the ethics of this study.

### 1.5.2 Limitations to the Study

Nwoya district, Northern Uganda is considered stable and secure at this point, but has a high rate of land-related violence. This is particularly relevant as a safety concern in areas where foreigners are seen as investors and thus treated with hostility. In Nwoya district, this is most salient in Purongo and Alero Sub-counties, where oil prospects have made locals wary of investment. Some areas which would have been pertinent to the study were off limits at the

discretion of advisors with the Refugee Law Project and/or the District Local Government, particularly when the researcher's presence as a foreigner could have had the potential to spark violence. Such an escalation would have been detrimental to all parties, and care was taken to avoid this scenario. In the course of this research, there were a few cases when tensions rose during mediation and one occasion where there was ensuing violence. To mitigate safety concerns during site visits, this research was conducted with close consultation from local experts and leaders.

Unfortunately, conducting research closely with parties that are actively engaged in mediation may have impacted the results. Because it was necessary to be introduced by someone with authority within the community, that individual inevitably exerted influence on the less powerful participants in the community simply by being present. Translation was a significant limitation to the study, as translators were almost exclusively either clan or political leaders. In these situations, when respondents were asked what parties they felt would mediate most fairly, they inevitably pointed to the party present (either a member of the District Local Government or a clan leader). A future study would benefit from locating neutral assistants and translators when conducting research in rural areas.

## 1.6 Literature Review

Land conflicts in Northern Uganda are a relatively new phenomenon, dating primarily back to resettlement around 2006-7, and have only escalated since then. Mediation, mitigation, and justice methods are also constantly being developed and adapted to meet the changing needs of the community. Therefore, due to the contemporary nature of the research, the comparable studies that exist are not conclusive, though there are a number of qualitative and quantitative research reports out there. Like this one, they intend to shed more light on the dynamics of land conflict, from causes to resolution mechanisms, in order to better assist those policy makers, mediators, and other actors working on the ground. The following section will briefly summarize some of the literature within different subject areas that inform this research.



### 1.6.1 Land Conflict Mapping

Because of disorganization and lack of capacity of the land dispute resolution mechanisms across Northern Uganda, there are few comprehensive databases of land conflicts, and none in Nwoya district, where this study was based. However, there is one resource that maps out land conflicts across the region. Gulu-based NGO Human Rights Focus has created a “land conflict mapping tool” (LCMT) to visually depict where land conflicts are occurring and at what frequency. Based on conflict records from each district and sub-county, they provide basic statistics on land conflicts. The tool is predictably limited by incomplete data. Still, the figures are a useful representation of the breadth of the problem at hand, and hopefully the project will be expanded in future as new records and surveys arise. The majority of maps and figures about Nwoya district cited in this research come from the LCMT tool.<sup>10</sup>

### 1.6.2 Land Grabbing and Conflicts in Context

Several recent studies have assessed the problem of land conflicts in the wider context of Northern Uganda, or in the country as a whole. In 2009, the International Republican Institute (IRI) funded a study through the Uganda Round Table Foundation assessing the escalation of land conflicts across Uganda using local survey data and synthesizing relevant studies. The study provides a legal framework for discussing land issues, pointing to specific laws and events which help contextualize the issue. One major drawback of the report is that as the scope of the study is national, each region experiencing land conflict on a large scale is discussed only broadly. Nonetheless, some of the general concerns addressed in this work help inform the framework of this research, and indicate gaps to be investigated within a more specific scope.<sup>11</sup>

Another study by Samuel B. Mabikke on land grabbing in Northern Uganda specifically was presented to the International Conference on Global Land Grabbing in 2011. It focuses on the impact of the insurgency on contemporary land conflicts and the adjudication mechanisms used to handle them. In terms of this study, Mabikke’s research helps to provide a theoretical framework for looking at land grabbing. Applying these to Nwoya district is helpful for

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<sup>10</sup> Land Conflict Mapping Tool, Human Rights Focus.

<sup>11</sup> Rugadya, Margaret A. “Escalating Land Conflicts in Uganda.” International Republican Institute (IRI) and the Uganda Round Table Foundation, June, 2009.

analyzing the unique circumstances that make Nwoya so heavily ridden with conflicts. It also corroborates some of the findings of this study in the broader context of Northern Uganda.<sup>12</sup>

### 1.6.3 Land Dispute Resolution and Adjudication Mechanisms

There is less research available on the resolution and adjudication mechanisms than there is on causes and characteristics of land conflicts. There are several policy papers by NGO's such as RLP and LEMU which discuss land conflict adjudication, but they focus on specific cases rather than the adjudication situation as a whole. One study referenced for this research specifically assess the efficacy of mediation in the context of land conflicts in Northern Uganda, looking at 8 districts within Lango and Acoli Sub-regions. This is an in-depth study based on partnerships with NGO's currently mediating land disputes, so the perspective it provides is largely NGO-based. In terms of this research, the A-D-R-tistry report was useful in providing background on alternative dispute resolution techniques and contextualizing the focused work in Nwoya district within a much larger context. During the Northern Uganda Land Platform Conference, I was able to interact with researchers for this study and hear details of ongoing research being conducted contemporaneously; those interactions also helped to inform this study.<sup>13</sup>

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<sup>12</sup> Mabikke, Samuel B. "Escalating Land Grabbing in Post-conflict Regions of Northern Uganda: A Need for Strengthening Good Land Governance in Acoli Region." Land Deal Politics Initiative (LDPI), 2011.

<sup>13</sup> Akin, Jeremy and Isaac Katono. *Examining the A-D-R-tistry of Land Dispute Mediators in Northern Uganda*. For the Northern Uganda Land Platform, October, 2011.

## **Chapter II: Background**

### 2.1 Land Use and Ownership in Uganda

#### 2.1.1 Brief History of Land Tenure in Uganda

While unofficial customary land tenure among the various ethnic groups of Uganda goes back to “time immemorial,”<sup>14</sup> legally speaking, each of the political regimes has treated land differently, which has contributed to confusion and conflict in the present environment. In Acoli, people have clung strongly to customary land tenure, even during the colonial period when land was not legally in their possession. “In the North [of Uganda], people rejected the idea of sharing out the land between their leaders and the protectorate government (Okello-Okello 1, 2010).”<sup>15</sup> Immediately after independence, land was returned officially to the people, but was re-centralized in 1969 for purposes of development. Amin’s Land Reform Decree of 1975 further placed land in the hands of the state. The 1998 Land Act re-established the land tenure system in response to widespread public pressure on the government to return land to the people. “The position of land in the constitution did not originate in the constituent assembly, it was demanded by the people of Uganda.”<sup>16</sup>

Under the 1998 Land Act, there are four types of land tenure: customary, freehold, mailo,<sup>17</sup> and leasehold.<sup>18</sup> Customary land, the tenure most applicable to this study, is defined as:

*“a form of tenure applicable to a specific area of land and a specific description or class of persons; governed by rules generally accepted as binding and authoritative by the class of persons to which it applies; applicable to any persons acquiring land in that area in accordance with those rules; characterised by local customary regulation; applying*

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<sup>14</sup> Oywa, Rosalba. Interview by author. Personal interview. School for International Training Resource Center, Gulu, Uganda, May 4, 2013.

<sup>15</sup> Hon. Okello-Okello John Livingstone, Chairman, Acoli Parliamentary Groups (APG). “Statement to Parliament on the Issues of Acoli Land” 1. Kampala, December 10, 2006.

<sup>16</sup> Ibid, 3.

<sup>17</sup> Mailo land is a system of land ownership present among the Baganda of central Uganda, and is not relevant to this study.

<sup>18</sup> Government of Uganda. *Land Act 1998*. Kampala, Uganda, 1998.

*local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land.”<sup>19</sup>*

The ambiguity of this definition has been a factor in creating and aggravating land conflicts over customary land. Coherent with the decentralized governance model of the current administration, the management of land was returned to the districts via the Land Act. District Land Boards (DLB) were established to handle the registration and titling of land based on all four tenure systems, while District Land Tribunals (DLT) were created as judicial bodies to handle land-related conflicts. At the Sub-county level, Area Land Committees (ALC's) were intended to inspect land and provide recommendations to the DLB, which would then make final decisions on whether or not to grant a land title. At the legal level, the 1998 Act also abolished discrimination based on sex and age in granting land titles, though in practice there is still a distinct gender imbalance in land ownership.<sup>20</sup>

### 2.1.2 Customary Land Tenure in Acoli

Under the system of customary ownership, which accounts for nearly 90% of arable land in the Acoli sub-region (Otim 2013)<sup>21</sup>, land cannot be transferred through sale and essentially belongs to past, present, and future generations of the family, community, clan or tribe in possession. Traditionally, customary land in Acoli is divided into the following components: homesteads (including the family compound and a small plot for cultivation), agricultural lands, grazing grounds, hunting grounds, and forested areas used as sources of firewood, honey, medicinal herbs, and other necessities. The latter three types of land were used communally based on membership in a family, clan, or region. According to Rosalba Oywa, in Acoli “we don’t have public land. All the land here belongs to some group of people.”<sup>22</sup> Customary land was traditionally managed by *rwodi kweri* (chiefs of the hoe), whose responsibility was to allocate land according to community needs and serve as a judiciary body when disputes

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<sup>19</sup> Government of Uganda. *Land Act 1998*. Kampala, Uganda, 1998.

<sup>20</sup> Okuku, Juma Anthony. “The Land Act (1998) and Land Tenure Reform in Uganda.” *Africa Development*, Vol. 31, No 1. 1-26. 2006.

<sup>21</sup> Otim, Barnabas Denis. Interview by author. Personal interview. Refugee Law Project, Gulu, Uganda, March 29, 2013.

<sup>22</sup> Oywa, 2013.

occurred. Other elders and community leaders also participated in land management, and decisions regarding customary land were made by a consensus between all stakeholders.<sup>23</sup> Culturally, customary tenure is seen as the most secure type of land tenure, because it is not transferrable by sale;<sup>24</sup> however, in northern Uganda it is the most vulnerable to land grabbing due to poor documentation and numerous in the land conflict adjudication system.

## 2.2 Background to Conflict in Northern Uganda

### 2.2.1 Conflict Between Government and Lord's Resistance Army (1986-2006)

For two decades, conflict between the Uganda People's Democratic Front (UPDF) forces of the Government of Uganda (GoU) and the rebel group known as the Lord's Resistance Army (LRA) raged across the Acoli, Lango, and Teso sub-regions of Northern Uganda. Described in 2003 by United Nations spokesman Jan Egeland as "the biggest forgotten, neglected humanitarian emergency in the world today,"<sup>25</sup> the conflict left approximately 1.8 million people in Northern Uganda displaced. Over 90% of the population of the Acoli Sub-region were relocated from their ancestral homelands to squalid Internally Displaced Persons (IDP) Camps (Government of Uganda 2012, 1)<sup>26</sup> as part of the Ugandan government's "scorched earth" policy,<sup>27</sup> leaving broad swaths of land empty and fallow for decades. Disease was rampant and protection was poor; at the peak of the conflict in 2004, the death rate reached 1500 people per day, the highest in the world for an armed conflict at that time.<sup>28</sup>

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<sup>23</sup> Depending on the case, this may or may not have included vulnerable members of the community such as women and children.

<sup>24</sup> Otim, Barnabas Denis, Ina Jahn, and Emily Cody. "Land and Investment: Balancing Local and Investor Interest." *Conflict Watch*. Advisory Consortium on Conflict Sensitivity (ACCS), Refugee Law Project. Gulu, Uganda, August 2012.

<sup>25</sup> "War in Northern Uganda World's Worst Forgotten Crisis: UN." *Agence France-Presse*. Nairobi (2003).

<sup>26</sup> Government of Uganda. *Humanitarian Profile 2012*. Kampala, Uganda, December 21, 2011.

<sup>27</sup> A "scorched earth" policy is a military strategy designed to deprive enemy forces of needed supplies (food, shelter, etc.) and local support (mainly intelligence information and a recruitment base) during a protracted siege, by destroying or relocating these elements. In the case of Northern Uganda, civilians were relocated to IDP camps ostensibly for their own protection, though many consider this to be an application of the "scorched earth" policy. The use of this strategy is prohibited by Article 54 of Protocol I of the 1977 Geneva Conventions. (United Nations. *Protocol I: Additional to the Geneva Conventions, 1977*. Part IV: Civilian Population, Section 1: General Protection Against Effects of Hostilities, Chapter I. 1977.)

