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Land Rights in the Context of Post War Northern Uganda
The Case of Amuru District, Uganda

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Grace Angeline Chelimo

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Members of the examining committee:

Dr. Helen Hintjens (Supervisor)
Prof. Mohamed Salih (Second reader)

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This document represents part of the author's study programme while at the Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

Inquiries:

Postal address:

Institute of Social Studies
P.O. Box 29776
2502 LT The Hague
The Netherlands

Location:

Kortenaerkade 12
2518 AX The Hague
The Netherlands

Telephone: +31 70 426 0460

Fax: +31 70 426 0799

DEDICATION

This Research Paper is dedicated to my dear parents Mr. Paddy Kitiyo Kamuyeke and Mrs. Esther Chemutai Kitiyo. Thank you Dad and Mum for everything you have done for me. Your love, support and commitment to education have made me who I am today. To my lovely brothers: Isaac, David, Emmanuel and Moses, thank you dears. May God bless you all abundantly.

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List of Acronyms

ALPI	Acholi Religious Leaders Peace Initiative
HURIPED	Human Rights and Peace Centre
HPG	Humanitarian Policy Group
IDMC	International Displacement Monitoring Centre
IIED	International Institute for Environment and Development
INPROL	International Network to Promote the Rule of Law
JYAK	Jamii Ya Kupatanisha (Fellowship of Reconciliation)
LC 11	Local Council Two
LCCA	Local Council Courts Act
LEMU	Land Equity Management Uganda
LRA/M	Lord's Resistance Army/Movement
IRIN	Integrated Regional Information Network
MCA	Magistrates Courts Act
MFPEP	Ministry of Finance Planning and Economic Development
NGOs	Non Governmental Organisations
NRC	Norwegian Refugee Council
NSADP	North-West Smallholder Agricultural Development Project
NURPI	Northern Uganda Reconstruction Program
NUSAF	Northern Uganda Social Action Fund
RDC	Resident District Commissioner
UDHR	Universal Declaration of Human Rights
UGX	Uganda Shillings
UHRC	Uganda Human Rights Commission
ULA	Uganda Land Alliance
UNHCR	United Nations High Commissioner for Refugees
UNHABITAT	United Nations Human Settlements Programme
USAID	United States Agency for International Development

Abstract

Much academic and policy thinking about post war reconstruction has stressed the importance of resolving land disputes as part of a wider resettlement process of formerly displaced people. This is because for mainly agrarian societies, access and entitlement to land plays a key role in the resettlement process and in enabling vulnerable rural returnees to derive a more secure livelihood. This study selected the case of Amuru Sub-county in Northern Uganda (formerly part of Gulu district), an area in which land disputes are rampant. This study focuses on how existing legal and institutional frameworks are handling land disputes in the case of post war Amuru Sub-county. The study explored the factors that contributed to different kinds of land disputes and how these were being handled. Findings revealed that local council courts were vital to resolving land disputes, though the process was characterized by a number of irregularities, which sometimes led to miscarriage of justice. Most local institutional actors were not familiar with land laws or land rights, and complex multiple systems of tenure in some areas complicated the task of resolving land disputes. Finally, the study found that magistrate's courts play a vital role, but were slowed by the overwhelming work burden of their staff yet the decisions of this court are respected by the people. Especially in the case of more vulnerable complainants, specific challenges were identified in addressing land disputes; the main was the high cost of accessing justice. The study concluded that more critical attention needs to be paid in future to specific land tenure arrangements, land boundaries and registration, land ownership and user rights, especially in relation to poorer households, within a post war district like Amuru and other similar settings. Land claims of large numbers of formerly displaced people have continued to pose a challenge in realizing secure and just land rights.

Relevance to Development Studies

In Northern Uganda, which this research focuses on, secure land rights are vital for future development, and are a pre-requisite for investment, more productive farming, securing and future improvement of livelihoods. People need to enjoy their rights to own and use land in order to prosper and alleviate their own poverty, especially in rural areas and post war situations. If existing land disputes are resolved in a just manner, then development is more likely to be realisable in any society. The originality of this study lies in being able to consider the complex inter-connections of a 'modern' justice system, and a 'customary' dispute resolution process, which relates to the mix of customary and legal title controlling access to and use, as well as ownership of land.

Keywords

Legal pluralism, Land tenure, Land rights and Post war reconstruction.

CHAPTER ONE:

Introduction

1.1 Background

Secure property and land rights are vital to the well being of citizens and state stability in Africa. In Uganda, every Citizen is guaranteed the right to own property under Article 26 of the Constitution (Government of Uganda 1995). However prior to the enactment of the 1995 Constitution, in 1975 land was nationalised in Uganda and vested in the Uganda Land Commission and it was only held in form of leases by people but this was later overturned (Mugambwa 2002:5). Currently in Uganda people own land according to four tenure systems which are: leasehold, mailo, freehold and customary as provided for under Article 237 (3) of the Constitution (Government of Uganda 1995).

The Great Lakes Region in Africa has experienced armed conflict and political strife which have consequently led to forced displacements with different humanitarian consequences (Huggins et al. 2005:1). Uganda underwent a series of violence right from the establishment of colonial rule, during Obote and Amin's regimes respectively (Dolan 2009:39). Northern and North Eastern Uganda experienced civil war and insecurity for two decades from 1986 to 2006, the principal perpetrator in the war was a rebel group of militia called the Lord's Resistance Army or movement. The rebel group was led by self-proclaimed Joseph Kony who waged a campaign which was brutal against the government of Uganda leading to massive displacements and a consistent pattern of Human Rights violations (HURIPPEC (2003), IRIN (2005), UHRC (2001-2002), OCHA and IRIN (2004), UHRC (2003), as cited by Ssenyonjo 2005:406).

The war forced people out of their homes because the entire region was under attack and it became very difficult for government to effectively protect its citizens, but when the rebel activities intensified government moved people in affected areas from their villages into what were called 'protected villages' in mid-1990's and from 2002 larger numbers of people were forced into camps by an increase in rebel activities and government decree (Pham et al. 2007:16). The twenty one years of war were characterised of destruction and displacement of more than 1.5 million people from their homes who were forced to live in camps and settlements which turned Northern Uganda into a humanitarian disaster (Pham et al. 2007:1).

However, in 2005 the Lord's Resistance Army withdrew its forces from Northern Uganda to the Southern State of Eastern Equatoria (Ibid). Rugadya observes that in 2007 and early 2008 due to important improvements in the security situation in Northern Uganda upon the signing of the Cessation of Hostilities Agreement between Government of Uganda and the Lord's Resistance Army, people began to return home from the camps (Rugadya 2008:1). Since then Northern Uganda enjoyed relative peace and the government with the assistance of international agencies such as: the United Nations High Commission for Refugees, Norwegian Refugee Council embarked on decongestion of camps programmes, resettlement and reconstruction programmes.

The NRC and IDMC highlight that stability in Northern Uganda has allowed majority of people thus about 1.8 million which is about three quarters of the population to return home and they are in the process of rebuilding their lives (NRC and IDMC 2010:1). However, it is reported that some people have not left the camps for various reasons which may include occupation of their land by other people among others (Ibid).

A combination of different factors which have emerged since 1986 in Northern Uganda have created widespread insecurity and uncertainty in the property rights regime in the region (Rugadya 2008:2). People are very weak in reclaiming land after living in IDP camps for many years compared to defending land on which they have been living on throughout which is practically happening in Northern Uganda (LEMU 2011:4). Upon return people are seeking to resolve various land disputes through traditional and legal systems amidst existing challenges which will be discussed in Chapter four.

This study will inform various stakeholders on the practical reality of factors which have contributed to existing land disputes in Amuru Sub-county, how they are handled by the legal institutions in place and challenges faced in the land dispute resolution processes.

1.2 Statement of the Research Problem

The return and decongestion of camps processes encountered many setbacks related to land ownership and use which have perpetuated the land disputes and limited enjoyment of land ownership and user rights by many people in post war Northern Uganda. The land disputes are partly attributed to the fact that most people, who were forced out of their land due to insecurity for many years, settled in resettlement camps or villages and the land which belonged to them prior to the war was occupied by other people before or during return. And now that the area is peaceful some people returning from camps have found it difficult to settle back peacefully and without dispute on the land they previously owned or had use of before the war.

The NRC and IMC report that since most formerly internally displaced persons have returned home, land disputes in the areas which they have settled have risen (NRC and IDMC 2010:1). The factors which have contributed to the land disputes include: unclear boundaries, land grabbing, increase in value of land, expansion of families, breakdown in customary norms and practices, and the tenure arrangement among other factors to be discussed in Chapter four. In as much as there is a framework handling land disputes in Amuru it has not been adequate enough to address the rising land disputes.

In line with the above situation, studying the factors which have contributed to the prevailing post conflict land disputes in Amuru, how land disputes are being handled by the legal mechanism, gaps or challenges faced in the land dispute resolution process is very vital at this point in time when many people have disputes over land yet it is the main resource which people derive their livelihood from.

1.3 Objectives of the Research Study

The main objectives of this study is to examine the factors which have contributed to existing land disputes in Amuru Sub-county and analyze how legal institutions are resolving the land disputes by reflecting on the land disputes resolution mechanisms set up by the state and the challenges posed.

1.3.1 Main Research Question

What factors have contributed to the different kinds of land disputes in post-war Amuru Sub-county and how have existing legal and administrative processes tried to resolve such land disputes?

1.3.2 The Sub-research questions:

1. What factors have contributed to land disputes in Amuru Sub-county?
2. How are land disputes in Amuru sub-county addressed by the existing legal and administrative processes?
3. What are the challenges encountered in the land dispute resolution process?
4. How can land dispute resolution processes and practice be improved in future to better protect the rights of complainants?

1.4 Relevance and Justification

This study is important because land disputes remain a major challenge that prevents people from farming their lands and securing livelihoods. Northern Uganda is currently faced with food insecurity yet before the war it was an agricultural economy which was majorly dependent on subsistence farming (Mabikke 2011: 4). The existing land disputes render some people in Northern Uganda very vulnerable and undermine successful post war recovery hence warranting a study on how the land disputes are being handled with a view of understanding the challenges and formulating recommendations.

Though much literature on land disputes in post war Northern Uganda has been written less has been written by scholars about how the existing land disputes are being resolved or handled by the legal institutions at the local level, irregularities and challenges faced. I strongly believe that studying these aspects is very critical at this moment after war when people are in the process of rebuilding their lives given the importance of land in society.