<sup>28</sup> Mapenduzi, Martin. "Challenges of Nation Building in Uganda." Lecture, Post-Conflict Transformation from School for International Training, Gulu, Uganda, February 18, 2013.

During this period, a “systematic kind of disenfranchisement”<sup>29</sup> was being carried out: People were deprived of their access to agricultural land and all means of production. Herds of cattle, the Acoli source of wealth, were “borrowed” by the UPDF without compensation. Large tracts of land were being grabbed by powerful friends of the government and titles forged. Pleas by prominent Acoli leaders for a peaceful end to the conflict fell on the deaf ears of the central government. In 2006, the Acoli Parliamentary group resolved as follows: “That it is wrong for anybody now to start acquiring large chunks of land in rural areas under the pretext of investment when the entire population of Acoli is still interred in squalid IDP camps. They should wait until the people have returned home and peacefully settled on their land (6).”<sup>30</sup> The Juba Peace Talks began the same year, resulting in a signed cessation of hostilities and a promise by the GoU to begin prioritizing the recovery and development of Northern Uganda, with the support of outside donors.<sup>31</sup> But as an activist and participant in the Juba Peace Talks, Rosalba Oywa cautions that “the war has caused a lot of complications,”<sup>32</sup> and the damage inflicted during the years of strife will not be easy to undo.

### 2.2.2 “There is No Better Cause to Die For.”<sup>33</sup> Overview of Land Conflicts in Acoli

One of the most visible side-effects of the war in Acoli has been the almost constant eruption of land conflicts across the northern region, which threatens to destabilize a hard-won peace. As Uganda has a land-based economy, and agriculture accounts for 43% of its GDP and nearly 82% of its workforce,<sup>34</sup> disputes over land have proved devastating to productivity and development, particularly in the Northern region.<sup>35</sup> “The issue of land in Acoli was not a big

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<sup>29</sup> Otim, 2013.

<sup>30</sup> Okello-Okello, 2, 2010.

<sup>31</sup> Opiyo, Nicholas. “Challenges of Peace-Building in Post-Conflict Society.” Lecture, Post-Conflict Transformation from SIT at Makerere University, Kampala, Uganda, March 4, 2013.

<sup>32</sup> Oywa, 2013.

<sup>33</sup> This phrase excerpted from a comment in: Okello-Okello, 3, 2010.

<sup>34</sup> Mabikke, Samuel B. “Land Grabbing in Post-Conflict Regions of Northern Uganda.”

<sup>35</sup> Northern Uganda is known historically as the “bread basket” of Uganda.

issue in the past,<sup>36</sup> but has emerged to become the biggest source of violence in Northern Uganda today, according to a number of academics. Although the exact number of instances of land conflict is unknown, estimates generally land in the thousands,<sup>37</sup> with the majority of cases coming out of the newly created Amuru and Nwoya districts in western Acoliland. In 2006, the Uganda Bureau of Statistics found that 6.7% of households nationwide had been involved in a land dispute, while the rate is above 16.4% in post-conflict Northern Uganda.<sup>38</sup> Observed prevalence in Nwoya district is significantly higher, with key respondents estimating that anywhere from 30% to 60% of households have been embroiled in land conflicts since resettlement. Land conflicts are so prevalent that they appear in the news almost daily as the cause of property damage, injuries, and deaths. Rosalba Oywa explains, “When there is an armed conflict like this that destabilizes and displaces people, normally the return is marred with land conflicts.”<sup>39</sup> An anonymous army commander from the UNLA simplified this into an ominous, “This is another war.”<sup>40</sup>

Land conflicts wreak enormous damage on the quality of life across the affected area. Barnabas Otim, a representative of Refugee Law Project (RLP) explains, “Because of the history of this region, people are tired of fighting... If you fight, if you conflict, you can’t do anything much. It’s the same with your land. If you go to the fields with your kids and you are fighting, the season is going, and the next thing is starvation.”<sup>41</sup> However, despite the strong desire for peace expressed by members of the Acoli community, land remains the only resource left to most formerly displaced people, and they will defend it fiercely. “The only good thing that these people have remained with is their land, and I don’t think they will easily accept or allow someone to take away their land... The community looks at it like this: they can shoot us, beat us,

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<sup>36</sup> Okello, Patrick Oryema (LC 5, Nwoya District). Interview by author. Personal interview. Anaka, Uganda, April 23, 2013.

<sup>37</sup> Angwech, Pamela. “The Socio-Economic Impacts of the Northern Uganda Conflict.” Lecture, Post-Conflict Transformation from School for International Training, Gulu, Uganda, February 14, 2013.

<sup>38</sup> Rugadya, M (2008) “Northern Uganda Land Study” for the World Bank.

<sup>39</sup> Oywa, 2013.

<sup>40</sup> UNLA commander, Interview by Sarah Nieberg.

<sup>41</sup> Otim, 2013.

take away our land, but they can never own it. Our grandchildren will carry on with this.”<sup>42</sup>

Tensions between community members—marginalized, dehumanized, and disenfranchised—and the GoU threaten to reach a boiling point over land.

Land conflicts in Northern Uganda today take on various forms and involve different sets of actors, depending on the circumstances, and the character of each dispute influences the efficacy of chosen resolution methods. Generally, conflicts can be broken down into inter-personal or inter-familial, inter-group or inter-clan, and disputes between investors and the community. Smaller-scale conflicts between individuals or families are generally the simplest.<sup>43</sup> However, they do have the potential to escalate to inter-group or inter-clan conflict, as supporters, whether family, friends, neighbors, or clan members tend to flock to the aid of their own side to show their support and intimidate the opposing party.<sup>44</sup> A representative from ULA explains, “When a land conflict escalates from an individual to a clan level, the results are disastrous.”<sup>45</sup> Among land disputes, a large number are genuine misunderstandings between parties that can be resolved easily with the assistance of community leaders acting as mediators. However, this atmosphere of uncertainty also opened opportunities for exploitation of vulnerability by those seeking wealth and power through land acquisition, termed by a community member in Alero Sub-county, “self-appointed land givers.”<sup>46</sup> The character of a case of land grabbing, or *lara ngom* in Acoli language, is determined firstly by the intent. Adjudicating actors must take this into consideration in determining their resolution approach

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<sup>42</sup> Ibid.

<sup>43</sup> However, inter-personal conflict becomes more complex when there is an imbalance of power between the parties, such as when land is disputed between husbands and wives, and mediators of these cases run a high risk of treading over land rights of the vulnerable in an attempt to create compromise and harmony.

<sup>44</sup> Okullo, 2013.

<sup>45</sup> Anonymous Uganda Land Alliance representative. Interview by author. Personal interview. Anaka, Uganda, April 25, 2013.

<sup>46</sup> Anonymous community member. Interview by author. Personal interview. Alero Sub-county, Nwoya district, Uganda, April 24, 2013.



## 2.3 Introduction to Nwoya District, Northern Uganda

In the years since the insurgency ended in 2006, there has been a proliferation of new districts in Northern Uganda.<sup>47</sup> Now, the Acoli Sub-region comprises seven districts: the regional headquarters in Gulu district, Nwoya, Amuru, Kitgum, Pader, Agago, and Lamwo. In 2007, Amuru was carved out of Gulu and administered as a separate district. Amuru was then divided into Amuru and Nwoya districts in 2010, making Nwoya one of the youngest districts in Uganda.<sup>48</sup> Geographically, Nwoya district borders the Nile River on the Western edge and hosts the northern third of Murchison Falls National Park in the south. It borders Gulu and Oyam districts to the East, Amuru to the North, Nebbi to the West, and Buliisa, Masindi, and Kiryandongo to the South. It is comprised of four Sub-counties: Alero, Purongo, Koch Goma, and the Anaka Town Council, the administrative headquarters of Nwoya district. Within these Sub-counties, there are a total of 26 parishes and 130 villages.<sup>49</sup> The total area of the district is 477,148 hectares, making it one of the largest districts in Uganda. As of 2002, the total population in what was then Nwoya county was just over 41,000 people, with a 2012 projected population of 54,243.<sup>50</sup> Based on these figures, the average population density of Nwoya district is 0.11 persons per hectare. The very low population density has an enormous impact on land conflict adjudication and management.<sup>51</sup>

Nwoya and Amuru districts are currently considered to be the most volatile in terms of land conflicts in the Northern region.<sup>52</sup> The specific challenges associated with land conflicts in Nwoya district are the main subject of this study, so they are outlined briefly here to provide an overview. There are three main causes of land conflicts which are specific to Nwoya district. Firstly, the size and low population density of the land means that borders are often poorly

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<sup>47</sup> Some of the reasons for the creation of new districts and their impact on land conflicts will be discussed in further depth in section 3.1.7 on Corruption, Bad Governance, and Administrative Weakness

<sup>48</sup> Omara, Emmanuel, District Natural Resources Officer, Nwoya District. Interview by author. Personal Interview. School for International Training Resource Center, Gulu, Uganda, March 1, 2013.

<sup>49</sup> Land Conflict Mapping Tool, Human Rights Focus.

<sup>50</sup> Due to the massive displacement surrounding the twenty-year insurgency, this figure may be largely irrelevant, but is provided here as a baseline. Source: Land Conflict Mapping Tool, Human Rights Focus.

<sup>51</sup> To be discussed further in section 3.1.5, Nwoya District: Too Much Land or Too Many People?

<sup>52</sup> Oywa, 2013.

demarcated and historically flexible. A significant portion of the land which appears unoccupied at first glance is in fact crucial for hunting, grazing, and forestry, and has customarily been used as communal land. This land is untitled and belongs to largely very poor communities, so it is a ripe target for grabbing by powerful parties. The size of the area also makes administration difficult, as the understaffed local government is often unable to achieve proper oversight. This leads into the second challenge: as a new district, Nwoya is administratively inept and has very little district revenue outside tourism income from the national park, which cannot fulfill district needs. Lastly, Nwoya is home to fertile soil and abundant natural resources. This has led to a massive scramble for land by members of all walks of life, from community members looking to extend their hold on traditionally held land, to ambitious oil prospectors, to the First Lady of Uganda looking to back investments in the region.<sup>53</sup> Taken together, these challenges exacerbate a vicious cycle of land grabbing and violent disputes in Nwoya district that undermine the land rights of vulnerable individuals. Throughout this study, even when not explicitly stated, analysis is based on the unique case of Nwoya district. Information herein should be taken in the context of the major challenges outlined above, as they have a direct impact on the procedures of land conflict adjudication and the nature of the conflicts themselves.

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<sup>53</sup> Oywa, 2013.

## **Chapter III: Findings and Analysis**

### 3.1 Primary Causes of Land Conflict

The root causes of land conflicts can be traced back to problems affecting a broad spectrum of other contemporary societal ills within Northern Uganda. According to a representative of War Child Canada, “There is a clash between new development and traditional, existing beliefs and practices. This can result in land disputes and conflict in so many other spheres.”<sup>54</sup> Therefore, without addressing these underlying issues, mitigation, mediation, and justice mechanisms being used to resolve land conflicts are unlikely to bear fruit. The following section will address some of the primary causes of land disputes, with particular emphasis on Nwoya district. Strategies for confronting these issues will be addressed in section 3.3 on dispute resolution.

#### 3.1.1 Displacement and Resettlement

During the conflict which swept Northern Uganda from 1986 to 2006, protracted displacement in IDP camps led to overwhelming poverty, massive changes in lifestyle, and loss of life and livelihood. According to the Local Council 5 (LC 5) of Nwoya District, “That was the genesis of land conflicts in Acoli.”<sup>55</sup> The vast majority of respondents for this study identified the insurgency and resultant displacement as the primary cause of land-related disputes. When large scale resettlement began in 2007, the official directive of GoU advocated a reversion to the status quo of pre-conflict land occupation, for people to return to their “original homes.”<sup>56</sup> Many returning IDP’s found their land razed and barren, while others found that it had been grabbed in their absence by other community members, investors, or government/military officials.<sup>57</sup> As livelihoods and property were destroyed during during the war through looting and lack of productive capacity in the camps, returnees were economically vulnerable and unable to access

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<sup>54</sup> Anonymous War Child Canada employee. Interview by author. Personal interview. Gulu, Uganda, May 2, 2013.

<sup>55</sup> Okello, Patrick Oryema, 2013.

<sup>56</sup> Ibid.

<sup>57</sup> Mapenduzi, 2013.

the resources necessary for using their land.<sup>58</sup> Furthermore, there was widespread confusion amid the return due to the changing dynamics of families and communities in the camps. As the LC 5 of Nwoya district described, “the elders died, and the people who came as young children to the camps went back to the land as adults. They didn’t know even where to find their homes.”<sup>59</sup> Now, although more than 98% of IDP’s have “returned to their areas of origin or been resettled in new locations... the sustainability of returns remains in doubt,”<sup>60</sup> due to land conflicts and lack of infrastructure to handle the population influx in remote areas.

Another consequence of mismanagement of the war in the North is that it has sewn an atmosphere of deep distrust for government among the Acoli people. This was readily apparent in interactions with community members during the course of this study, who expressed suspicion of the central government’s motives in putting people in camps. According to a community member interviewed in Alero sub-county, “We suspect that the government wants to put people back in camps”<sup>61</sup> so they can use the land for large scale investment and profit from it. These kind of suspicions are widely held even by politicians and academics in the region as well: Rosalba Oywa explains, “the government had its own opinion about the land. They wanted to create townships like in South Africa where people remained permanently in those camps while the land can now be used by other people in the government.”<sup>62</sup> Although this may be an overstatement, the perception of the central government by rural communities in Nwoya district is deeply resentful.

Most of the other causes of land conflicts identified by respondents also had their roots in displacement in the IDP camps, from demarcation and documentation challenges, to investment, to shifting cultural norms within the region. “When the camp system started, the lifestyle and culture started changing.”<sup>63</sup> In example, historically, grazing and hunting grounds were named

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<sup>58</sup> Omara, 2013.

<sup>59</sup> Okello, Patrick Oryema, 2013.

<sup>60</sup> Government of Uganda. *Humanitarian Profile 2012*. Kampala, Uganda, December 21, 2011.

<sup>61</sup> Anonymous community member. Interview by author. Personal interview. Alero Sub-county, Nwoya District, Uganda, April 24, 2013.

<sup>62</sup> Oywa, 2013.

<sup>63</sup> Oryem, Simon Peter (LC 3 Anaka Sub-county, Nwoya District). Interview by author. Personal interview. Anaka, Uganda, April 22, 2013.

after the individuals entrusted to manage them. Now returning from the IDP camps, the descendants of those original managers sometimes interpret the naming of the communal land to mean that it belongs to their family alone, and have begun excluding others from accessing the land.<sup>64</sup> With longstanding cultural traditions in transition, control over customary land tenure is currently weak and there are many opportunities opening up for exploitation of customary land by powerful parties. In framing this study, it is crucial that the following sections identifying causes of land conflicts be taken in the context of massive internal population displacement across the North.

### 3.1.2 Border demarcation

Traditionally, land borders in Uganda are demarcated by impermanent natural markers, such as stones, trees, anthills, streams etc. Often, those in possession of large tracts of land will leave large plots fallow for several seasons to allow the replenishment of nutrients in the soil. Without constant use, boundaries are often vague, and communal land which is crucial to family or clan activity may seem unoccupied at first look.<sup>65</sup> The custodians of land boundaries are usually family elders or other prominent members of the community, including local chiefs (*rwodi kweri*), whose responsibility it is to allocate land.<sup>66</sup> Due to the extended period of displacement, many of these individuals perished in the camps, leaving behind descendants with legitimate claims to land, who had no way to determine where their boundaries lie. Upon returning to their family's land, many chose homesteads arbitrarily or were misinformed about the borders of their holdings, so that when neighbors returned to their own lands, border disputes erupted.<sup>67</sup> Though these usually started as isolated incidents (between only a few individuals), they often escalated into inter-clan conflict and violence, particularly when no documentation existed to map the pre-war boundaries of a land holding. With indefinite demarcation of land

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<sup>64</sup> Okello, Patrick Oryema, 2013.

<sup>65</sup> Omara, 2013.

<sup>66</sup> Oyat Oketta (*Rwot* of Koch, Ker Kwaro Acoli). Interview by author. Personal interview. Koch Goma, Uganda, April 29, 2013.

<sup>67</sup> Anonymous Refugee Law Project representative. Interview by author. Personal Interview. Refugee Law Project, Kampala, Uganda, March 7, 2013.

boundaries, it is difficult for authorities to prevent encroachment and boundary related conflicts.<sup>68</sup>

### 3.1.3 Bona Fide Occupancy

The legalization of the concept of *bona fide* occupancy within Uganda law complicates the process of resolving land disputes and can often be a cause of conflict itself. In legal discourse, *bona fide* refers to an action that was performed without the “intent to deceive.”<sup>69</sup> In the Northern Ugandan context, “According to the law, if someone has resided on a piece of land for over twelve years without their presence being protested, the land legally belongs to the resident. In the case of Northern Uganda, if someone was in possession of the land before the insurgency began in 1986, it is theirs.”<sup>70</sup> Because the demand for land is high in the wake of the conflict, returnees are often intent on establishing original ownership in order to secure their property, even if that means evicting neighbors who were settled peacefully on the land before the war.<sup>71</sup> Under the system of *bona fide* occupancy, the settlers have a legal right to stay. However, if the original land owner has a title, this breeds dispute because there are conflicting legal claims to land usage, under the *bona fide* occupancy system.

### 3.1.4 Investment and Development:

Economic growth in the Acoli sub-region has been stunted by the insurgency, as well as a history of marginalization and undervaluation of the potential of the region due to longstanding sectarianism between North and South (to be discussed further in section 3.1.8). As a result of the Juba Peace Talks, the Peace, Recovery, and Development Plan (PRDP) is designed to establish sustainable peace in Northern Uganda, which includes narrowing this development gap,

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<sup>68</sup> Shewan, Jessica. “Certificates of Customary Ownership.” *Conflict Watch*. Advisory Consortium on Conflict Sensitivity (ACCS), 2. Refugee Law Project. Kampala, Uganda: October 2012.

<sup>69</sup> *New Oxford American Dictionary, Second Edition*. Oxford University Press, Inc. Oxford, England, 2005.

<sup>70</sup> Okullo, John Bosco (LC 3, Koch Goma Sub-County). Interview by author. Personal interview. Koch Goma, Uganda, April 9, 2013.

<sup>71</sup> Otim, 2013.

but it has been largely unsuccessful due to misappropriation of funds,<sup>72</sup> and during the implementation period of the PRDP, land conflicts have escalated dramatically rather than subsiding with increased promises of development. This study finds that a key cause of land conflict in Nwoya district specifically is increased investment, whether intended for development purposes or otherwise.

Despite antagonism from the communities, investors have managed to purchase (or sometimes grab) large swaths of land for a) commercialized agricultural production of cash crops, such as sugar, or b) the hope of profiting from mineral deposits believed to be present in the region.<sup>73</sup> There have been several high profile cases recently in which investors have used connections within the government to acquire large tracts of land without the permission of customary owners. In one such case, the Madhvani sugar company has claimed forty thousand hectares of land with the support of President Museveni and since 2010 has been in the process of evicting over ten thousand community members from the area.<sup>74</sup> According to Rosalba Oywa, “they have not paid a cent, and yet these are supposed to be investors.”<sup>75</sup> The lack of compensation for local communities’ land is a significant source of conflict between investors and the community, as “land is a source which appreciates every day,”<sup>76</sup> and even remote rural populations are aware of its value.

Although investment is intended to enrich the lives of residents, Rosalba Oywa says “we have seen that there have been not so many benefits.”<sup>77</sup> Once again, this kind of suspicion of the government’s intentions can be traced back to the systematic deprivation of the Acoli people. During a focus group discussion, one community member gestured around at his humble homestead, situated in a very remote part of Alero district. “You can see the pathetic state of the

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<sup>72</sup> The PRDP is directly overseen by the Office of the Prime Minister (OPM), which has recently been accused of the theft of approximately 50 billion shillings from the PRDP program (Mapenduzi, Martin. “Challenges of Nation Building in Uganda.” Lecture, Post-Conflict Transformation from School for International Training, Gulu, Uganda, February 2013.) In the course of this research, the only sign of PRDP support encountered was a set of luxury office chairs in the district headquarters, while access to services in Nwoya district remains extremely limited. This is a testament to the poor allocation of funding of the PRDP.

<sup>73</sup> Otim, 2013.

<sup>74</sup> Ibid.

<sup>75</sup> Oywa, 2013.

<sup>76</sup> Seguaia, Moses Bukenya (CAO Nwoya District). Interview by author. Personal interview. Anaka, Uganda, April 25, 2013.

<sup>77</sup> Oywa, 2013.

people. It seems that the government is not interested in the welfare of the people, but investment.”<sup>78</sup>

A representative of RLP posed the question, “How do you balance the return challenges, who genuinely want to return home after the conflict, with the needs of investors who want huge chunks of land for commercialized production?”<sup>79</sup> The answer is not clear, and as Denis Otim of RLP remarked, “There has not been any breakthrough.”<sup>80</sup> Conflicts involving investors have a few defining characteristics which make them usually the most difficult to resolve: Firstly, there is a significant imbalance of power between the parties involved, as investors have financial power and usually connections to back up their claims to the use of land. Secondly, these conflicts are framed as struggles between locals and foreigners, giving them an ethnic or even racial dimension that makes the parties recalcitrant to find solutions to work together. This connects to the third and perhaps most important facet, that conflicts tend to occur most often between investors and the community when the procedures used to acquire land have not been transparent, and when there has been no dialogue between the investors and communities *prior* to development.<sup>81</sup> Investment has the potential to positively influence the lives of people. On preventing investment-based conflicts, Denis Otim continued, “Have those discussions smoothly, and you won’t have those problems. You can have very good mineral extracts, make lots of money, and change the lives of the people of the community.” But if dialogue does not take place and violence ensues, he cautioned, “Now it’s a human rights thing against your company or your regime.”

Furthermore, the lack of trust in government and investment actors to respect land rights makes these conflicts the most difficult to resolve. A representative from Irish-based NGO Trocaire posed the question, “Why has the executive been involved in those transactions at all, in cases when the conversation should be between a legitimate buyer and a legitimate seller.”<sup>82</sup> Skipping the step of consulting with residents over the use of their own land by dealing with

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<sup>78</sup> Anonymous community member, Alero Sub-county, 2013.

<sup>79</sup> Anonymous Refugee Law Project representative, 2013.

<sup>80</sup> Otim, 2013.

<sup>81</sup> Ibid.

<sup>82</sup> Anonymous Trocaire representative. Lecture, Northern Uganda Land Platform. Lira, Uganda, April 15-16, 2013.



governments alone has spelled disaster for many investment ventures in the region and caused significant tension that has sometimes erupted in violence. The following is a statement by Denis Otim from RLP:

*“Apart from following procedures, the government needs to start rebuilding trust, especially for people in the north. President Museveni can even come in with a very good project. As long as it involves land, it’s going to be very difficult because people have started becoming aware. There were a lot of things that were being done secretly, so people no longer trust him. If you want an investment to succeed in Northern Uganda, you need to be very pure and very honest with the people.”<sup>83</sup>*

Thus far, this has not been the case. Conflicts between communities and investors have often been characterized by violent evictions and complete disrespect of the rights of individual community members, as well as extensive property damage and loss of productive capacity.<sup>84</sup> Three of six observed conflicts in the course of this research were in this class, and the community members who participated in the study from these situations responded unanimously that when investors were involved in land disputes, the only way they could access justice was to take the law into their own hands, if necessary at the point of a spear or machete.

### 3.1.5 The Resource Curse

Since the adoption of a new Constitution in 1995, the GoU has actively pursued a path of privatization and foreign investment to accomplish its development goals. In post-conflict Northern Uganda, investors piquing interest in the region for its natural resources and productive capacity have provoked fear and anger in local populations, whose livelihood depends entirely on their tenuous land holdings. Mineral and oil prospectors have predicted large pockets of oil and uranium deposits in several Northern districts including Nwoya and Amuru. Uganda is estimated to contain deposits worth around 2.5 billion barrels of oil, most of which lies in the

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<sup>83</sup> Otim, 2013.

<sup>84</sup> Okello, Patrick Oryema, 2013.