Given the rampant land disputes in Amuru, it is important to study how they are resolved because this has an implication on the enjoyment of land rights by parties to land disputes which are guaranteed under Article 17 of the UDHR and 26 of the Constitution (UN General Assembly 1948 and Government of Uganda 1995). And other human rights provisions with due regard to other human rights which are cross cutting such as the right to privacy of property or home, fair hearing, equal treatment and freedom from discrimination as provided in the International Covenant on Civil and Political Rights and the Constitution (UN General Assembly 1966 and Government of Uganda 1995).

This research is also intended to inform the government of Uganda, land policy makers and implementers, NGO's, judicial officers and various stakeholders on how land dispute are being handled by the existing mechanisms, its effectiveness, irregularities and challenges. And the recommendations which are based on the findings raise important views on what needs to be done to ensure expeditious and effective resolution of land disputes, access to justice by the poor and vulnerable people among many others in Amuru Sub-county which will enhance the protection and promotion of land rights.

1.5 Area and Scope of the Study

The study focused on Amuru sub-county within Amuru District, which was separated from Gulu in Northern Uganda, and created by an Act of Parliament in Financial Year 2005/2006.

The researcher chose to focus on Amuru Sub-county because of the view that land disputes were rampant in Amuru district. However, it was possible to believe that this was not the case and it was questionable whether Amuru is such an 'exception' in the Northern Uganda context. Amuru is not an exception in the Northern Uganda Region but the media and many authors have published on land disputes prevalence in Amuru than other areas.

1.6 Research Methodology

In writing this research paper I used different techniques in order to come up with critical findings and suitable literature on land disputes in Amuru Sub-county, how they are being addressed by the existing legal frameworks and the challenges encountered.

I reviewed existing literature on legal pluralism, land tenure systems, land rights and post war reconstruction. This enabled me to analyze and appreciate the different concepts surrounding land rights in the context of post war Amuru which makes this paper relevant to academics and various stakeholders.

Secondly, I conducted a field study in Amuru Sub-county and interviewed various parties to land disputes, staffs from civil society organization, judicial officers and other government officials from whom I gathered information. I also studied some court records in the Chief Magistrates and Magistrates Court from 2008 to 2009.

1.7 Methods for data collection and analysis

In collecting data, analyzing and interpreting I used both qualitative and quantitative research methods.

1.7.1 Sampling

The choice of respondents who were interviewed was through purposive sampling technique which enabled me to select a number of key respondents (15) who included: the district land officer, judicial officers, Land Board chairperson, elders, Local Council Court members and NGO's staffs working in fields of land rights and human rights in the area. Some parties to land disputes

were also asked for their views on the dispute resolution process and its outcomes (10). The total number of respondents was twenty five (25).

1.7.2 Primary Data collection

I collected primary data by: conducting interviews, reading unpublished reports and studying some court records for a specific period. The interviews were guided by a questionnaire. I conducted formal interviews with some key informants and less formal with parties to land disputes, where a relaxed atmosphere was useful. This was appropriate because of the different settings in which the interviews took place for example office, court, home, restaurant, and under a tree while in the field (Zina 2010:195).

I also used the semi structured style of interviews which involved a well-defined plan of questioning that were adjusted from time to time to follow the flow of conversations which enabled me to deviate from the questioning plan when an opportunity arose to pursue interesting targets relevant to the study (Ibid). Interviews were one to one.

I examined records of some cases of 2008 and 2009 which are before the Chief Magistrate and Magistrate Grade One Courts. I was flexible in identifying the land cases to study since it only became clear with fieldwork what records were available (and accessible to me). I studied the Court records in order to ascertain the nature of land disputes lodged in the Court, how they were handled and their status. I did not study court records for only one month as I had earlier anticipated but for several months because it was difficult to access all the court records for a particular month.

1.7.3 Secondary data Collection

I collected secondary data through desk review of published text books, reports, journals articles, workshop papers, and international legal instruments, Constitution of the Republic of Uganda 1995, land laws of Uganda and a wide range of publications which were relevant to the study. I accessed the information online and by visiting various libraries.

1.8 Ethical Consideration

In conducting the study I undertook some ethical considerations.

Before conducting the interviews I sought the consent of the participants and informed them that the information I was collecting was for academic purposes and would be treated with confidentiality.

I also offered modest lunch to the parties to land disputes some of whom were living in Amuru camp.

1.9 Limitations to the Study

This study was limited by the following factors:

I encountered a challenge of speaking to some parties to land disputes that could not speak and hear English. But I addressed this challenge by using an

interpreter who translated from Acholi language to English but in doing so I was aware of the fact that information may be distorted.

I did not get any statistics on number of land disputes registered in Amuru before and after war as I had anticipated getting in the field.

The records of land matters handled in the magistrates' court were mixed up with those of Gulu and Nwoya districts because initially the land cases of the three districts were handled in Gulu Chief Magistrates' court until October 2010 when Amuru was granted a Grade one Magistrate's court. So I sorted out some land cases arising from Amuru district manually in Gulu Magistrate's court. However, I did not access all the records because it was difficult to trace the offices in which some files were and the mixed court up court records made it difficult for me to sum up the total number of land cases arising from Amuru district within a particular time frame.

1.10 Overview of chapters

Chapter one which is an introductory part of this paper gives a universal background to the study. Chapter two covers the conceptual framework of various concepts which include legal pluralism, land tenure systems in Uganda, land rights and post war legal reforms. Chapter three discusses the legal and institutional framework on resolution of land disputes in Uganda. In Chapter Four I present, analyze and discuss the data. The main focus is on factors which have contributed to land disputes, types of land disputes in Amuru Sub-county, how land disputes have been handled by existing legal and administrative frameworks, challenges faced in resolving land disputes and suggestions on how land disputes should be handled. Lastly, Chapter five presents the Conclusion and recommendations of this study.

CHAPTER TWO:

Conceptual Framework

2.1 Introduction

The conceptual framework in this research paper was informed by four concepts which are: legal pluralism, land tenure systems, land rights and post war legal institutional change. The legal pluralism concept is central to this study because it explains the different legal orders in Northern Uganda through which land is owned and land disputes are resolved. The land tenure concept offers an insight on systems through which land is owned in Uganda and specifically in Northern Uganda where Amuru is located. And land rights concept defines what the right entails, key elements in securing land rights, difficulties and what ought to be done to secure land rights. I also discuss post war legal change in order to ascertain the changes that have taken place after war in northern Uganda in the realm of land rights and access to justice. These concepts are central to this study because they offer a broad perspective, and are vital in understanding and analyzing issues regarding land ownership and use, claiming land rights and resolution of land disputes in society.

2.2 Legal Pluralism

Legal pluralism is a dominant and highly contested - concept in the legal anthropology field (Tamanaha 1993:192). Some scholars have defined legal pluralism as a situation within which two or more legal systems or orders exist together in a society (Popsil 1971, Griffiths 1982a, Moore 1986a, as cited in Merry 1988: 870). Griffiths defines legal pluralism as; “the presence in a social field of more than one legal order” (Griffiths1986:1). Hooker defined legal pluralism as “circumstances in the contemporary world which have resulted from the transfer of whole legal systems across cultural boundaries” (Hooker 1975: 1, as cited by Merry 1988: 871). According to Merry, legal pluralism was used to make reference to the situations under which the law imposed by colonizers was different from that which had been developed over generations by different tribes and villages (Merry1988:869). In line with the arguments advanced by the above authors, this study understands legal orders in the Ugandan context as a combination of statutory and customary systems, which can conflict with or support each other. In the case of land disputes relating to customary land, customary law is unavoidable, even when the legal system used for resolution is formal.

It is important to note that legal pluralism is more than the merging or joining of traditional European forms of law and other forms, because colonised third world countries were not only influenced by European laws; their indigenous law was also shaped by centuries of conquest and migration (Merry 1988:870). The French and British imposed their law in Africa onto indigenous law and they incorporated customary law which was not ‘repugnant to natural justice, equity, and good conscience,’ or ‘inconsistent with any written law,’ (Okoth-Ogendo 1979: 160, Adewoye 1986, Bentsit Enchll 1969, as cited in

Merry 1988:870). Unacceptable African customs were outlawed by colonisers through the so-called 'repugnancy principle' (Ibid). As Pospisil states: "every functioning sub-group in a society has its own legal systems which is necessarily different in some respects from those of other groups" (Pospisil 1971:107, as cited in Merry 1988:870).

In the Northern Ugandan context the social science view of legal pluralism is much more practical in that the traditional and legal system of resolving land disputes co-exist and if the customary fails the legal system is used but with reference to customary norms and practices which are not repugnant to natural justice. The two modes belong to two different systems but the legal recognises the customary and provisions are enacted to that effect and empowering them to handle land disputes though the decisions of traditional leaders are not legally enforceable. This is made provision for under section 88 of the Land Act which is to the effect that nothing will limit the power of traditional authorities in resolving or mediating land disputes over customary tenure (Government of Uganda 1998). In distinguishing between legal pluralism in the 'social science' and 'juristic view', Griffith views the 'social science' perspective on legal pluralism as a situation within society under which different legal orders exist at the same time yet they do not belong to one system (Griffith 1986a: 5, 8, as cited in Merry 1988 : 871).

On the other hand legal pluralism is viewed in the 'juristic' view as a particular problem of dual legal systems which was created as a result of European countries establishment of colonies and the act of them imposing their systems on pre-existing systems (Ibid). When the British introduced a new legal order in Uganda, the customary system of resolving land disputes and tenure was not interfered with in Northern Uganda since there was strong and prolonged resistance to British occupation (Mabikke 2011:8). However the two decade war following independence weakened the customary system. Even without the war, the dual legal system need not be viewed as a problem, as it tends to be seen from the juristic viewpoint. Rather, it may be an asset for a society to have different legal processes; given that tenure systems are not uniform either and some land disputes in Northern Uganda can only be administered by courts of law. Developments in the realm of hybrid, complex property rights, and the fact that statutory orders can be enforced legally unlike the outcomes of a land dispute resolved by the customary system justifies the importance of the different legal orders.