Albertine Graben of Northwestern Uganda (including Amuru and Nwoya districts).<sup>85</sup> According to 2005 amendments to the constitution, the GoU has complete ownership of these resources, although they compensate 17% of the profits for local governments and 3% to the landowners.<sup>86</sup> It is this last figure that makes oil a causative factor in land insecurity. Individuals hoping to profit from future oil works have been buying large chunks of land from the government, resulting in the eviction and loss of agricultural productivity of many communities.<sup>87</sup> Again, it is the perception of wealth that makes natural resources a source of conflict. People are hurriedly grabbing land “simply because of the wealth under the soil. They think, if I own it, tomorrow if they get oil here, I will be the beneficiary.”<sup>88</sup> According to Akena Tony, the Youth Chairman of Nwoya district, “The scramble for oil is one of the major causes of land issues in Nwoya today.” The more oil exploration occurs in the region, the more resource conflicts are likely to escalate.

### 3.1.6 Nwoya District: Too Many People or Too Much Land?

In conducting research, two primary causes of land conflicts commonly emerged which were completely contradictory of one another. The most common was that Nwoya district is in fact “too big.” Land vacancy can be a problem because borders are harder to define and are less widely known by community members.<sup>89</sup> Land seen as being occupied by only a few, poor communities is the easiest to grab, as these vulnerable individuals are so remote that have little access to formal justice systems which could back up their claims to ownership.<sup>90</sup> The Land Conflict Mapping Tool (LCMT) by Human Rights Focus states that based on 87 detailed conflict records, there are 7,952 hectares of land per existing conflict, a testament to the claim that there

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<sup>85</sup> “How much oil (and gas) does Uganda have, and where is it?” Oil in Uganda. ActionAid International Uganda, March 5, 2012.

<sup>86</sup> Mapenduzi, Martin. “Decentralization and Government Policies in Uganda.” Lecture, Post-Conflict Transformation from School for International Training, Gulu, Uganda, March 27, 2013.

<sup>87</sup> Anonymous Refugee Law Project representative, 2013.

<sup>88</sup> Oywa, 2013.

<sup>89</sup> Okello, Moses SP (District Police Chief, Nwoya District). Interview by author. Personal interview. Anaka, Uganda, April 20, 2013.

<sup>90</sup> The flaws in the formal justice system related to difficulty of access by vulnerable or remote individuals will be discussed in section 3.3.3 on the Formal Justice System.

is “too much land” in Nwoya district.<sup>91</sup> Also, due to high levels of poverty in Nwoya district and across the North, people often do not have the means to cultivate the land, “so they protect the resource for its own sake because it is all they have.”<sup>92</sup> People are thus fighting and being killed over land they are not able to use, simply because they are desperate to retain some source of wealth.

The second response which came up surprisingly often (mainly from community members during focus group discussions) and directly contradicted the first was that there are too many people in the district for the amount of available land. Perceived land scarcity leads families and neighbors which previously coexisted peacefully to clash over land. The challenge with the large amount of land in Nwoya that feeds the perception of land scarcity therefore seems to twofold: 1) poor allocation and distribution of land, and 2) the inability of community members to utilize arable land due to a lack of means. The consequence of these two factors is an increased inclination for landowners to protect their holdings at the exclusion of other individuals, which results in land conflicts.

### 3.1.7 Divide and Rule: Administrative Weakness and Bad Governance

The steady creation of new districts has resulted in a weakening capacity for proper administration of law and rules and regulations with regard to land administration. Carved out of Amuru district in 2010, Nwoya district in particular is lacking in political clout. Currently, it has no District Land Board (DLB) or District Land Tribunal (DLT), meaning that individuals seeking land titles must go to Amuru district to acquire them. Certificates of Customary Ownership (CCO's) are not available at this time at all. The district has no court capable of making legally enforceable rulings, as the LC courts were stripped of their mandate in 2007 because they were not elected bodies. Plaintiffs must go to the G1 Magistrate Court in Gulu to handle land cases, where the ever-accumulating backlog of cases means that their case could take years to see the inside of a courtroom. Administrative and judicial weakness make managing land conflicts

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<sup>91</sup> Land Conflict Mapping Tool, Human Rights Focus. These figures are by no means complete, as conflict records are extremely limited in Nwoya district due to administrative weakness and lack of resources. Estimates from the four Sub-county LC 3's would suggest that there have been at least a thousand instances of land conflicts since 2010 that have been handled by the LC 3 offices alone.

<sup>92</sup> Okello, Moses, 2013.

difficult to the point that “the government has failed to execute its role.”<sup>93</sup> Another consequence of the creation of new districts is that they often create societal divisions, contributing to the “over-fragmentation of the country”<sup>94</sup> that has characterized Uganda’s history. Rosalba Oywa explains, “When boundaries are created, people start seeing one another as enemies. This is another source of conflict. It is divide and rule to a level that people will not work together anymore.”<sup>95</sup> When it comes to land conflicts, major disputes have erupted when new districts were created along the borders between Adjumani and Amuru districts, Gulu and Nwoya districts, and other cases.

### 3.1.8 Sectarianism and Tribalism:

“Uganda,” said one Makerere University professor, “is almost a fiction.”<sup>96</sup> He went on to explain that identities in Uganda are constructed along tribal, religious, regional, and linguistic lines, and are heavily exploited by national politics. “The identity people project is the most opportunistic one” in a given situation.<sup>97</sup> This use of ethnicity as a tool for division and personal gain in many cases causes an escalation of existing land conflicts from an individual level to a clan or even tribal scale, and can even be the original source of a dispute. According to the umbrella chief of the Koch clan in Koch Goma Sub-county, Nwoya district, the relationships between clans and ethnic groups are exceedingly complex here, especially regarding land.<sup>98</sup> In the past, empty land was distributed to individuals regardless of clan membership. Customary ownership was not strictly divided along clan lines, and there was significant intermingling. With increased demand for land in the wake of the war, ethnic identity is being used often as a parameter for expulsion from so-called “clan land.” According to Rosalba Oywa, “We didn’t

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<sup>93</sup> Akena, 2013.

<sup>94</sup> Oywa, 2013.

<sup>95</sup> Ibid.

<sup>96</sup> Omach, Paul. “The International Dimensions of Conflict in Uganda.” Lecture, Post-Conflict Transformation from SIT at Makerere University, Kampala, Uganda, March 4, 2013.

<sup>97</sup> Omach, 2013.

<sup>98</sup> Oyat Okello, 2013.

have clan or inter-ethnic conflicts before the war; these are recently being exploited by politicians to create division and strife.”<sup>99</sup>

### 3.1.9 “Digging Like Nobody’s Business:” Land as a Patronage Resource

According to *Where Law Meets Reality*, “African states—and indeed governments – have become havens for ‘homeboys’ and ‘homegirls’, tribesmen, sycophants, and xenophobes.”<sup>100</sup> Uganda is a typical example, and land is a primary tool for maintaining this status quo. Tales of the First Family’s personal involvement in land conflicts in Northern Uganda have become infamous among local communities in the region. One community member in Alero recounted that the president’s brother Salim Saleh has been marrying Acoli girls and is now “digging like nobody’s business” across Nwoya district. The First Lady is another major investor in the region, and her name is on the list of stakeholders for almost every major investment in Nwoya and Amuru districts today.<sup>101</sup> President Museveni has become openly involved with the case of the Madhvani sugar company in Amuru district, making several presidential statements in an attempt to reassure the people that land rights will be respected. This specific matter has not yet been settled in the High Court, but the fact remains that the government’s involvement in purchasing land for investment in Nwoya district is a major source of suspicion and conflict. Another community member at a focus group discussion in Alero Sub-county was confident that “the government has a hidden agenda” behind their interests in land in Nwoya. As a valuable commodity, land has been used as patronage, a reward for loyal civil service to the GoU.

### 3.1.10 Land Commodification, Relative Deprivation and Perception of Grievances

Land (*ngom*) is central to Acoli culture, as both a source of livelihood and a determinant of identity. Traditionally though, it was not interpreted as an owned commodity with the capacity to be bought or sold.<sup>102</sup> Among the fundamental societal shifts that came with two decades of

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<sup>99</sup> Oywa, 2013.

<sup>100</sup> Kagoro, Brian. “The Paradox of Alien Knowledge, Narrative and Praxis.” *Where Law Meets Reality: Forging African Transitional Justice*. Refugee Law Project. Pambazuka Press, Nairobi, 2012.

<sup>101</sup> Oywa, 2013.

<sup>102</sup> Oyat Okello, 2013.

conflict and internal displacement is a changed perception of land, which has lent itself towards violent, land-related disputes.<sup>103</sup> Acoli political philosopher Daniel Komakech explains: “At one point, land was simply space. Now, land is a commodity, so the narrative around land has changed towards reinforcing conflict.”<sup>104</sup> As a commodity, land is being increasingly treated as a means to accessing more monetary wealth; land grabbers are motivated by rising land prices and the attraction of selling large tracts of land at low cost to themselves. The people who become victims of land grabbing are generally in a much more vulnerable position economically or socially, and are thus deprived of power within the system, which “needs oil to run properly.”<sup>105</sup> Political theorist Ted Gurr describes this dynamic as “relative deprivation,” whereby vulnerable individuals perceive themselves to be powerless and resort to violence as their only means of defense.<sup>106</sup> In these cases, “the scope of relative deprivation determines the potential intensity of conflicts.”<sup>107</sup> One of the primary causes of land conflicts is therefore the perception of grievances and the threat of powerlessness among vulnerable communities.

### 3.2 Influence of Culture and Custom on Land Conflict

A key finding of this research that sets it apart from other relevant studies is that in addition to being a factor among the causes of land disputes, longstanding cultural traditions and beliefs have a notable impact on the process of land adjudication, within both formal and informal spheres. While some of these cultural characteristics can be used positively to create lasting solutions and facilitate communal harmony, they can also be exploited and used to sabotage the process of mediation. Furthermore, the culture of Acoli is in flux following the upheavals associated with insurgency, and the tension between old and new ways of life also factor into land conflict adjudication. The strengths and challenges of working within cultural

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<sup>103</sup> The changing cultural dynamics of Acoliland and their impact on land conflict adjudication will be discussed in depth in Section 3.2 on the Impact of Changing Culture and Custom on Land Adjudication

<sup>104</sup> Komakech, Daniel. “The Nature of Armed Conflict in Northern Uganda.” Lecture, Post-Conflict Transformation from School for International Training, Gulu, Uganda, February 18, 2013.

<sup>105</sup> Anonymous Trocaire representative, 2013.

<sup>106</sup> Gurr, Ted Robert. *Why Men Rebel*. New Jersey: Princeton University Press, 1970.

<sup>107</sup> Oywa, Rosalba. “Conflict Theory and Analysis.” Lecture, Post-Conflict Transformation, Gulu, Uganda, February 13, 2013.

constraints must be taken into account if measures to resolve land conflicts are to be successful in the long term, so the findings in this section are crucial to understanding the weaknesses of the adjudication system as a whole.

### 3.2.1 Acoli Perceptions of Land

As previously stated, land is treated traditionally as a shared communal resource within Acoli, held in customary trust by the local leadership structures called *rwot kweri*, literally “chiefs of the hoe”.<sup>108</sup> These bodies are charged with distributing land to meet the needs of individual community members. According to one *rwot kweri* in Koch Goma Sub-county, “Whoever is born in an area has equal rights to land.”<sup>109</sup> As such, an individual’s rights to use a particular plot of land may be seasonal or activity-based, and subject to change if the current pattern of usage does not contribute to the overall good of the community, but they are guaranteed access to land as a source of livelihood. Because the system is designed to safeguard the livelihoods of a larger community by distributing resources according to needs, it promotes two tendencies that are particularly relevant to this study: 1) the practice of “gifting” or “loaning” land for indefinite (but not infinite) time periods to needy parties, and 2) a cultural abhorrence of selling land.

The first of these tendencies can be compared to the Roman concept of *usufructuary* rights, that is, “the right to enjoy the use and advantages of another’s property short of the destruction or waste of its substance.”<sup>110</sup> As the Acoli are essentially usufructs on their own customarily held land, the same concept logically carries over to land holders loaning parcels of their property to other needy parties for cultivation. Several community respondents for this study referred to these pieces of land as having been “gifted,” to their families or clans, while others described the land as lent temporarily. “The value for land was not known so much, so that people were free, even a friend would come, you would just give the friend some land and

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<sup>108</sup> Oyat Oketta, 2013.

<sup>109</sup> Focus Group Discussion, Koch Goma Sub-county, Nwoya District, 2013.