According to legal anthropologists, many of whom study the different types of law that coexist in society, legal pluralism persists in all societies in some form (Berry 1993; Meinzen-Dick and Pradhan 2002, as cited in Meinzen-Dick and Nkonya 2005:8-11). And even where it is possible to fit customary law within the ambit of state law, legal anthropologists argue that there will be another form of legal pluralism (Ibid). Pimentel recognises that independent countries struggle to preserve their cultures and norms, as reflected in customary law and institutions, even whilst seeking to function as modern constitutional states (Pimentel 2011:61). Local authorities which resolve land disputes in rural areas rely on custom and they use the legal institutions in backing the land rights, other than heavily relying on state apparatus which in most occasions is costly and ineffective in rural areas (Meinzen-Dick and Nkonya 2005:8-11).

More than one legal system is relevant in most domains of social settings and social life (Meinzein-Dick and Pradhan 2002:3). A legal system which is sound and stable must reflect the rule of law which covers broadly different values which include equity, security, justice and basic human rights protection (Pimentel 2011:63). Access to justice is a major component of rule of law, however in most countries the statutory courts are in the town centres yet the greatest populations of persons with disputes are in the rural areas and may not have any means of getting to the town centre and if they get their most of them cannot afford to pay for legal advice or representation, and if the matters cannot be heard in their villages then their claims may never be heard or they resort to traditional institutions (OSISA, Mozambique (2006), as cited in Pimentel 2011:64, V. Boege et al (2008), as cited in Pimentel 2011:64).

The findings of this study reveal that most people initially resort to the traditional system to resolve their land disputes. If this fails or if they are dissatisfied with the outcomes, only then do they tend to resort to a statutory body, in this case local council courts, which exist in every area in the villages. If they are still dissatisfied, then litigants will tend to appeal to the Chief Magistrates court in Gulu. In Northern Uganda the NRC supports a few poor and indigent persons, including in Amuru, by offering free legal services in Courts of law and transport to hearings (Interview with Staff of NRC on 4 July 2011). However, findings suggest (see Chapter 4), the problem is that majority of people, who cannot afford transport costs, court fees and legal fees, are not included in such NGO programs.

Land Equity and Management Uganda, an NGO suggests that legal pluralism as it exists in Northern Uganda involves the coexistence of two legal orders and forum shopping which involves actors trying out different systems to find something that works for them (LEMU 2011:4). People have at their disposal parallel judicial paths which erode power of the customary courts whose source of power is derived from their authority which is derived from the respect they command. It is the respect they command that keeps customary norms and practices alive because their decisions are not binding (Ibid). Yet research by LEMU also reports that most traditional leaders are powerless old men, and command less authority and respect than judges and court officials in the statutory bodies (Ibid). State institutions for the resolution of land disputes both coexist with and also undermine customary forums, which however cannot be replaced entirely by statutory law. In a sense, a hybrid system 'limps along', and the state lacks capacity to make them function well together (Ibid).

In conclusion, legal pluralism is a reality in post conflict Northern Uganda, and other regions of the Country. The different legal orders ought to be strengthened to meet the needs of society which will go a long way in ensuring access to justice and land rights protection.

2.3 Land Tenure Systems

The land tenure systems in Uganda are also legally plural. The discussion hereunder examines different tenure systems in Uganda which are modes of owning land and how they have developed overtime.

In most parts of Africa land tenure is depicted as either customary/traditional or statutory (Cotula et al 2004:2). Colonialism introduced dif-

ferent types of land tenure systems which are based on statute law which have very little to do with customary practices and laws of land use and ownership (IIED 2006:1). However in some places the customary systems of land ownership and administration were not replaced with satisfactory legal systems. (Adams and Turner).

One school of thought sees the replacement of customary tenure systems in Africa with private property as enhancing capitalist economic growth, on the grounds that enterprising individuals and families who own land titles will be more likely to invest (Quan and Toulmin 2004:5). However, in line with the arguments of legal pluralists, in most parts of Africa research confirms that people aim to strike a balance by using both customary and formal land tenure systems (Platteau 2000, Coulibaly & Hilhorst 1994, as cited in Quan and Toulmin 2004:4). Each is resorted to, in a strategic way, if it can help to strengthen a family or community's claims over specific areas of land for both use and ownership.

In general, it seems that in practice, people's land rights strongly depend on the tenure systems. Land tenure systems take different forms but it indicates the rights of different individuals to use land, the free and open access to land either consecutively or in a serial way but the problem is that the customary user rights over land are sometimes overlapping in a particular area or piece of land (Mabikke 2011:8). In the Ugandan context, on the 9 day of October 1962 when Uganda became an independent state the land tenure systems were freehold, mailo, customary and leasehold tenure which are made provision for in the Constitution (Mugambwa 2002:2, Government of Uganda, 1995). The Constitution of Uganda, under Article 237 vests land in the people of Uganda who hold it according to the four land tenure systems except under circumstances when government or local governments acquire land for public interest (Government of Uganda 1995). Much has been achieved both at Constitutional and legislative levels in as far as integrating communal ownership of land and statutory tenure system though there are still some challenges in institutional management of land especially in war affected areas like Amuru (Mwebaza 1999:3&4). The different tenure systems in Uganda are discussed here-under:

Mailo tenure is a system of land ownership which originated from the 1900 Buganda agreement where the King of Buganda together with notables and protectorate government were given land in square miles thus describing the name Mailo land (Barrows and Kisamba-Mugerwa 1989:6). This tenure system is unique to only Buganda Kingdom (Mugambwa 2002:2).

On the other hand Freehold land tenure system was introduced during Tooro agreement of 1900, Ankole agreement of 1901 and Bunyoro agreement of 1933 where land was granted due to requests from the religious organisations (Barrows and Kisamba-Mugerwa 1989:6). This tenure system is common in Western and Eastern regions of Uganda (Ibid). It is further argued that free hold land tenure system is the best and strongest land tenure system which offers secure and hustle free transfer of property rights with assurance and authority from the state (Quan and Toulmin 2004:5).

Leasehold land tenure is a system under which a person gives to another an exclusive right to possess land for a specific period of time, in return for

payment which can be periodic or paid in a lump sum called rent (Mugambwa 2002:8, Government of Uganda 1998).

Customary tenure is a system where land is owned and organized according to customary laws and regulations and sometimes it is referred to as communal land ownership (Barrows and Kisamba-Mugerwa 1989:4). This tenure system exists in majorly, northern, eastern, western, southern and parts of central Uganda. Customary land tenure system is more flexible to the extent that it can better address the challenges of land scarcity and enable agricultural commercialization in some communities (Quan and Toulmin 2004:3). Customary tenure system has been seen by some researches as means of enabling weaker groups to access land for use (Colin 1995, as cited in Quan and Toulmin 2004:3-4). However, one possible problem with customary land tenure system is that it cannot provide absolute rights, some clan chiefs in some countries having turned against their subjects and sold land commercially which belonged to clans and would be considered as family land (Woodhouse et al. 2000, Berry 2001, Amanor 1991, as cited in Quan and Toulmin 2004:4).

In Amuru district and more generally in Northern Uganda most of the land is held under customary land tenure. This is confirmed by Rugadya who observed that over 90% of the land holding system in northern Uganda is still under customary land tenure systems which are governed and administered through customary laws which are implemented by chiefs, including the local and magistrates' courts (Rugadya 2008:21). However though land is owned under customary tenure research has revealed that land is held as private property by households or families where displacement occurred (Levine and Adoko 2006). Customary land tenure system poses a challenge in that there is no documented evidence of proof of ownership of customary land other than oral evidence and boundary marks if at all they are there.

2.4 Land rights

Land rights are: "inalienable ability of individuals and groups of individuals to obtain, possess and utilize land at their discretion, so long as their activities on land do not violate the inalienable human rights of others as outlined in numerous international human rights agreements such as Universal Declaration of Human Rights, Convention of Elimination of All Forms of Discrimination against Women and the African Charter of Human and People's Rights" (Nneamaka 2009:16). Land rights entail the inherent ability of people to own, use, alienate, obtain and possess land without interfering with other people's rights (IIED 2006:1). The right to own property either individually or in association with others is provided for under Article 17 of the UDHR and Article 26 of the Constitution of the Republic of Uganda (UN General Assembly 1948 and Government of Uganda 1995).

Legitimate land rights are different and overlap in different countries and societies (IIED 2006:1). IIED further highlights that in some communities, individuals or groups of people can have a right to cultivate land, build a house or even donate it but have no right to sell or dispose off that same piece of land (IIED 2006:2). According to the principles and practices of Customary land tenure in Acholi which is the major tenure system in Amuru the universal land rights which accrue to all clan members are is much hinged on utilisation

and accessibility rights which include right to live on land, graze animals and hunt other than ownership rights (Ker Kwaro Acholi 2008:18).

There are two key elements necessary for the acquisition of secure rights to land and property by individuals which include: legitimacy of the rights which has to be recognized by the local community; and the state must recognize or endorse the legality of those rights as well (Toulmin 2006:4). She highlights that large chunks of land under customary ownership may be insecure because sometimes they are not legally recognized by government even when they are lawful and recognized in the local community (Ibid). It has also been observed that another way of securing tenure and land rights of the people is highly dependent mostly on the reliability and strength of the institutions which intervene in the resolution of land disputes (IIED 2006:3).

However, it is very difficult to protect land ownership and user rights without any documentation of ownership or substantial proof of ownership say through boundary markings backed by individuals adducing evidence. Toulmin argues that in West Africa, there is hardly any documentation and most rights are claimed without any written system of tenure, it is only 2% of land that is formally documented (Toulmin 2006:2). The findings reveal that many people in Amuru sub-county have undocumented interests in customary land which makes it very difficult for them to protect their land rights when they encounter land disputes given the fact that boundary marks were destroyed overtime during the 20 year war and some people who knew of who owned what died (Interview with staff of ULA in Amuru on 7 July 2011). This poses a serious challenge on protection and promotion of land rights.

The best way of securing land rights is by registering the people's interests in land. A study conducted by Toulmin indicates that there are several ways of registering rights to land whereby some are short term certificates of occupancy while others are formal registers and titling processes (Toulmin 2006:5). She further emphasised that it is the responsibility of the state to manage and facilitate the whole process of acquiring land rights and ensure that land rights are secured at all levels which can only be successful if government partners with local institutions in checking and validating land claims right from the grassroots (Ibid). However, it is very costly to establish effective property rights and in most cases when a resource is in plenty or abundant, there is less incentives for the definition of such rights, and yet demands and scarcity of property which is on the increase has created pressure to define rights (Alchian and Demsetz 1973, as cited in Meinzein-Dick and Nkonya 2005:8-1).

Conclusively, for land rights to be totally recognized; the institutions that issue them have to be legitimate and socially accepted by the people (IIED 2006:3). To secure land rights there is need for the people to know their rights and the state through its actors to secure the rights and claims of the people over land.

2.5 Post war legal reforms

In society various reforms take place towards the end of war and after wars which are part of the reconstruction programmes. I will briefly discuss post war reconstruction and the legal reforms which have been undertaken in post war Amuru.

Post-conflict reconstruction refers to: “the rebuilding of the socioeconomic framework of society” and the “reconstruction of the enabling conditions for a functioning peacetime society to include the framework of governance and rule of law” (World Bank 1998, as cited in Hamre and Sullivan 2002:89). Some scholars argue that four distinct inter-related pillars make up post-conflict reconstruction worldwide and these are: security; justice and reconciliation; social and economic wellbeing; and governance and participation (Hamre and Sullivan 2002:90). Security deals with enabling a favourable and secure atmosphere, ensuring public and individual safety in the aftermath of conflict and it is a major pillar that determines the successful achievement of other pillars (Ibid). Justice and reconciliation pillar looks at setting up mechanisms for addressing grievances that arose from the conflict using both formal and informal approaches (Ibid). Social and economic wellbeing pillar addresses aspects of emergency relief and rejuvenation of social essential services (Ibid). Lastly, the pillar of governance and participation deals with creating legitimate political and administrative institutions thereby putting in place rules and procedures in political decision making process and providing the voice for the people to air out their views (Hamre and Sullivan 2002:91).

War often has a negative impact on property rights regimes and during reconstruction attention must be paid to such rights and the various institutions handling property matters must operate in the interest of restoring society in a just manner. According to a report by UNHABITAT and UNHCR (2004:1) housing, land and property rights are most crucial components especially during post war peace building and an important aspect of democracy in state institutions which enhance economic growth.

In post war Amuru the main legal reform was the grant of a Grade one Magistrates Court to the district which started work in October 2010 (Interview with Grade One Magistrate of Amuru on 23 July 2011). This is a very important legal reform in the context of resolution of land disputes among others in post war given the fact that prior to that all complainants would travel to Gulu to file their cases which is very far yet majority could not afford transport costs.

Furthermore, upon return the Judicial Service Commission has been conducting trainings in Northern Uganda which I participated in on resolution of land disputes, land rights and succession laws among others. Other nongovernmental organizations such as NRC, ULA and ALPI too have been training the people on land rights and how land disputes ought to be handled (Interviews with NRC, ULA and ALPI staffs in Gulu and Amuru on 4 and 6 July 2011). The target groups of these institutions are small in every district because they undertake activities in the entire Northern Uganda region.

However, enforcing rights on property and resolving land disputes has proved to be a daunting task to undertake in the post war region (INPROL 2009:1). It was observed by NRC and IDMC that plans of Uganda government in promoting durable solutions in return have not been well developed to address issues regarding helping returnees to obtain land in areas they formerly owned and supporting transformation of some transit sites or camps (NRC and IDMC 2010:10)

Conclusively, limited legal reforms have been undertaken by government to address rampant land disputes in post war Amuru but attention should be drawn to land rights and mechanisms for resolving land disputes in return given the existing complexities.

2.6 Conclusion

This chapter discusses the concepts of legal pluralism, land tenure systems, land rights and post war legal reforms. In Amuru Sub-county different legal orders with regard to land tenure systems and frameworks for resolution of land disputes exists. These legal orders have developed overtime and they are all aimed at protecting the rights of the people to obtain, own and use land, and ensuring access to justice in the resolution of land disputes. Amidst the rampant land disputes in Amuru Sub-county the different legal orders should be strengthened to enhance security of tenure, land rights and access to justice.

CHAPTER THREE:

Legal and Institutional Framework

3.1 Introduction

The legal and institutional framework on resolution of land disputes in Uganda is primarily based on the law of Uganda enshrined in the Constitution of Uganda of 1995 which is upheld as the supreme law of the land and other subsidiary legislations which have been enacted to govern land management, resolution of land disputes and other various legal fields related to land. The traditional justice mechanism in Northern Uganda plays a vital role in the resolution of land disputes in Amuru.

3.2 Judicial Framework for Resolution of Land Disputes

The Constitution of the Republic of Uganda under article 129 (1) empowers courts of judicature which consist of the: supreme court, court of appeal, high court and subordinate courts to exercise judicial powers as prescribed by parliament (Government of Uganda, 1995). Land disputes in Uganda are handled by: local council court II, Sub-county courts, Magistrates Courts, High Court, Court of Appeal and Supreme Court.

a) Local Council Courts

The Local council court was established under section 3 of the Local council court Act No.1 of 2006 which is to the effect that local council courts should be established at every village, parish, town, division and Sub-county levels. Section 76A (1) of the Land Act (section 30(1) of the Land (Amendment) Act No: 1 of 2004) is to the effect that parish or ward executive committee courts is the Court of first instance in respect of land disputes (Government of Uganda 2004).

The area of jurisdiction of the local council court is within the territorial areas of the council and matters in which a party resides within the area which is provided for under section (9) of LCCA (Government of Uganda 2006). The appeals from judgements of a parish local council court are filed to the town, Sub-county or division which is provided for under section 32 (2) (b) and (c) of the LCCA (Ibid).

Subsequently, under section 76 A (2) of the Land Act (section 30 (2) of Land (Amendment) Act No: 1 of 2004 appeals on land matters arising from Sub-county executive committee courts or from division lie to respective district tribunal and from there to the High Court (Government of Uganda 2004, 1998).

b) Land Tribunals

Land Tribunals were established under Article 243 of the Constitution of Uganda to resolve land disputes (Government of Uganda 1995). However, land tribunals are no longer operational and all land matters were transferred to courts presided over by Magistrate's Grade 1 and Chief Magistrates.

c) Magistrate's Courts

The Magistrate's Courts Act Cap 16 under section 2 makes provision for the division of Uganda in magisterial areas and section 4 provides for appointment of magistrates for each magisterial area for efficient administration of justice (Government of Uganda n.d). Further, section 4(2) makes provision for the different grades of Magistrates which are: Chief Magistrate, Magistrate Grade 1 and Magistrate Grade II (Ibid).

The value of the subject matter of cases that magistrates handle is determined by the jurisdiction in civil matters provided for under Section 207 of the MCA as amended by Act No: 7 of 2007 (Government of Uganda 2007). Section 207 (1) of MCA makes provision for a chief Magistrate to have jurisdiction over matters whose subject matter does not exceed 50 million shillings and unlimited jurisdiction in matters relating to damages of property, conversion and trespass, the Magistrate Grade 1 to handle disputes whose subject matter is not above twenty million shillings and a Magistrate Grade 11 jurisdiction where subject matter in a dispute is not above five hundred thousand shillings (Ibid). However in circumstances under which the matter or cause of a civil nature is governed only by civil customary law then the jurisdiction of the Magistrate Grade 1 and Chief Magistrate is unlimited as provided under Section 207 of the MCA (Government of Uganda).

The Magistrates Courts receive appeals from the Sub-county local council courts and if parties to various land cases before the Magistrates Court are aggrieved with court's decision have the right of appeal to a Higher Court (Government of Uganda section 220 of MCA).

d) High Court

This court is established under Article 138(1) of the Constitution of the Republic of Uganda which empowers the Chief Justice in consultation with the principle judge to appoint and ensure accessibility of the High Court to people (Government of Uganda 1995). Article 139(1) of the Constitution and section 14 of the Judicature Act cap 13 makes provision for the high court's unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred by law (Ibid).

The High Court operates in a way that high court circuits have been established which sit in various areas in the country as provided under section 19 (1) of the judicature Act (Government of Uganda). Some areas which have been designated for High Court circuit hearings are Gulu, Mbarara, Fort Portal, Mbale, Soroti, Jinja among others. Gulu is near Amuru so the land cases arising from Amuru are handled in Gulu.

e) Court of Appeal

Under Article 134(2) of the Constitution appeals from decisions of the High Court lie to the Court of Appeal as may be prescribed by law (Government of Uganda 1995). Therefore in the context of land cases, the appeals arising from the decisions of Gulu High Court are filed in the Court of Appeal in Kampala.

f) Supreme Court

The Supreme Court is the highest and final court of appeal. Article 132(1) and (2) of the Constitution stipulate that appeals from decisions of the court of appeal shall lie to the Supreme Court (Ibid).

Conclusively, decisions of the Supreme Court are most respected but land matters are mostly resolved at the Magistrates and High Court, and people respect their decisions. Otherwise, appeals from the High Court to the Court of Appeal and Supreme Court mostly arise in contentious matters touching the law or complexities which the High Court cannot handle.

3.3 Other Institutions that participate in the Resolution of Land Disputes

a. Traditional Leaders

The traditional leaders who include clan leaders, chiefs and elders in various communities play a very important role in the resolution of land disputes in Uganda and most especially in Northern Uganda. A study conducted by Mwebaza (1999:5) indicates how section 88 of the Land Act of 1998 permits traditional authorities and leaders to settle land disputes arising from customary tenure. Another study indicates that both Acholi and Lango have complex traditional mechanisms of resolving land disputes though the Acholi traditional system is more advanced than the one in Lango (Rugadya 2008:12). The most important characteristic of this system is that it is based on equity, promoting harmony and restoring relationships between parties to land disputes (Ker Kwaro Acholi 2008:16).

The resolution of land disputes and management in the traditional manner in Acholi is done by the clan leaders, family heads and head of households (Ker Kwaro Acholi 2008:20). This system is independent of the land administration system in the district (Mwebaza 1999:9). However, the long spells of displacement have massively eroded customary norms and powers entrusted to the traditional leaders towards resolving land disputes in the region, in that there has been distortion of purpose and meaning of customary laws and rights which are being abused by families and clans (Rugadya 2008:10). All in all the traditional authorities play a vital role in the resolution of land disputes in Amuru.

b. Mediator's

Mediators participate in mediations between parties to land disputes with a view of helping them resolve disputes amicably without recourse to court. This is a very fast way through which land disputes can be resolved and it promotes reconciliation between parties, which is very important because after resolution of land disputes parties return to society and live together.

Section 89(1) of the Land Act (as amended by section 36 of The Land (Amendment) Act 2004) provides for the employment of a mediator in each district (Government of Uganda 2004). However in practical terms, mediators have not been employed by government.