<sup>110</sup> *New Oxford American Dictionary, Second Edition*. Oxford University Press, Inc. Oxford, England, 2005.

you could just live there forever, and nobody would question.”<sup>111</sup> As a result of the cultural value placed on familial and ethnic ties, being an Acoli “son of the soil”<sup>112</sup> meant that one was entitled to space to “dig,” so in most cases, the recipient was originally an individual with close personal ties to the loaner or “giver” of land.<sup>113</sup> Occasionally, unused land was also lent out to those considered to be “outsiders,” coming from neighboring clans or even ethnic groups. These temporary transfers of land were common during the conflict, when people would be forced to flee from their original homes due to threat of violence and were taken in by family, friends, and neighbors.<sup>114</sup>

In the wake of displacement, conflicts have sprung up between former recipients and “givers” of land over the nature of the original transaction and its longevity. In cases where the individuals involved in the original transactions died during the insurgency, there is often genuine confusion over the particulars of the original transaction and whether it was a transfer of land ownership or simply an informal land lease. In many cases though, a new awareness of the value of land has resulted in a push towards individualization “People are starting to want to take direct ownership at an individual level,”<sup>115</sup> so they began asserting their original claims over formerly gifted land. Sometimes, ethnic tensions and other grudges between parties can complicate the process of mediating disputes over gifted land, and the soil itself becomes an arena where underlying conflicts play out.

Traditionally, people were highly resistant to selling land, because there were no provisions for sale in the accepted system of customary tenure. “Our concept of land looks for now and onwards. That’s why people don’t want to sell it.”<sup>116</sup> But because of displacement during the insurgency, “the cultural patterns started changing. The way people saw land started

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<sup>111</sup> Oywa, 2013.

<sup>112</sup> Otim, April 27, 2013

<sup>113</sup> Okema, Santo. Interview by author. Personal interview. *Ker Kwaro* Acoli Cultural Institution, Gulu, Uganda, February 15, 2013.

<sup>114</sup> Interview with Santa, commercial farmer

<sup>115</sup> Anonymous NGO Forum representative, 2013.

<sup>116</sup> Otim, 2013.



changing. Money was not of so much importance before the war.”<sup>117</sup> Increasingly, people are selling off plots of land that may or may not belong to them to pay for a more urban lifestyle, creating conflict within families and between community members over the legality and cultural morality of selling land. A nostalgic, lingering distaste for the sale of land is apparent in the responses of community members to inquiries about land sales. According to one community member in Alero, “in our culture, we don’t sell land traditionally.”<sup>118</sup> Yet, there is little desire to go back to cultivation among the young generations, and the government of Uganda is pushing to facilitate the conversion of customary tenure to freehold tenure across the North. The tension between old and new perceptions of Acoli land use and ownership make mediation challenging, particularly when there is no documented evidence to back up ownership claims.

### 3.2.2 Social Hierarchy and Treatment of Vulnerability

In traditional Acoli culture, a strict system of social hierarchy determines the proper actions and behaviors of an individual depending on their position within the community. This carries over to land use and ownership, and has a notable impact on the dispute resolution process.

#### *Ladit: The Power of the African “Big Man”*

In the resolution of a land dispute, the demographic most called upon to provide evidence and make judgements are the *ladit*, literally meaning “big ones.” Usually, this term refers to elders and important leaders within a community; using it denotes great respect and deference for the highest level of the Acoli hierarchy system.<sup>119</sup> The widespread admiration of power can be a double edged sword in the context of land conflict adjudication. According to Rwot Oyat Oketta of Koch, the community members’ “perception of the mental strength of the mediators determines the results of mediation,”<sup>120</sup> which begs the question, when there is such an

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<sup>117</sup> Okello, Patrick Oryema, 2013.

<sup>118</sup> Anonymous community member, Alero Sub-county, 2013.

<sup>119</sup> The dominance of the “big man” is pervasive across much of Sub-Saharan Africa; a common humorous refrain is that with the exception of Paul Kagame, a politician must have a big belly to succeed in Africa. Anonymous Refugee Law Project representative, 2013.

<sup>120</sup> Oyat Oketta, 2013.

imbalance of power, is it a mediation or an arbitration?<sup>121</sup> While the *ladit* can play a crucial role in establishing justice and maintaining harmony, they can also easily exploit their position for personal gain. When discussing the role of the *ladit* in mediation, two contrary answers supporting this observation commonly arose from community members. The first reflects the traditional respect for the elders in saying that mediations *must* involve elders because they have the knowledge to provide evidence, and they “will tell the truth.”<sup>122</sup> However, most of the respondents who recognized the need for impartial *ladit* to participate in the process of mediation also cautioned that elders were not as infallible as they are culturally posited to be. In the words of a village chief in Anaka Sub-county, Opio Joel, “The elders are not truthful. They serve their personal interest, and people are suffering for it.”<sup>123</sup>

The source of this inconsistency lies once again in the tension between old and new modes of thinking, sparked by a rapid and violent change in lifestyle during the insurgency. Accustomed to being supported in their livelihood by extended family and the clan structure, “at present, the clan elders’ loss of their relative economic power within the community poses a serious gap in decision-making processes.”<sup>124</sup> The elderly have become economically vulnerable relative to the working class youth due to their inability to work the land, but still privileged due to their traditional position in society. As a result, they are prone to exploiting the system in order to secure their own livelihood. As those most knowledgeable about customary tenure, their testimony is crucial to establishing truth and reaching a mediated solution to land conflicts; however, their high potential for corruption and bias unfortunately makes them unreliable.

### *“Women Are Always Vulnerable”*

Female community members participating in this study were vocal about the disrespect of their rights to access land and their lack of participating in the process of mediation. When male focus group discussion participants declared that all members of the community had equal access

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<sup>121</sup> This question will be addressed in section 3.3.1 on Alternative Dispute Resolution

<sup>122</sup> Focus Group Discussion, Alero Sub-county, 2013.

<sup>123</sup> Opio, Joel, 2013.

<sup>124</sup> Komakech, Lyandro. “Traditional Justice as Adjudication in Uganda.” *Where Law Meets Reality: Forging African Transitional Justice*, 74. Refugee Law Project. Pambazuka Press, Nairobi, 2012.

to land in Acoli, they were interrupted by sharp retorts from the women, emphasizing that *men* were the ones with rights to the land. Widows and unmarried women were identified as groups particularly vulnerable to eviction and lack of land access in the wake of the insurgency, though before the war, most female respondents believed that even these groups were able to access land more readily. Several NGO's focusing on women's land rights have identified cultural shifts as a factor in gender-based conflict over land. "Before, when they used to say there were no cultural land disputes [between men and women], it is because people respected cultural practices. It was because women had no rights to land, and they kind of resigned themselves to it," explained a representative from War Child Canada. "Where men have been raised to know that they are the protectors and owners of land, there's this new concept of development that says women have rights to land, and that's where the challenge is."<sup>125</sup> Women's awareness of their own disenfranchisement within the community is beginning to take hold. One female community member in Koch Goma Sub-county responded that when it comes to justice, as women, "we don't have any voice."<sup>126</sup> Female respondents were particularly frustrated about their input in land conflict mediations not being taken into consideration. Although they asserted that they had a crucial role to play in calming violence and making sure conflicts didn't escalate, they believed that their perspective was not considered relevant by local leaders.<sup>127</sup>

### *Youths: "Tit-for-Tat" in Land Conflicts*

The youth in Acoliland are a demographic that has spent their formative years in IDP camps, experiencing the rapid disintegration of traditional ways of life and cultural structures. As a result of poverty and fear amid the chaos of the insurgency, delinquency and alcoholism among youth are extraordinarily common. A local landowner in Purongo Sub-county who was one of the few to stay out of the camps during the insurgency explained, "People were just scattered, and the youth didn't know where they came from."<sup>128</sup> Now that these children have grown up

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<sup>125</sup> Anonymous War Child Canada representative. Interview by author. Personal interview. Gulu, Uganda, May 2, 2013.

<sup>126</sup> Focus Group Discussion, Koch Goma Sub-county, 2013.

<sup>127</sup> Focus Group Discussion with women, Purongo Sub-county, 2013.

<sup>128</sup> Anonymous commercial farmer, Purongo Sub-county, 2013.

and returned to their ancestral homes, they are some of the main instigators of land conflicts. According to one youth in Purongo Sub-county, “the youths go in for a tit-for-tat approach.”<sup>129</sup> The youth participants in this study were frustrated by their treatment by clan leaders and *ladit*. “The elders use the youths as an energetic group to go and cause land conflicts.”<sup>130</sup> However, because the Acoli traditionally have a deep respect for the elderly, “the community isn’t interested in the perspective of young people”<sup>131</sup> when it comes to decision-making process such as land conflict mediations. Just like women, their perspective is treated as negligible to the process of land conflict mediation, except when they are chastised and punished for instigating violence. Marginalizing youths in the peace process only perpetuates their tendency to turn to lawlessness over land.

#### *Ajwaka: Exploitative Spirituality*

Set somewhat apart from the linear hierarchy of Acoli communities are the *ajwaka*, traditional healers to claim to communicate with spirits to solve societal ills, for a considerable fee. When communities are consulted about the means they use to handle land conflicts, it often comes to light that parties in conflict consult the *ajwaka* in order to find out the root cause behind the conflict, or even inflict spiritual harm on the opposing party. The *ajwaka* counsels the complainant on the best course of action, assuages their fears and vindicates their position by offering spiritual protection and vengeance against the offender. For a fee of five hundred thousand to a million shillings, an *ajwaka* can even be hired out as an assassin. As such, they are continually on the sidelines of land conflicts as psychologists and executors of a traditional form of vigilante justice from within the spiritual world, which is a very tangible source of both fear and hope in Acoli culture. In charging exorbitant fees for these services, they seem to exacerbate the financial strain on families undergoing land conflicts by exploiting cultural beliefs. Operating

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<sup>129</sup> Focus Group Discussion with youth, Purongo Sub-county, 2013.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

as hired bolsters of power for one side or the other, their presence can also undermine mediation efforts if they become too deeply involved.<sup>132</sup>

### 3.2.3 Communalism, Compromise and Consensus Building

Although land is managed by a respected leadership body, usually a *rwot kweri*, an elder, or a council of community leaders, community consensus is crucial when making decisions about how to handle land. Similarly, land conflicts are treated as a communal problem and sustainable solutions must be based on mutual consent between all parties involved. The value of mediation most commonly touted by both mediating actors and participants alike is that a way forward that will secure sustainable harmony within the community can be agreed based on compromise and consensus. The communal attitude of the Acoli culture lends itself to compromise, even in cases where this means one party ceding land to another. “In a mediation, sometimes one side surrenders land for the sake of peace and coexistence,” the LC 5 of Nwoya stated. “We hope to restore coexistence, the harmony that a community used to enjoy, and preserve cultural practices.”<sup>133</sup>

The value the Acoli place on communalism and consensus may lend itself well to creating harmony and accepting compromise between relatively equal parties or in the case of genuine disagreements, but can lead to an abuse of vulnerable people’s land rights in circumstances where compromise essentially amounts to making land grabbing a “no-risk” activity.<sup>134</sup> “There is no justice in that kind of compromise,” according to Rosalba Oywa. Rwot Oyat-Oketta of Koch corroborated this opinion, “As much as mediation is good to come to a compromise, it is better when rights are respected.”<sup>135</sup> But as mediators, cultural and political leaders face the challenge of establishing when there is malicious intent involved in a conflict, in order to know when compromise may not be an appropriate solution. Their power is also limited,

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<sup>132</sup> The information in this paragraph is based on conversations with Rwot Oyat Oketta of Koch and his secretary, James Komakech, as well as observations of and interactions with communities, and the observation of one consultation with an ajwaka in Koch Goma Sub-county.

<sup>133</sup> Okello, Patrick Oryema, 2013

<sup>134</sup> Akin, Jeremy and Isaac Katono. *Examining the A-D-R-tistry of Land Dispute Mediators in Northern Uganda*. For the Northern Uganda Land Platform, October, 2011.

<sup>135</sup> Oyat Oketta, 2013.

because they can only facilitate agreements, not make rulings. Yet the LC 3 of Anaka Sub-county maintains, “with mediation, at least a balance can be maintained. If you go to court, someone must lose.”<sup>136</sup> The win-lose arrangement of the formal justice system offends the cultural value placed on communalism and consensus, so it was seen by most respondents for this study as a last-resort only. The dynamics of the formal justice system will be discussed further in section 3.2.3 on the Formal Justice Framework.