The institutions which have been actively involved in mediating in land disputes in Northern Uganda are the elders, religious leaders, NRC, ULA,

UHRC, Legal Aid Project of Uganda Law Society, Acholi Religious Peace Initiative and the RDC's Office.

c. Uganda Human Rights Commission

The UHRC adjudicates land disputes on the right to own property if government compulsorily acquires land from people and does not compensate them as provided for under articles 26 (2) and 52 (1) (a) of the Constitution (Government of Uganda, 1995). The UHRC Northern Regional offices are in Gulu, and persons with such disputes often go to the commission.

3.4 Conclusion

The legal institutions handling land disputes arising from Amuru are: local council court, Sub-county committee court, Magistrates Court and High Court majorly. However, traditional leaders are also active in the resolution of land disputes though their decisions are not legally enforceable but parties often go there and if they disagree they are referred to local council court II. As discussed above some institutions have been active in mediating in land disputes between parties and this includes; RDC, religious leaders, elders and human rights organizations but if parties fail to mutually agree they are referred to the courts of law or traditional authorities.

CHAPTER FOUR: Data Presentation, Analysis and Discussion

4.1 Introduction

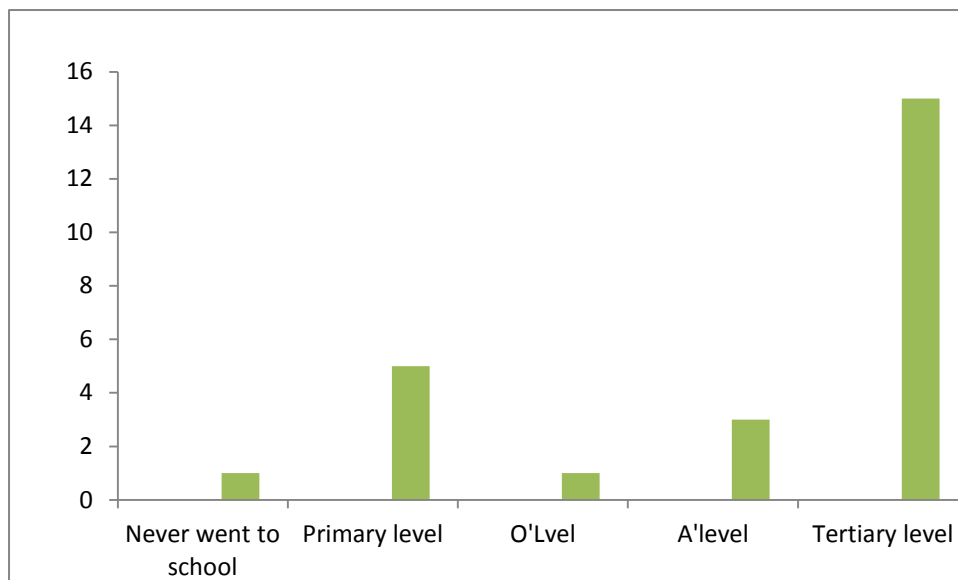
In this chapter the researcher presents, analyses and discusses the study findings which are organized under themes developed in relation to the study objectives. The study findings were chronologically presented basing both qualitative and quantitative methods were used. Qualitative methods included personal communication and use of secondary data sources to support the study findings. Quantitative analysis included scientific data analysis such as Microsoft Excel for easy tabulation, use of graphs and compression of data from the field.

4.2 Background information of respondents

The researcher took an initiative to investigate the background information of the respondents. This was examined for purposes of showing whether such background information had a bearing on information related to land rights and disputes in the context of post war northern Uganda. The researcher explored background information regarding education levels and occupation of respondents from whom data was collected.

4.2.1 Level of education of respondents

Figure1: Showing the education levels of respondents



Source: Field data, 2011

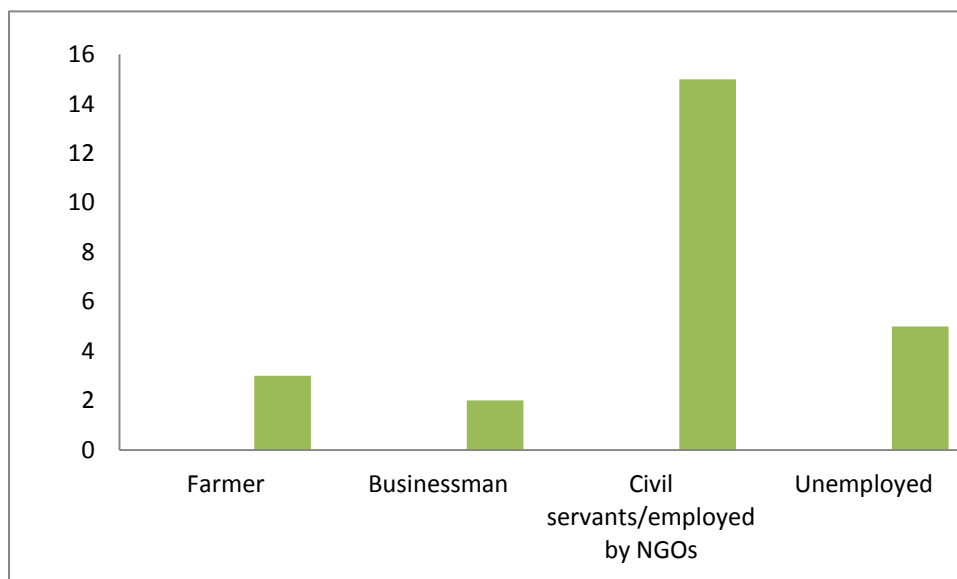
From the figure above, findings established that respondents involved in this study can be grouped into two different categories of educational levels. This information is useful in order to understand whether education levels have an influence on the knowledge that people have about land rights and land dispute resolution processes. On the one hand there were complainants, who generally had only primary level education. On the other hand, there were NGO workers, staff in courts and district officials, who in one way or another participate in the resolution of land disputes or land rights advocacy programmes. Generally they had at least A' level or in most cases tertiary education. The land disputes handled in Amuru sub-county were mostly those of poor, and uneducated or less educated people (Field data July 2011).

As depicted in the figure above, those respondents who completed only primary school level included the returnees who never had a chance to proceed beyond primary education because of the war which lasted for more than twenty years. There was a bias in my interview sample towards respondents educated to tertiary level, who accounted for 60 per cent of the total. This was because it was necessary to speak to a range of people, including NGO staff, judicial officers, Sub-county chiefs, government officials and human rights experts.

Findings revealed that most of the respondents who were themselves parties to land disputes had no more than primary school education, and some never went to school. Most persons handling land disputes at the Magistrates Courts, civil servants and NGO staffs interviewed had attained at least A' level standard, but most had gone to College or university and were knowledgeable on land rights and land dispute resolution processes.

4.2.2 Occupation of respondents

Figure 2: Showing the occupation of respondents



Source: Field data, 2011

From the figure above, it again emerges that around 60% of the respondents were employed by government and NGOs. These respondents will also tend to be the most highly educated and they included few returnees. This category was relatively knowledgeable as far as land rights in Amuru Sub-county were concerned, and had been involved in different aspects of interventions about land disputes in the area. The main exception was that the local council courts, staffed by committee members who were mostly returnees, and therefore had difficulties in completing their education (Interview with parish chiefs in Amuru sub-county on 7 July 2011).

A high number of respondents reported themselves to be unemployed. These were mainly returnees some of whom were still living in the camp because they feared the violent nature of land disputes in their home area (Interviews with parties to land disputes in Amuru camp on 6 July 2011). Twenty per cent of respondents were unemployed, the second largest category. Again, it is fair to assume that most of these people did not have the opportunity to continue to study during the war. They lack employment skills, perhaps, but also the critical factor may be lack of access to land or capital.

Business did not seem that significant among respondents, representing just two respondents, or eight percent of the total. These two were selling agricultural products, like sim-sim (sesame), cassava, groundnuts and millet and one was operating a retail shops in a trading centre (Interview with parties to land dispute in Amuru sub-county centre on 7 July 2011). This small percentage may also reflect that war disrupted economic activity in northern Uganda, going beyond agriculture to other forms of livelihood.

Peasant farmers accounted for just three respondents, or twelve per cent of the total. It may be that land disputes are so widespread in the area that only a small fraction of people remain actively engaged in agriculture, or it may be that the researcher was not able to contact many farmers, who one would expect still form the majority of the economically active population in Amuru sub-county. Even so, it was found during fieldwork that there is no serious commercial agriculture in this sub-county because production remains mainly for home consumption. Those who stated that they were unemployed could in some cases be subsistence farmers (this was not known). However, it is clear that the many cases of land disputes in local courts of law are adversely affecting the local population. Many cases are pending, and some people who practice subsistence farming in the area fear violent disputes over land, and simply decide to return once more to the camps (Interview with Parish Chiefs on 7 July 2011). When I visited Amuru camp, I found that this was the case (Field visit to Amuru Camp on 6 July 2011).

4.3 Factors contributing to land disputes in post war Amuru Sub-county

4.3.1 The different factors contributing to land disputes in post war Amuru Sub-county

I found out from the field that before war there were less land disputes in Amuru compared to the present but there were no documented statistics to

proof this fact (Interview with staff of ALPI and NRC in Gulu on 4 July 2011). The factors which have contributed to different kinds of land disputes in Amuru Sub-county are discussed hereunder:

a. Breakdown in customary values and norms

The findings reveal that cultural values and norms have deteriorated due to migration, many years spent in camps, death of many elders, and lack of respect for elders by the young generation (Interview with staff of ALPI on 4 July 2011). Another respondent observed that:

War caused a breakdown in the customary values and norms which support the mainstream legal systems and traditional systems of justice... The young people no longer respect the elders who used to resolve land disputes because they underwent similar experiences in the camps and their authority and power could not change the situation (Interview with staff from ULA in Amuru on 7 July 2011).

According to Mabikke prior to the 23 year war cultural norms, rules and regulations which were administered by the traditional leaders used to provide security of tenure mostly for the elderly, children, disabled, widows and many other people but due to forced displacement the cultural values have been eroded due to the death of most elders who were the custodians of customary practices and instruments before passing them on to the young generation which has resulted to the rapid transformation of Acholi Culture (Mabikke 2011: 9). The current generation in Acholi Land is mostly composed of young people who grew up in the camps and they are ignorant or have little knowledge of their customary land rights (Mabikke 2011:7). This poses a challenge in the resolution of land disputes and leads to inadequacy of evidence to proof ownership.

b. Forcible acquisition or grabbing of Land

Forcible acquisition or grabbing of land was identified as one of the factors which contribute to some of the existing land disputes. A respondent during an interview revealed that land which he owned prior to the war had been taken and he was not adequately compensated (Interview with a resident of Amuru Sub-county on 7 July 2011). When land is left vacant for many years as the case was in northern Uganda it becomes vulnerable to the capture by elites in society or government, most especially in a context when the people are unable to farm as before or fail to return or are oppressed, in areas where land can be used potentially for investment purposes or where it is valuable (Alden Wiley, 2009; Foley, 2009; Pantuliano, 2009b, as cited by Pantuliano pg.3 n.d).

In addition to the above, a legal officer who had been involved in representation of complainants with land disputes observed that land grabbing was existent in Amuru Sub-county but it took the forms of encroachment bit by bit by neighbours or relatives until when they want to take over the entire piece of land (Interview with NRC staff on 4 July 2011).

In post war northern Uganda land grabbing is existent and it takes different forms thus through borrowing of land, grabbing by force and intimidation, grabbing through gradual encroachment which has flourished because the people who were displaced lived away from their land for many years hence making them vulnerable and falling prey to entry of their land by people with-

out their permission (Mabikke 2011: 16-17). Though unlawful entry of land and use is a common practice but the surrounding circumstance in Northern Uganda are exceptional because people were not in actual physical possession of their land for many years.

c. Contested Leases

The findings revealed that before the coming into force of the Constitution of the Republic of Uganda, 1995 the Land Board granted leases to some people (Interview with Judicial Officer in Gulu on 8 July 2011). At the same time some people applied for leases and they were granted lease offers but they did not complete the procedure due to war but subsequently other persons did apply for leases on the same land which they were offered and they concluded with the procedure (Ibid). However some people also claim customary ownership over the same land while others have lease offers and others leases (Ibid). Another respondent informed me during an interview that:

Some land was leased since 1970's and the lease offers have since then expired and the owners of the land would like to reactivate the leases. But the challenge is that the land in question has been occupied by communities who claim customary ownership over the same land ... (Interview with staff of UHRC in Gulu on 8 July 2011)

The Magistrate Grade One of Amuru confirmed the above allegation during an interview (Interview with the Magistrate Grade One of Amuru on 23 July 2011). Therefore this is another factor which has contributed to the land disputes in Amuru.

d. Unclear boundary demarcations

Most boundaries on land are unclear and this has greatly contributed to the boundary disputes between neighbours, family members, clan members and persons who may have purchased the land. A respondent revealed that:

Most people are uncertain of their boundary demarcations because some of the people who knew the boundaries died during the war and most boundary demarcations were destroyed or have disappeared. Children who were born in captivity or whose parents died are not sure of where their parents land is located and some know where the land is but may not know boundary demarcations (Interview with a staff of ALPI in Gulu on 4 July 2011).

Other respondents revealed that most of the youth or young people do not know the boundary demarcations and when the elders tell them they do not hid and at times they encroach on the land of the elderly, yet the elderly fear insisting on truth because of threats from the youth (Interview with Parish Chief in Amuru Sub-county on 6 July 2011). And some of the boundary disputes are a result of the fact that people may genuinely not remember the boundaries while others use that reason for manipulating others (Interview with staff of ULA in Amuru on 7 July 2011).

e. Appreciation of value of Land

The value of land in Uganda as elsewhere in the world has greatly appreciated so as the people of Northern Uganda return home, different actor's have interests in the land. The Justice and Peace News reported that upon return from camps people were on a rush to get much land as possible and the greed for

money started to creep in (Justice and Peace Commission 2011:2). It is stated in the same report that:

The youth of Amuru saw land as a viable source of income, so it did not come as a surprise when you could see elders who are meant to have all the respect and live out their days in peace and decency, having to fight the youths who are hell bent on selling the lands (Ibid).

Pantuliano argues that in contexts where people fail to return or cannot farm the elites capture the land for investment purposes (Wiley 2009, Foley 2009, Pantuliano 2009b, as cited in Pantuliano page 3 n.d). Given the increasing value of land elites, business persons, investors, youth and government have interest in acquiring large chunks of land.

f. Misunderstanding of Government Directive

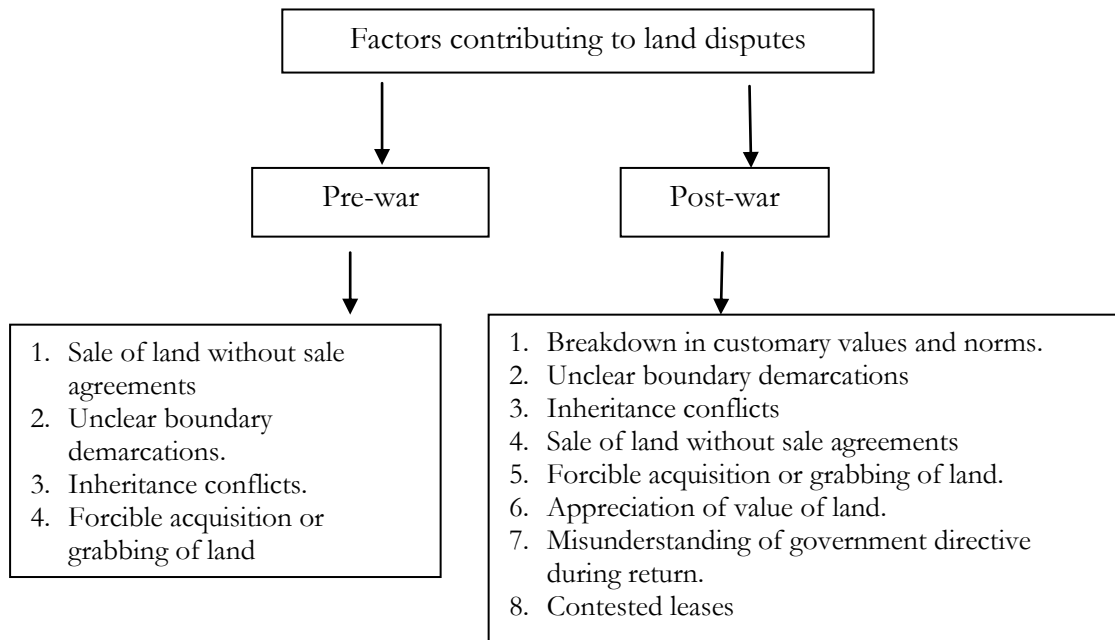
Furthermore, from the interviews conducted with some stakeholders, it was revealed that some land disputes arise due to misunderstanding of the directive which government gave to IDPs to return to where they were displaced from first but since people moved from one place to the other in different phases, some have returned to places where they settled in for many years not in their original homelands before displacement took place (Interviews with staffs of NGO's and government in Amuru and Gulu July 2011). This has fuelled some land conflicts in that different people claim interest over same piece of land yet some were settlers during displacement.

In conclusion, discussed above are some of the factors which have contributed to existing land disputes in Amuru Sub-county. It is important to note that the factors also include the change in family sizes through the death of some family members and birth of some in camps with other partners who were not married and the selling of land without land agreements which is a common practice in rural areas.

4.3.2 Categorisation of factors contributing to land disputes in post war Amuru Sub-county

The illustration hereunder is a categorisation of the factors contributing to land disputes into two categories of pre war and post war. The pre-war factors are those that were existent prior to the war and post war are those which are as a result of war and some have developed overtime.

**Table 1:
 Indicating categorisation of factors contributing to land disputes in pre-war and post war Amuru Sub-county**



The pre war factors indicated above are some of the factors which prior to the war, were present in society and even exist in societies were there was no war. In the communal system of ownership under customary tenure family members sometimes have disputes during sub division of land within the clan, families and households, and if there is communal grazing land sometimes some beneficiaries want to appropriate it otherwise for personal use. Boundary disputes are common on customary land tenure systems. The disputes arising from inheritance have always existed in society some are rooted in the patriarchal systems and others are based on the inequalities within some families. The forcible acquisition of land has always existed in society even prior to the war and even in societies which had no wars. And disputes arising from sale of land of land without sale agreements are attributed to the fact that people are ignorant of the law and other do it intentionally with a view of reclaiming it back since there will no proof of passing of property to the other party.

The post war factors include: breakdown of customary norms and practices, unclear boundaries and misunderstanding of government directive on return which have been discussed above. The recent increase in Amuru of forcible acquisition of land, what is known as 'land grabbing', aggravated by the appreciating value of land, has also contributed to the rising number of land disputes in Amuru and other areas of Uganda. Given the vast land which appears to be underutilised, and agricultural commercialisation elsewhere, outsiders may wish to acquire land in Amuru and similar areas, because they hope to be able to sell it later for a high return, for example to investors who may use it for commercial or agricultural production. Even after war people do sale land without any agreements to proof passing of property to the other party which I believe has contributed to land disputes.

4.3.3 Types of land disputes in Amuru Sub-county

According to the research findings, different kinds of land disputes are rampant in Amuru Sub-county some of which can be attributed to war and displacement (Interview with Amuru District Land Officer in Kampala on 13 July 2011). This is supported by Rugadya's study which indicates that there has been an increase in land disputes in Northern Uganda region compared to the period before displacement took place (Rugadya 2008).

Table 2:
Showing types of Land disputes

Response	Frequency
Land grabbing	14
Inheritance disputes	7
Boundary disputes	20
Dispute over sale	2
Total	43

Source: Field data 2011

It is important to note that some respondents gave more than one response so the researcher categorised all the responses and totalled them up, that is why it is more than the total number of respondents which is 25.

According to the study findings, boundary disputes are the commonest land dispute in Amuru sub-county (Interviews with staffs of ALPI, ULA, NRC, UHRC in Gulu on 4, 7 and 8 July 2011). This formed 20 responses respectively from parties to land disputes, government officials and NGO staffs. This was identified as the commonest kind of land conflicts in Amuru sub-county which is attributed to the fact that the marks which used to act as boundaries for example trees were burnt down and people are not certain of where their land starts and ends. This is further supported by the study conducted which indicates that disputes related to boundaries were the most prevalent in Northern Uganda (Rugadya 2008:10).