### 3.2.4 Linguistic Duplicity and Mistranslation

The Acoli language is rife with ambiguity; because its lexicon is relatively small, each word carries a host of meanings which may or not be congruous with one another. In the context of land conflicts, the non-specificity of the key Acoli phrases used in describing disputes and resolution can lead to miscommunication that exacerbates tension. As previously mentioned, *lara ngom* is the phrase usually used to refer to land grabbing. While it does mean ‘grab,’ concurrently, the word *lara* could imply either malicious ‘seizing’ or conversely, protective ‘clinging to’ or ‘saving,’ a nuance which drastically changes the meaning and reception of the word.<sup>137</sup> Taken as an allegory, this word represents the various ways that stakeholders in Northern Uganda treat land: for land grabbers, as a commodity to be exploited, but for the landowners themselves, something to hold on to with all of their strength.

The use of language also serves as evidence of the tense cultural confluence of Acoli and Western values. This is particularly obvious in the Acoli adoption of judicial terms; in Acoli, the word for ‘court’ is simply a local inflection of the English version, written as *kot*. In the discourse of a mediation, English words are occasionally used when they have no Acoli equivalent. The type of words spoken in *leb muno* (literally, ‘white man’s language’) in an otherwise Acoli speech is indicative of the depth of cultural strife: ‘boundary’ was one that appears not to have a direct translation into Acoli and is used consistently in its English version during mediations. In other example, part of the negative perception of investment by Acoli communities may be due to the use of the term *nyayo lonyo*, which can translate either to ‘increased prosperity,’ or

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<sup>136</sup> LC3 Anaka Sub-county

<sup>137</sup> Anonymous SIT lecturers, March, 2013.

‘accumulating wealth,’ phrases that obviously carry different connotations.<sup>138</sup> Within the rural communities that participated in this study in Nwoya district, the latter translation was most common, which corresponded with communities viewing investment as foreign appropriation of their birthright. Thus, the way words are used and interpreted in the context of a sensitive and potentially explosive land conflict mediation is a strong determinant of the outcome of the resolution process; the wrong turn of phrase can pour fuel on a smoldering fire by further miring a conflict in misunderstanding.<sup>139</sup>

### 3.3 Land Conflict Adjudication and Resolution in Nwoya District

#### 3.3.1 Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) mechanisms are gaining prominence in the international sphere of conflict resolution as a way to deal with conflicts outside the formal justice system, especially in situations like Uganda, where that structure is known to be practically moribund. There are a wide variety of ADR mechanisms, ranged on a scale from situations where the conflicting parties have the most control over decision-making (negotiation), to the least (arbitration).<sup>140</sup> In the context of land conflicts in Northern Uganda, mediation is the most common form of ADR. At the district level in Nwoya, there is a 30 member District Reconciliation and Peace Team organized by the District Council to handle land issues, comprised of a variety of district mediating actors. Mediation is widely viewed by communities to be a better alternative to the formal court system, because it is more easily accessible and “a properly mediated dispute has a more sustainable solution.”<sup>141</sup> Of course, there are also weaknesses in using ADR mechanisms that will be explained in the proceeding sections. ADR

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<sup>138</sup> Oyat Oketta, 2013.

<sup>139</sup> This paragraph is based on personal observation of mediations and brief conversations with Acoli participants about the nature of words used.

<sup>140</sup> Akin and Katono, *A-D-R-tistry*, 2011.

<sup>141</sup> Otim, 2013.

will be formally integrated into the court system in Uganda in June 2013, which should have an impact on the procedures of land conflict adjudication.<sup>142</sup>

### 3.3.1.1 Actors in Alternative Dispute Resolution

#### *Cultural Leaders:*

According to Rosalba, “culturally, [the Acoli] had our own mechanisms of dealing with conflicts, including land.”<sup>143</sup> These clan-based leaders play an instrumental role in mediating land conflicts, from petty land disputes to large, violent conflicts. The 1995 Constitution of Uganda established cultural institutions for each ethnic group, to act as umbrella organizations to formalize clan systems. In Acoli, this is Ker Kwaro Acoli, led by the Paramount Chief of the Acoli tribe. Beneath the paramount chief in terms of hierarchy come the other clan chiefs, the sub-clan chiefs, the councils of elders, and finally the *rwodi kweri* (chiefs of the hoe). Because they have been there for “time immemorial”<sup>144</sup> and are widely respected by local communities, the cultural actors can be strong authorities for mediating land conflicts. They are also non-politicized, so their propensity for corruption may be lower than other actors.

Being bound to traditional customs, though, they can be prone to further disadvantaging vulnerable groups if cultural norms create pockets of vulnerability. “They base their decisions on existing cultural practices, and that cycle continues to hinder the rights of certain groups,”<sup>145</sup> said a representative of War Child Canada. The Chief Administrative Officer (CAO) of Nwoya district confirmed, “When it comes to culturally marginalized groups, when it is the clan leaders mediating, they lose out.”<sup>146</sup> Traditionally, clan leaders and clan “courts” had a great authority over their subjects, so they can also be inclined to arbitrating and making rulings rather than mediating, but these have no legal backing and can do more harm than good in trying to mitigate

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<sup>142</sup> Anonymous ULA representative, 2013.

<sup>143</sup> Oywa, 2013.

<sup>144</sup> Ibid.

<sup>145</sup> Anonymous War Child Canada representative, 2013.

<sup>146</sup> Seguia, 2013.



land issues.<sup>147</sup> It often depends on the integrity of the individual to ensure that a mediation is carried out fairly, which cannot always be guaranteed.

### *Law Enforcement*

When land conflicts occur, relative vulnerability and desperation cause people to take the law into their own hands as their only option for securing their land and livelihood. When land disputes result in criminal activity (usually trespass, destruction of property, assault, and occasionally murder), law enforcement is called in to play a role in resolution and mitigate damages. According to the District Police Chief (DPC) of Nwoya district, when aggrieved parties make a complaint to their office, the police first investigate to see if the crime is land-related. If it is not a serious offense, they go through the channels of land conflict mediation rather than prosecuting the offender, which would do little to address the root cause of the issue. During a mediation, law enforcement officers act in an authoritative capacity as mediators and also provide security for other mediating actors.<sup>148</sup>

Unfortunately, the biggest weakness of the law enforcement system in Uganda was found to be that it is widely distrusted by the communities. Community respondents for this study unanimously testified to corruption in the police force. As one respondent in Alero Sub-county put it, “the police is the most corrupt arm in this country. I’d rather eat at the same table with an army man than a policeman. They preach something and practice something else.”<sup>149</sup> Another community member continued, “The police normally use their gun to oppress people.”<sup>150</sup> They were deeply suspicious of law enforcement as another military arm of the government, particularly in cases where the government itself was implicated in land grabbing. Here, the involvement of the police became a catalyst for violence instead of helping to calm the situation.

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<sup>147</sup> Oyat Oketta, 2013.

<sup>148</sup> Okello, Moses SP (DPC Nwoya), 2013.

<sup>149</sup> Anonymous community member, Alero Sub-county, 2013.

<sup>150</sup> Ibid.

### *District Elected Political Leaders*

In the decentralized system of government in place in Uganda, each district is designed to be largely self-sufficient in terms of conflict resolution. Local Councilors at district, sub-county, parish, and village level play a prominent role in implementing ADR to handle land conflicts. Along with *rwodi kweri* and other local actors, the Local Councilor 1 (LC 1, the lowest level of elected officials in government) is the first mediator to attempt resolution of a land conflict.<sup>151</sup> If this is unsuccessful, the case is forwarded to the LC 3 at Sub-county level, and then up to the District Chairperson LC 5. Each of these actors employ other relevant leaders to bolster their authority, such as District Councilors, clan leaders, law enforcement officers, etc. As elected leaders, the LC's are the mediators held most accountable to their constituencies, which can be positive in that they are sensitive to the needs of the community, but negative when they are found to currying favor with one group or another in return for political support.<sup>152</sup>

Community members participating in this study had mixed feelings about the role of the LC's and other elected leaders at the district level. Though they were perceived much more positively than the central government, they are still seen as biased due to their role as politicians: "People coming into office don't come in with the mind of understanding the problems of the people."<sup>153</sup> Community members criticize the LC's for simply referring cases on to the next actor when they can't handle them. However, LC's themselves report high rates of success in mediation.<sup>154</sup> The LC 5 of Nwoya district replied, "In all the areas I have moved personally, I was able to handle [the land dispute]. Those communities have not gone back to conflict."<sup>155</sup> Each LC 3 interviewed reported hundreds of cases of land conflict per year in their Sub-county, indicating another challenge with using political leaders to mediate: land conflict resolution makes up a huge portion of their daily work, diverting them from other necessary

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<sup>151</sup> Opiyo Joel, 2013.

<sup>152</sup> Okello, Patrick Oryema, 2013.

<sup>153</sup> Community member, Alero Sub-county, 2013.

<sup>154</sup> Okello Patrick Oryema, the LC 5 of Nwoya district, reported a 100% success rate in mediations he was involved in personally, while LC 3's in the various sub-counties reported between 60% and 80% success rates, overall. This was contradicted by several NGO representatives, as well as observed evidence (only one of the six mediations observed was successful, and several have been going on for over two years).

<sup>155</sup> Okello, Patrick Oryema, 2013.

tasks.<sup>156</sup> In Nwoya district, incensed community members will often skip over lower level adjudication structures to go directly to LC 3's or the LC 5, creating the kind of backlog and delay in the mediation process that makes the justice system so ineffective.<sup>157</sup> As of May 13, 2013, President Museveni issued a public statement to the effect that political leaders should no longer be involved in mediation of land conflicts.<sup>158</sup> Because this is so recent, it is impossible to know what effect this will have on the process of land dispute resolution, but it is likely to have significant bearing as political leaders are currently the actors perhaps most embroiled in the land conflict situation.

*“Completely Dead”: Technical Land Governance Institutions*

The 1995 Constitution of Uganda and the 1998 Land Act established a series of technical institutions for handling land and resolving land-related disputes. These include the District Land Boards (DLB), the District Land Tribunals (DLT), the Area Land Committees (ALC), the District Natural Resources Offices (DNRO), and the District Land Offices (DLO), among others.

However, as Denis Otim bluntly puts it, “the land governance structures are completely dead.”<sup>159</sup> Nwoya district has no DLB or DLT and no DLO, and its DNRO has been up until recently staffed by only one individual who does not have the resources to fulfill his role completely.<sup>160</sup> A representative of War Child Canada elaborated, “The structures that are supposed to handle land issues are weak, though they are existent, which is commendable. Financially, logistically, and human resource wise, they are scattered and spread out, which makes them ineffective.”<sup>161</sup>

Because they were established fairly recently and are not coordinated with customary institutions, there is also a very low level of awareness regarding the function of these structures among communities.<sup>162</sup> Even when community members are aware, they perceive these

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<sup>156</sup> Interviews with the LC 3's of Koch Goma, Anaka, Alero, and Purongo Sub-counties.

<sup>157</sup> Okello, Patrick Oryema, 2013.

<sup>158</sup> Otim, 2013.

<sup>159</sup> Otim, 2013.

<sup>160</sup> Omara, 2013.

<sup>161</sup> Anonymous War Child Canada representative, 2013.

<sup>162</sup> Okello, Moses SP, 2013.

structures (particularly the ALC's) to be weak and corrupt, and are unlikely to turn to them as sources of authority for mediating land conflicts. For all intents and purposes, the ALC's and other land-based institutions "only have power during peaceful, undisputed transactions involving land,"<sup>163</sup> making them completely ineffective ADR bodies.