Another kind of land dispute which is common in Amuru sub-county is land grabbing or forcible entry. This accounted for 14 of the total responses gathered from the field. It is worthy to note that land grabbing disputes take different forms, according to information obtained from NRC staff, he pointed out that there has been encroachment of land bit by bit by neighbours or trespassers until they want to take the entire piece of land (Interview with NRC staff in Gulu on 4 July 2011). Other respondents argued that land grabbing takes place gradually by relatives and by outsiders who include some poli-

ticians in the region (Interview with officer from ULA in Amuru on 7 July 2011).

There are some inheritance land disputes especially those that occur when widows and orphans are denied land by the relatives of the deceased husband. This accounted for 7 responses. Inheritance land disputes were also attributed to the fact that:

During displacement when people were living in the camps widows were inherited by other men and upon return the relationships ceased, when they returned back home where they lived formally with their husbands they have been denied access to their former land'(Interview with officer from ULA in Amuru on 7 July 2011).

It should be noted that this type of land conflict has been fuelled by the paternal uncles or even the heads of the clans who take advantage of the death of their brothers to deny the widows and orphans the right to inherit the land that belonged to the husband or father (Interview with District Land Officer Amuru in Kampala on 13 July 2011). The above argument is in line with findings in a study conducted by Rugadya who argues that disputes related to inheritance of land are existent in northern region (Rugadya 2008:11). This involves depriving widows and orphans of their land rights which is contrary to Article 26(1) of the Constitution which promotes equal rights to ownership of property by individuals and groups or associations (Government of Uganda, 1995).

Other respondents cited disputes over the sale of land by a family member or relative upon return. This was pointed out by 2 responses. There have been disputes that have resulted from some individuals or family members or groups owning and using family property or selling it off without the consent of the others and benefiting from proceeds without sharing it with persons who ought to benefit hence leading to violent land conflicts (Interview with a Parish Chief in Amuru on 6 July 2011). And instances of selling land without sale agreements then denying thereafter that they had not sold (Ibid)

The stakeholders also revealed that there are different inter clan type of land disputes in which different clans claim ownership of a given land (Interview with ULA staff on 7 July 2011). However findings revealed that this was not a common occurrence since the respondents I spoke to referred to the same incident.

4.4 How land disputes are handled by established legal frameworks in Amuru Sub-county

In order to examine how land disputes are handled, the researcher identified various institutions which complainants reported land disputes to for resolution, documented experience of a party to a land dispute before court and examine selected cases arising from Amuru in the Magistrates Court.

4.4.1 Institutions handling or resolving land disputes in Amuru Sub-county

Findings revealed that some of the institutions which parties reported land disputes to were traditional governed by customary values and norms and others

statutory (Interviews with stakeholders, governments staffs and parties to land disputes in Amuru and Gulu July 2011). This clearly justifies the argument which legal anthropologist advance that different types of law in society suggest that pluralism always exists in some form (Berry 1993; Meinzen-Dick and Pradhan 2002, as cited in Meinzen-Dick and Nkonya 2005:8-11). The use of customary and statutory legal orders or systems in the resolution of land disputes in Amuru sub-county is a clear indication that it is a legally plural society.

The study findings indicated that traditional leaders have been handling many land disputes in Amuru Sub-county (Interview with parties to land disputes in Amuru on 6 and 7 July 2011). This is the first office which most people reported to land disputes and in some cases they amicably mediate between the parties who later agree mutually and the matter is resolved (Ibid). However, when the traditional leaders fail to resolve cases they always refer them to LC II (Interviews with parish chiefs of Toro and Okungedi in Amuru Sub-county on 6 July 2011). Given the mandate of the Local Council courts II to handle land matters of customary nature as a court of first instance this has made it easy for the traditional leaders to refer land disputes to the LC II courts because they are near, accessible, its decisions are legally enforceable and can be appealed against (Interview with Amuru district land officer in Kampala on 13 July 2011).

Furthermore, respondents revealed that Local council court II is one of the institutions which they reported to land disputes (Interview with parties to land disputes in Amuru camp on 6 July 2011). According to Section 76A of the Land Act and section 30(1) of the Land Amendment Act, the Parish or ward executive committee is the court of first instance in handling land disputes relating to customary land (Government of Uganda 1998 and 2004). Local council Court II has always been dependant on the traditional leaders who handle local land disputes though the decisions or agreements that are reached before this office are not legally enforceable (Rugadya 2008).

In reference to the above discussion, in as much as legal pluralism is the existence of two or more legal orders or systems in society, and people having to choose whichever applies to them, in Northern Uganda the people view the customary law and practices as a way of life (Popsil 1971, Griffiths 1982a, Moore 1986a, as cited in Merry 1988:870, LEMU 2011:2). In my opinion the customary and statutory modes of resolution of land disputes are two different legal orders which developed differently but they co-exist and are interdependent in society. In Amuru Sub-county the combination of both systems is very important since both legal orders are made provision for lawfully and they support each other.

More to the above, respondents also revealed that when a matter is reported to the LC court II and a party is aggrieved with its decision then he or she can appeal to the Sub-county court (Interview with parties to land disputes in Amuru, ULA staff and the district land officer on 6, 7 and 13 2011). Other respondents pointed out that in some cases they would go directly to the Sub-county court committee which would refer the case to the Chief magistrate's court or High court (Interview with parties to Land disputes in Amuru camp on 6 July 2011). And that sometimes the High court or Chief Magistrates court refer back some cases to be settled locally by religious or traditional elders in

society (Interview with district land officer Amuru in Kampala on 13 July 2011).

The study findings also revealed that in some instances land cases which involve violent parties are reported to the local council courts which refer the criminal offences to police and continue hearing the land case (Interview with Parish chief of Okungedi in Amuru Sub-county on 6 July 2011). An interview with a stakeholder revealed that very often some persons opt for violence after losing a matter in court and others do not even go to court but use violence (Interview with the RDC Amuru in Gulu on 8 July 2011). The police assist in cases when land disputes involving violence are being handled by various institutions and when some people are dissatisfied with court decisions, since some go for war or decide to criminally trespass onto land or maliciously damage property (Ibid).

It was further revealed that due to mistrust and irregularities which are common in LC II courts, some people have resorted to filing their cases directly in the Magistrate's court and High court which is very costly because it requires legal representation and drafting of Court documents (Interview with officer from ULA in Amuru on 7 July 2011). This in turn poses a great challenge because the high court is based in Gulu and though there is a magistrate's Court in Amuru, the magistrate only comes to Amuru on Tuesdays and Thursdays (Ibid). Legally in local council courts parties to land disputes do not need legal representation because it is a community court unlike the Magistrates and High Court's. However, it is important to note that the Norwegian Refugee Council and the legal Aid project support few parties to land dispute by offering them free legal representation in the Courts of law (Interview with staff of NRC and Legal Aid Project in Gulu on 4 July 2011).

So the people in Amuru Sub-county use all institutions discussed above in order to have their land disputes resolved.

4.4.2 Experience of a complainant in land dispute resolution process

The researcher interviewed a respondent from Amuru Sub-county who is party to a land dispute which was handled by the legal system in order to ascertain how in real life the land disputes were being resolved in Amuru Sub-county and to get the view of the respondent regarding the entire process and outcomes.

Case study

He alleges that the dispute is over customarily owned land on which he was born and the land was passed on to him by his father. The respondent alleges to have left the said piece of land in 1995 to live in a resettlement camp but in 2002 after the death of his father someone claimed ownership over the same piece of land. That the matter was reported to the Local council court II from where he won the case but the other party appealed against the decision to the Sub-county court where he encountered many problems because the court committee members were often bribed and they would deliberately absent themselves whenever court hearings were scheduled. This subsequently led to non realization of quorum to hear the case for several times and later another

Chair person was appointed to preside over the hearing but later it was discovered he was related to the appellant and he passed a judgement in his favour. He further alleges that he appealed against the decision of the Sub-county Court to the Chief Magistrates Court but up to date the case is still dragging in Court. He also alleges that the Magistrates court has been manipulated by the respondent who has never respected the court injunction. He states that he is tired of waiting and wonders of when the appeal will ever be concluded since the respondents is developing the said land despite the injunction stopping him yet Court has not taken any further steps to bar him from doing so. He also says that he had waited for a very long time to access justice and he was uncertain of when it would ever be done (Interview with a resident of Amuru on 7 July 2011).

The case study reveals the procedure, irregularities and delays experienced by some parties to land disputes during the land disputes resolution process in local council, Sub-county and Chief Magistrates Courts.

4.4.3 Summarised overview of some land cases arising from Amuru filed in Gulu Magistrates Court from 2008 to 2009

The information entailed hereunder is a summary of findings collected from court records I studied in Gulu Court for selected land cases arising from Amuru district which were lodged at Gulu Magistrates Court from 2008 to 2009 before Amuru was granted a Magistrates Court. Currently some of the cases studied are before the Chief Magistrate Court in Gulu, some were concluded, dismissed and others are pending before the Grade One Magistrate of Amuru district. The case files of different districts were mixed up so I sorted some for Amuru in general and not for Amuru Sub-county because of the difficulty in tracing the files for a particular Sub-county.

Table 3

Showing types of land disputes reported, evidence adduced and status of selected cases

Types of land disputes	Evidence adduced	Status of matters	Specific points
<ul style="list-style-type: none"> • Land boundary • Land grabbing • Inheritance disputes • Disputes over ownership • Civil suit • Breach of contract • Applications for execution 	<ul style="list-style-type: none"> • Old graves • Planted trees • Old site • Witnesses testified • Previous landmarks • Continuous disobedience by parties cultivating land in dispute amidst a court injunction. 	<ul style="list-style-type: none"> • Boundary defined • Old boundary revised • Appealed to the magistrate. • Case dropped • Case completed • Case adjourned • Pending hearing • Case dismissed • Case withdrawn 	<ul style="list-style-type: none"> • Eviction order • Fresh trial in Grade I Magistrates Court ordered • Waiting for LC court report • Application for injunction granted • Application for execution granted • Parties consent and withdraw a case

Source: Field data extracted from Magistrates court records 6 and 7 July 2011)

The table above is a summary of findings on the kinds of land cases, evidence adduced and the status. Most land disputes were about customary land boundaries and land grabbing. Other disputes included breach of contract, inheritance of land as well as civil appeals.

The findings in the table also show the nature of evidence that had been adduced or partially recoded in the court which includes: old graves of relatives and features of former settlement like rubble of former house. Other evidence include planted trees for instance mangoes, visibility of former land marks, evidence of continuous cultivation on land and cutting of the trees on disputed land. In most cases witnesses had been summoned to testify and some had testified though in some cases some had not testified. Therefore in the resolution of land disputes the court relies on different kinds of evidence depending on the nature of land dispute and available evidence.