### *Non-Governmental Organizations: The Wild Card*

As outside actors without a legal mandate to participate in ADR of land conflicts, Non-Governmental Organizations (NGO's) have a unique role to play in adjudication. There are a number of prominent international and grassroots NGO's now working on mediating land conflicts and advocating for land rights and justice within the legal system. The major strengths of the NGO's is that they are perceived as neutral by the communities and have the flexibility to serve as an intermediary between resolution actors.<sup>164</sup> Representatives from several NGO's reported that they consult the communities before designing mediation strategies. "We invite them to bring people they are comfortable with and think they can help."<sup>165</sup>

In facilitating successful mediations, NGO's rely heavily on local actors for connections. According to a representative of War Child Canada, "The community looks at NGO's as outsiders, and you have to invest a lot to first of all create a relationship" before mediation can be successful. Initial attempts by NGO's at building rapport can be unsuccessful, especially if the people involved are seen to be outsiders. "People in Northern Uganda look at NGO's as a threat to cultural systems. We are a threat to existing practices, so sometimes that affects people's attitudes."<sup>166</sup> Although their position outside the government and other official structures can be a strength, NGO's involvement in advocating for rights of vulnerable individuals rather than simply acting as neutral observers can also sew discontent in the community, particularly when local perceptions of "human rights" contrast with international norms. A representative from the Uganda Land Alliance explained this stance: "Once mediators are not helping the oppressed,

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<sup>163</sup> Okello, Patrick Oryema, 2013.

<sup>164</sup> Anonymous ULA representative, 2013.

<sup>165</sup> Anonymous WCC representative, 2013.

<sup>166</sup> Ibid.

then to me, they are sidelining the oppressors. Instead of trying to create balance, they would just be keeping the power imbalance in place.”<sup>167</sup> Within the context of the Ugandan justice system, this kind of advocacy is still crucial to preserving land rights, but massive community sensitization will be needed to facilitate closer relationships between communities and the NGO’s that serve them.

### 3.3.2.2 ADR: Challenges to Implementation

Alternative Dispute Resolution (ADR) mechanisms are already the dominant mode of dealing with land conflicts in Acoli, and have enormous potential for sowing sustainable solutions in communities that have been wracked by conflict. The region benefits from the fact that there are “very strong informal processes when it comes to land conflict resolution in Acoli.”<sup>168</sup> Mediation is widely supported by the communities, and is faster and less expensive than the formal system. “Mediation is better, simply because for the vulnerable people, they cannot access court.”<sup>169</sup> Actors using ADR are more effective at working with the cultural framework rather than antagonizing it. In a properly facilitated mediation, “a person is free to speak and speak confidently,”<sup>170</sup> without fear of retribution. However, “they also have loopholes,”<sup>171</sup> some of which will be discussed in the following sections.

#### *Bias, Corruption, and Manipulation*

Like any other system, the ADR framework can be exploited by participants whose intentions are self-serving or not in the interests of justice. With ADR, bias of mediators and participants alike can cause mediations to fail in creating lasting solutions. Most lower level land conflicts are mediated by actors who are very close to the situation at hand, such as *rwot kweri*, village chiefs, and LC 1’s. Although the proximity means that they are likely knowledgeable about the situation at hand, they are also likely to be biased. Even the LC 5 of Nwoya district

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<sup>167</sup> Anonymous ULA representative, 2013.

<sup>168</sup> Anonymous WCC representative, 2013.

<sup>169</sup> Oryem, 2013.

<sup>170</sup> Okello, Patrick Oryema, 2013.

<sup>171</sup> Anonymous WCC representative, 2013.

admitted, “as leaders, we take sides.” A mediator might be a neighbor, of a member of the same clan as one party and not the other, or even a relative. In these cases, even if the mediators are not actively influencing the outcome of the mediation, they are perceived as biased. Neighbors and elders who attend mediations to provide evidence are intended to be impartial, but their proximity to the community also undermines their credibility.

Uganda is notorious for corruption at every level. In *Where Law Meets Reality*, Brian Kagoro writes: “Most African systems do not seem to function without ‘grease’ or ‘facilitation fees.’ These are systems of co-conspirators from the watchmen guarding office buildings to the highest echelons of the state. These co-conspirators are tied together by an umbilical cord of greed and short-term gain.”<sup>172</sup> The *ladit* commonly accept bribes for giving particular pieces of evidence and withholding others during mediation. Interested third parties use their own power to exert influence.<sup>173</sup> Even religious leaders are implicated in corruption. An anonymous pastor described situations where land grabbers would donate large sums of money to churches as payment to turn the other cheek.<sup>174</sup> Some administrators are willing to use their office to sign off on false certificates of land ownership for a small fee, with the result that one parcel of land could be registered under several “legal” titles. Because of the high level of corruption, it is very easy for individuals to manipulate the process of a mediation to go in their favor.

#### *Impotence, Lack of Means, and Untrained Mediators*

Another challenge with the use of ADR mechanisms in addressing land conflicts is a lack of capacity. Mediators are poorly trained and their efforts are underfunded, while their decisions carry no legal weight and in many cases are not respected, particularly by powerful actors. This latter problem occurs specifically when there is an imbalance of power between parties, because the more powerful party may not engage in ADR. The LC 5 of Nwoya district affirmed that those who “have the money for lawyers have no incentive to come to mediations.”<sup>175</sup> Of the six

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<sup>172</sup> Kagoro, 24, 2012.

<sup>173</sup> Okello, Patrick Oryema, 2013.

<sup>174</sup> Anonymous pastor. Interview by author. Personal interview. Lira, Uganda, April 16, 2013.

<sup>175</sup> Okello, Patrick Oryema, 2013.

mediations observed, four of them were attended by only one of the two parties involved; these seemed to be the most volatile and least successful. The DPC of Nwoya district confirmed that “violence comes when only one party is present.”<sup>176</sup> Therefore, the mediators’ lack of authority creates instability and the potential for violence. Ultimately, “the resolution of a dispute is dependent on the willingness of the parties involved,”<sup>177</sup> because mediators are not powerful enough to enforce them. “Mediators cannot be people who are easily intimidated by the community.”<sup>178</sup> When parties are unwilling to cooperate, ADR is essentially impotent.

Capacity is also lacking in terms of training and finance for mediation. Basic problems such as a lack of transportation and funding to compensate mediators and witnesses for their time can derail a mediation and make it vulnerable to corruption. Given the scope of the problem, the budget for ADR is prohibitively small. Poor mediation can easily compromise the mediation structure. When mediating actors are perceived as weak, biased, or unknowledgeable, “mediation may not be very accurate and reliable in terms of weighing evidence” and giving advice. Untrained mediators may also try to arbitrate when they should be acting in a neutral, advisory capacity. When mediators are impotent, the paradox arises that in the interests of harmony, land dispute mediators often come to compromises which abet land grabbing and the exploitation of vulnerable individuals, thus infringing on land rights, in the interests of peace.

### *Arbitration or Mediation?*

The “big man” mentality described earlier in the report can turn a mediation into an arbitration, as communities are accustomed to respecting power, and mediators can exert undue influence on the proceedings. Among the mediations observed during the course of this study, several tended towards arbitration in their rhetoric and in behavior of the parties. In example, one case in Purongo Sub-county involving low level mediating parties used rhetoric similar to that of a courtroom. The mediation was occurring because one party (called “the accuser” by the mediators) approached the Sub-county offices for assistance. The “accused” was issued the

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<sup>176</sup> Okello, Moses SP, 2013.

<sup>177</sup> Otim, 2013.

<sup>178</sup> Ibid.

informal equivalent of a summons. During the mediation itself, the mediating parties called “witnesses” for “cross-examination.” As Denis Otim from RLP remarked, “all they need is lawyers to make it a courtroom.”<sup>179</sup> This treatment of the process undermines the parties’ own initiative to come to a peaceful settlement, thus making a solution less sustainable.<sup>180</sup>

### 3.3.2 “Legality is Now Blocking Justice.” The Formal Justice Framework

The formal justice framework in Uganda mirrors the decentralized structure of the government. At the lowest level are the LC 1 and LC 2 courts. Originally, the LC 2 court was the official court of first instance for land conflicts, but these bodies were stripped of their mandate to deliver rulings in 2007 because they were presided over by non-elected officials.<sup>181</sup> However, in many areas they are still holding sessions for a fee, contributing to the problem of land conflicts rather than their solution. From here, the LC 3 sub-county court is the lowest level court that can make rulings. The Magistrate Grade 2 and then Grade 1 courts follow at the district level. Nwoya district does not have any courts currently in operation that have the capacity to deliver legally binding rulings, meaning that cases must go to Gulu district to be heard. If they cannot be resolved here, cases are heard by the High Courts, the Courts of Appeals, and the Uganda Supreme Court, located in Kampala.

Land cases are decided on the basis of circumstantial evidence in the form of witness testimonies, location visits, and primary document evidence when it is available.<sup>182</sup> One oft identified challenge with the formal justice system is that when customary ownership is involved, there can be a lack of solid evidence. Land disputes themselves are heard solely as civil suits, while criminal charges associated with them such as trespass, forcible entry, assault, destruction of property, and murder are handled separately as criminal suits.<sup>183</sup> A key difference between the two is that civil cases award damages to plaintiffs, while criminal cases result in

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<sup>179</sup> Ibid.

<sup>180</sup> This paragraph, observation of a mediation in Purongo-Sub-county, April 30, 2013.

<sup>181</sup> According to a representative of the Ministry of Lands, the government plans on holding elections, but a date has not yet been set.

<sup>182</sup> Anonymous lawyer, 2013.

<sup>183</sup> Okello, Moses SP, 2013.



either incarceration of the party or fines paid to the state.<sup>184</sup> Cases of land disputes rarely go beyond the Magistrate G1 level due to lack of financial capacity of the people involved, and those that do usually involve investors or others with financial capacity. The court system in Uganda is widely seen as dysfunctional among rural community members, government officials, academics, NGO representatives and even lawyers consulted for this study. It is notoriously expensive and seen as exploitative of vulnerable parties. According to a representative of the Gulu NGO forum, “These structures are there, but they don’t really provide justice.”<sup>185</sup> The following sections will detail some of the weaknesses and challenges associated with the formal justice system in dealing with land conflicts.

#### *Case Backlog: Justice Delayed is Justice Denied*

Backlog in the court system poses a significant challenge to land conflict adjudication. As it stands now, civil cases often take years to through the procedures, “making execution of cases impossible.”<sup>186</sup> Currently, cases are being filed faster than they can be processed, and the backlog is only increasing. Courts are understaffed and underfunded, and there are too few of them to handle the caseload. Furthermore, the first step in the process of adjudicating a land dispute is usually to issue an injunction prohibiting either party from accessing that piece of land while it is being disputed.<sup>187</sup> This exacerbates power imbalance between parties, because many of the people involved in land conflicts are dependent on their land for basic subsistence. Issuing these injunctions makes it very easy for land grabbers to succeed by turning land conflicts into waiting games, where the first one to be desperate enough to access the land illegally is arrested for encroachment and thrown in prison. When a criminal case is added to the mix, the civil case may be further delayed. A representative from the Uganda Land Alliance suggested that the court should maintain the status quo on a piece of land while it is in court to protect against denying vulnerable people access to land.<sup>188</sup> Although they do have the power to do this, it is more

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<sup>184</sup> Anonymous lawyer, 2013.

<sup>185</sup> Anonymous NGO Forum representative, 2013.

<sup>186</sup> Anonymous LEMU representative, 2013.

<sup>187</sup> Anonymous lawyer, 2013.

<sup>188</sup> Anonymous ULA representative, 2013.

common for them to simply prohibit all access to the land, which in some cases constitutes “even a threat to people’s lives”<sup>189</sup> when cases drag on for several years without conclusion.

*Abuse of Power: Money, Corruption, and Intimidation in the Courts*

The first flaw in the formal justice system is that filing a case is prohibitively expensive for the common person. According to a lawyer working in Oyam district, a preliminary consultation with a lawyer will cost approximately six million shillings, which may be well outside what a rural household, or even community, makes in a year. Along with initial fees for filing a case, courts charge extra for locus visits, which are crucial sources of evidence in cases of land conflicts. “The formal justice system relies on issues of strict proof, witnesses, which are really costly to the local person. Many people cannot afford the formal justice system.”<sup>190</sup>

On top of exorbitant official fees to be paid, the system is utterly replete with corruption. According to a majority of respondents for this study, cases do not go through court without significant bribes changing hands. “There is always underground payment to be done, which is expensive for the common man,” explains a representative from NGO Forum. “You can never win a case, even if you are right, even if you have a genuine case, unless you pay something.” Actors in all levels of the justice sector have been accused of involvement in bribery, from court clerks, to magistrates, to witnesses, to the litigants who “march into it” by giving out “tokens of appreciation.”<sup>191</sup>

Furthermore, there is little public awareness of the legal processes involved in going to court, and the opacity of the system can be used by powerful land grabbers to intimidate vulnerable community members out of pursuing a case. A representative from the Uganda Land Alliance explained, “We need to find a way so that someone who has not gone to school has an easier way of going to court.”<sup>192</sup> People who are illiterate or cannot speak English are discouraged from going to court and are therefore vulnerable to land grabbing. Even the

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<sup>189</sup> Ibid.

<sup>190</sup> Seguia, 2013.

<sup>191</sup> Anonymous lawyer, 2013.

<sup>192</sup> Anonymous ULA representative at NULP, 2013.

relationship between litigants and the judiciary is characterized by an imbalance of power and the use of intimidation by the latter against the former.<sup>193</sup> According to a representative from NGO Forum, “Court staff need to change attitudes towards the community; rather than seeing it as their mandate to punish or extort, the mentality should be that they are providing a service instead.” However, he added that “The government’s embracement of corruption makes it very difficult [to reform the formal justice system].”<sup>194</sup>

### *Public Perception of the Formal Justice System*

As a result of these weaknesses, the public perception of the formal justice system in Uganda is seeped in mistrust and suspicion. Every community consulted for a focus group discussion and the majority of other respondents for this study expressed a fatalistic sense of distrust in the court process. Firstly, courts are perceived to be “far from the people.”<sup>195</sup> In Nwoya district, where the nearest court that can handle land matters is in Gulu district, this dislocation from the communities makes the judiciaries unlikely to understand the local context.<sup>196</sup> The formality of the courts is also at odds with the traditional system, which approaches conflicts from a conciliatory rather than adversarial position.<sup>197</sup> In court, “the must be a winner and a loser, so people fear it.” The winner-takes-all function of a civil case is insoluble with the communalist values of the Acoli, so in many cases, rulings “end up fueling conflict back in the community.” According to the Chief Administrative Officer of Nwoya district, dissatisfied parties may even “resort to other strategies of elimination.”<sup>198</sup> For these reasons, communities are more willing to trust informal ADR mechanisms for resolving land disputes, because “the formal justice system has done more harm than mediation.”<sup>199</sup>

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<sup>193</sup> Anonymous NGO Forum representative, 2013.

<sup>194</sup> Ibid.

<sup>195</sup> Seguia, 2013.

<sup>196</sup> Okello, Patrick Oryema, 2013.

<sup>197</sup> Anonymous Ministry of Lands Representative. Lecture, NULP, 2013.

<sup>198</sup> Preceding three quotes attributed to: Seguia, 2013.

<sup>199</sup> Okello, Patrick Oryema, 2013.

## 3.4 Land Conflict Deterrence and Prevention Mechanisms

### 3.4.1 Are Certificates of Customary Ownership a Viable Solution?

A significant step taken by the central government recently to address land conflicts is to initiate the process of Certificates of Customary Ownership (CCO's), with the idea that codifying customary land would remove some of the uncertainty associated with a lack of documented land titles. Although it is too early to assess whether the new system of CCO's will help mitigate land conflicts in the long run, a number of challenges have already become apparent in implementing customary land registration, and CCO's have come under fire from land NGO's across post-conflict regions of Northern Uganda for aggravating and creating conflict. Firstly, there is concern that introducing bureaucratic requirements for accessing land holdings will lead to higher costs and increased marginalization of the rural poor.<sup>200</sup>

Despite the impression that customary land is something inherently known by the community members, in reality, "many people do not understand customary land" because of disruption associated with the conflict and a trend towards urbanization and modernization.<sup>201</sup> Furthermore, the blanket format of the CCO, applied across Uganda to vastly differing customary land systems, is inconsistent with the Acoli traditions in some regards. Each CCO allow only five names to be registered, making it easy for people who intend to grab land to exclude others from access.<sup>202</sup> The LC 5 of Nwoya district said that this is one example of several "unfriendly phrases," within the CCO framework that create loopholes for exploitation. Because the system was not streamlined before being put into effect, a representative from ActionAid warned, "CCO's will cause people to kill each other over land."<sup>203</sup>

However, some form of "authentic document that is satisfactory to all stakeholders,"<sup>204</sup> may be necessary to help curb the escalating trend of land conflict, according to a representative

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<sup>200</sup> Shewan, Jessica. "Certificates of Customary Ownership." Conflict Watch, Advisory Consortium on Conflict Sensitivity (ACCS), Refugee Law Project. Kampala, Uganda: October 2012.

<sup>201</sup> Okello, Patrick Oryema, 2013.

<sup>202</sup> Oywa, 2013.

<sup>203</sup> Anonymous ActionAid representative. Lecture, National Uganda Land Platform Conference. Lira, Uganda, April 15, 2013.

<sup>204</sup> Ibid.

from ActionAid. A representative from LEMU confirms this: “There is a real need for paper evidence of ownership.”<sup>205</sup> Implemented correctly and with the proper grassroots preparation, CCO’s could have the potential to be an effective force for mitigation. CCO’s may also need to wait until land issues are less explosive and vulnerabilities are less easily exploited, lest they end up aggravating conflict. Several respondents identified a need for massive sensitization in the community before CCO’s could be introduced effectively. “We need to first look into how we handle things culturally,”<sup>206</sup> the LC 5 of Nwoya suggested. Though they should perhaps be suspended until a more opportune time, CCO’s should be kept on the table for future consideration as a possible way to avert land conflicts over customary land in future.

### 3.4.2 Nascent National Land Policy

For several years, GoU has been in the process of drafting an ambitious national land policy to help address some of the current challenges associated with land in Uganda. The first draft, comprising seven chapters, was signed off by Cabinet on February 7, 2013 and will soon be circulated for feedback. According to a representative from the Ministry of Lands, one chapter concerns customary land and provides for the following: the establishment of a customary land registry; systematic demarcation of land; the limitation of leaseholds on customary land to 49 years, so that “no investor will acquire customary land;”<sup>207</sup> the establishment of a land bank to determine which lands are usable for what investments; and procedures for acquiring land for vulnerable groups and protecting small farming interests. Additionally, the Land Policy “proposes to facilitate the conversion of customary land to freehold tenure,”<sup>208</sup> and individualize customary tenure. In response to allegations that the current system is perpetuating land conflicts rather than helping to mitigate them, the new policy will address land adjudication by providing free legal aid for civil cases of vulnerable groups and design processes for integrating alternative dispute resolution (ADR) mechanisms into the formal judicial system.<sup>209</sup>

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<sup>205</sup> Anonymous LEMU representative at NULP, 2013.

<sup>206</sup> Okello, Patrick Oryema, 2013.

<sup>207</sup> Anonymous Ministry of Lands Representative. Lecture, NULP, 2013.

<sup>208</sup> Ibid.

<sup>209</sup> This paragraph: Ibid.

### 3.4.3 Community Sensitization

Community sensitization was identified by a majority of respondents as a necessary step forward for all actors intending to address land conflicts in Northern Uganda. The communities themselves recognize the need to be educated about land rights if conflicts are to be sustainably curtailed. Without sensitization, communities have little agency to self-advocate and protect their legal rights to land when a conflict arises. Reliance on NGO's and other ADR actors to provide those services creates a dependency on dispute resolution actors that is detrimental to communities' long-term autonomy. During a focus group dialogue in Alero Sub-county, respondents confirmed that they had not yet been sensitized to their land rights, so "we don't know whether the mediations are respecting our land rights or not."<sup>210</sup> Political leaders such as the LC 5 of Nwoya district agreed, "What we have done is not yet enough."<sup>211</sup> Constraints to providing adequate sensitization in Nwoya district specifically include limited access to the remote community due to lack of transport and a low population density, as well as limited resources and knowledgeable staff to carry out sensitization. However, as information increasingly spreads throughout rural Uganda via radios, cell phones, and other sources of communication, it may be more feasible to carry out sensitization remotely. Despite the challenges of implementation, community sensitization is a crucial piece of any way forward for preventing land conflicts.

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<sup>210</sup> Focus Group Discussion, Alero Sub-county, 2013.

<sup>211</sup> Okello, Patrick Oryema, 2013.

## **Chapter IV: Synthesis and Conclusion**

### 4.1 Conclusion

Land disputes are rapidly becoming a household norm in post-insurgency Northern Uganda; at this rate of prevalence, they have dangerous potential for sparking violent upheaval. As an RLP representative stated, “We are convinced that if nothing is done, if the conflicts are allowed to escalate, then there is likely to be a relapse into another phase of armed violence across Northern Uganda,”<sup>212</sup> an observation that has lent urgency and timeliness to this study. Based on the qualitative research detailed herein, the key findings of this research can be summarized as follows: 1) That Nwoya district faces unique challenges surrounding rising land conflicts, and that it is likely to be lit as the next prominent stage for land conflicts due to increased investment, resource prospects, and improper land distribution, 2) That Acoli traditional customs as well as the recent cultural cataclysm resultant from the community’s violent dissection from their established context have had a notable (and sometimes detrimental) impact on the land conflict resolution process, 3) That ADR has the potential to be a strong force for land conflict justice and mitigation, but that it is currently undermined by corruption, impotence, and a missing hierarchy of dispute resolution actors, among other factors, and 4) That the lack of standards and extensive corruption across the formal justice system lead to a marginalization of vulnerable community members, with the result that the justice system, though operational, is moribund in its current state. In future, if mitigation and mediation efforts are to be successful, it is paramount that several outstanding issues be critically addressed.<sup>213</sup> To accommodate the vibrant cultural context of Acoliland, the pursuit of land conflict justice *must* be approached by all stakeholders with a sensitivity to the community it purports to serve, if competing interests in the nexus of land conflicts are to be equitably balanced in a way that emphasizes community based development and exemplifies the positive connotation of *lara ngom*, that is simply: to hold the land.

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<sup>212</sup> Anonymous Refugee Law Project representative, 2013.

<sup>213</sup> These are presented in section 4.2 Recommendations

## 4.2 Recommendations<sup>214</sup>

<b>Investors</b>	<ul style="list-style-type: none"> <li>• Involve community members in the process of investment from the beginning, and ensure that a percentage of returns from investment go back into the community to enrich infrastructure and quality of life.</li> </ul>
<b>Central Government of Uganda</b>	<ul style="list-style-type: none"> <li>• Minimize government interference in land matters (particularly in an investment capacity) in Northern Uganda until the causes of community mistrust for GoU have been adequately addressed.</li> <li>• According to a Uganda Land Alliance representative, “The government should stop giving unconstitutional legal advice. The head of state jeopardizes the position of the legal system in land management,” by getting involved in cases of land conflicts in an illegal capacity.</li> <li>• Address the rampant corruption within the government that facilitates land grabbing and allows for miscarriage of justice.</li> </ul>
<b>Mediating Parties</b>	<ul style="list-style-type: none"> <li>• Build capacity of ADR mechanisms by providing training and compensation for mediators to address incompetence and impotence, and better enable them to handle conflicts in which there is an imbalance of power.</li> <li>• Engage stakeholders in widespread dialogue about land – within families, within and between clans, and between powerful and weak parties – to encourage understanding and avert disputes.</li> <li>• Harmonize land adjudication structures by standardizing a hierarchy of resolution actors and incorporating ADR mechanisms into the formal legal framework.</li> </ul>

<sup>214</sup> These recommendations are based on input from various respondents, if specific recommendations were given, sources are identified within the table.



### **Formal Justice System**

- To expedite the court process, design an agreement form to be filled by mediators and conflicting parties at the culmination of a mediation to be validated by the courts, so that mediation has legal weight (NGO Forum representative, 2013).
- Address corruption in the formal justice system by a) increasing salaries for adjudicators in the courts, b) imposing legal penalties for accepting even small bribes such as fines or a loss of employment, and c) using sensitization to to change the mindset of court employees from viewing litigants as criminals or targets for extortion to customers applying for a service (NGO Forum representative, 2013).
- Address backlog in the courts by a) creating more courts of law, b) increasing personnel in the justice, law, and order sector, and c) addressing civil and criminal land conflict cases simultaneously.
- Provide for legal aid for vulnerable individuals by enlisting young law students seeking experience as volunteer paralegals in courts, for a government-subsidized stipend.

### **Future Researchers/ Areas for Further Study**

- Conduct further research on cultural factors influencing land conflicts and resolution mechanisms, in order to inform and improve community sensitization and ADR methods.
- Conduct further research to determine the reasons behind political leaders' consistent involvement in land conflict adjudication and possible fallout of their intervention.
- Conduct further research to assess the peace vs. justice nexus and how both ideals can be pursued concurrently without undermining one another in the context of land conflict.

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