Furthermore, findings revealed that court had from time to time in different cases adjourned matters and many cases were still pending hearing, some dismissed, some were dropped by the plaintiffs, others court ordered for court records from local council courts, concluded with cases or ordered retrial or the parties in some instances consented and withdrew the case from court. In

some instances boundaries were defined while in other cases old boundaries were revised. In other instances court had concluded with the cases.

Lastly, the table also shows specific points which were noted from various land disputes. In some cases eviction orders had been issued while in others fresh trial was ordered. There were also instances when the Chief magistrate's court was waiting for LC court records while in other cases injunction or execution orders had been granted.

4.5 Challenges encountered in land dispute resolution process in Amuru Sub-county

4.5.1 Challenges encountered by complainants

The researcher further inquired into challenges which conflicting parties face when their cases are being handled by legal institutions.

Findings revealed that most complainants lack money for various uses such as transport for following up cases and for witnesses to attend hearings, legal representation and court fees. (Interviews with parties to land disputes in Amuru camp, ULA staff and Magistrate Grade one of Amuru on 6, 7 and 23 July 2011). It was revealed by the Magistrate that due to financial constraints sometimes parties to a case fail to attend some court hearings hence leading to adjournment of some hearings from time to time (Interview with Magistrate Grade One of Amuru in Kampala on 23 July 2011).

In addition to the above, it is worth noting that the High court and Chief Magistrates court is located in Gulu which is the Regional Centre and the distance from Amuru Sub-county to Gulu is approximately 96 km and transport fee is approximately 16,000/= (Sixteen thousand Uganda shillings) which is too high to be afforded by people who have no source of income. In this way accessing justice in the judicial system is quite expensive and is in line with the argument that the traditional system of resolving land disputes is very cheap compared to the statutory courts (Pimentel 2011:64). However it is important to note that some respondents represented by the Norwegian Refugee Council are facilitated by the organization (Interview with NRC staff in Gulu on 4 November 2011).

Furthermore, findings revealed that local council court officials charge high amounts of money in order to resolve land disputes and visit locus. A party to a land dispute stated that in a particular case the local council court committee members had demanded for one million Uganda shillings from each party before visiting the disputed land (Interview with a party to land dispute in Amuru on 6 July 2011). From the researcher's point of view, such exorbitant amounts of money is illegal and a great bottleneck to the realization of justice in land matters which should be subject to investigation because people are being robbed of money in the name of accessing justice. One of the respondents from the category of stakeholders argued that local council courts are not facilitated and official fees provided for by law are very low, which has made them very corrupt (Interview with staff of ULA on 6 July 2011). However, in as much as the court fees legally provided for in the local council courts Act are very low and there is no facilitation this is not a justification for

charging high fees but they should rather appeal to government to facilitate them.

Another challenge which parties to land disputes encounter is that some local council leaders are: biased, compromised and they side with some parties to land disputes. For instance one of the respondents said that he failed to get in touch with the Chairperson of LC II Court because the person who grabbed his land works with him and is his nephew (Interview with a party to a land dispute in Amuru camp on 7 July 2011). So given the interest that LC Court officials have in some cases they fail to act fairly or in a just manner.

Findings also revealed that in some land cases most especially concerning land grabbing occupants and defendants sometimes deliberately refuse to appear before court yet they are occupying the disputed land (Interview with party to land dispute in Amuru Sub-county on 6 July 2011). This challenge has contributed to the delay in the disposal of some land disputes in Amuru sub-county yet justice delayed is justice denied.

The findings also revealed that during the pursuit of land cases by orphans it is difficult to follow up. One respondent, a young boy said that it is very challenging for him to follow up the case since his parents died during the war (Interview with a party to land dispute in Amuru Sub-county on 7 July 2011). He revealed that when summoned to court sometimes he does not answer some questions posed to him especially concerning boundaries and former neighbours or the size of land he inherited from his parents (Ibid). And for this reasons the respondent stopped following up the matter and he now lives in Amuru camp with his siblings. This is in line with the argument that after wars evidence to prove a land claim is a problem (Unruh 2007:432).

Furthermore, some clerks in most courts of law do extort money from the litigants which is a corrupt tendency in the name of expediting the process of case resolution which is not the case (Interview with a party to a land dispute on 5 July 2011). As a matter of fact this is a common practice in Uganda and a great challenge because the clerks keep the case files and execute the roles of summoning and serving the parties to disputes to attend hearings.

It was further revealed that it is always difficult to identify boundaries because during the war, boundary marks like trees, fences were destroyed and some witnesses died (Interview with a party to land dispute in Amuru Sub-county on 6 July 2011). This makes it very complex to prove ownership and boundary demarcations on disputed land.

More to the above, it was revealed that sometimes local council court members sit without realizing quorum or before both parties are in court and sometimes pass decisions in such circumstances which is unlawful (Interview with staff of ULA on 6 July 2011).

The various issues raised above are challenges faced by parties to land dispute during the process of resolution of land disputes.

4.5.2 Challenges faced by judicial staffs and other stakeholders

The study findings revealed the following challenges:

The major challenge faced by local council court members is that they are not paid a salary yet the court fees which are provided for by statute are very

low (Interview with a Parish Chief in Amuru Sub-county on 6 July 2011). From the researcher's observation, this situation has been a source of temptation in a way that officials have opted to illegally charge parties to land conflicts extra money before the cases are heard or before visiting locus.

Another challenge is that there are many land disputes in courts of law yet court staff handling the cases are few an example cited was that there is one magistrate handling all land cases of Amuru, Nwoya and Gulu resulting to delay in Court (Interview conducted with NRC staff in Gulu on 4 July 2011). The judicial officer also revealed that case bar clog in the Magistrates Courts is partly attributed to the fact that the court is overwhelmed since cases which were before the land tribunals were transferred to magistrates courts which also handles other criminal, civil, commercial and family cases in the three districts (Interview with Grade One Magistrate of Amuru on 23 July 2011). Instantly, it is clear that the magistrate's court is burdened with many different cases hence resulting to delays in the dispensation of cases.

Furthermore, findings revealed that some parties to land disputes do not comply with or respect court orders and decisions and sometimes they resort to violence (Interview with the Resident District Commissioner of Amuru district on 5 July 2011). During an interview with a parish chief in Amuru Sub-county he said that there are three cases pending which should have been resolved long time but because the parties resorted to violence everything has come to a standstill (Interview with a parish chief at Amuru Sub-county offices on 6 July 2011). Therefore failure by parties to respect land dispute resolution processes, court orders and decisions is a challenge to the endeavours by courts to resolve land disputes.

One of the local council members intimated that most court committee members are corrupt and in as much as some of the court committee members try to act impartially it's very difficult (Interview with a local council court secretary in Amuru Sub-county on 6 July 2011). He further pointed out that some court members ask for bribes from the parties before their land cases are heard and that sometimes politicians manipulate the court systems most especially at the local council court level which compromises the court officials (Ibid). In as much as it is difficult to get sufficient evidence in some land disputes but corruption has derailed the whole court process and hindered access to justice mostly in the local council courts.

More to the above, findings revealed that in as much as cultural leaders and local council courts resolve land disputes and conclude successfully, lawyers in private practice sometimes instigate disputes by advising the parties to appeal against decisions of the lower Courts yet in actual sense the lawyers want to make money out of the dispute which had been mutually resolved (Interview with a Judicial officer from Amuru District on 5 July 2011).

In addition to the above, the findings revealed that the lawyers in private practice or those in various organization who offer pro bono services contribute to case bar clog and delays in the magistrates and High courts in that they are few in the region yet they offer legal representation to people all over Northern Uganda (Interview with Grade One Magistrate of Amuru on 23 July 2011). And they always seek for adjournments in Court from time to time because they are overwhelmed with instructions from many people yet land dis-

putes are heard once in a week in Amuru and but if they are appearing before other Courts they often seek for adjournments (Ibid). This has contributed to delays in dispensation of cases, and parties to cases are often not comfortable with hearings proceeding without their lawyers.

It was also revealed that in the Magistrates courts some parties often request for longer periods of adjournments in order to raise money for transporting witnesses and for the lawyer, and the next time the matter is fixed for hearing the lawyer may seek for an adjournment which prolongs the process and usually leads to delay of justice (Interview with Magistrate Grade one of Amuru on 23 July 2011).

It was further revealed that the local council court members are not equipped with knowledge on land rights, laws and procedures and in most cases it is their first time to handle land matters and they may not be aware of the laws and procedures (Interview with ULA staff in Amuru on 7 July 2011). This was evidenced by the fact that very often, the Local Council Courts miss some important steps for example they may visit the locus yet they do not have any statement or a sketch map drawn which makes it difficult to know the locus (Ibid).

Further still, it was also found out that some court officials especially at LC II level do not know how to read and write which makes it very difficult for them to evaluate evidence in the local council Courts (Interview with staff of ULA in Amuru on 7 July 2011).

In addition to the above, in handling the appeals from the lower courts the Chief Magistrates Court, only reviews records which may have gaps from local council courts such as insufficient evidence or the procedure followed may be wrong for example in certain circumstances, parties may have not been cross examined or some witnesses didn't adduce evidence or there is no record of proceedings or both parties may have won in a case or there is no ruling in some cases (Interview with staff of ULA in Amuru on 7 July 2011). Therefore the irregularities characterised with most matters handled by the local council courts pose a difficulty to the Chief Magistrates court which receives appeals and in many occasions the court orders for a retrial by the Magistrates.

Findings revealed that sometimes the High Court takes long to provide funds for visiting locus yet it is a requirement to visit it before making a decision which subsequently leads to a delay in the dispensation of some land matters (Interview with a judicial officer in Kampala on 23 July 2011).

Furthermore, regarding the High Court sessions which are planned by the Justice Law and Order Sector, the transport refund paid in most cases is insufficient, the parties may be paid say 3,000/= (Three thousand Uganda shillings) yet the cost of travel may be 15,000/= (Fifteen thousand Uganda shillings) to 20,000/= (Twenty thousand shillings) (Interview with Magistrate Grade One of Amuru in Kampala on 23 July 2011). The facilitation for transport given to parties to land disputes is not enough to meet their travel costs.

In conclusion discussed above are the challenges encountered by the judicial officers and stakeholders in the land dispute resolution processes.

4.6 Conclusion

The findings reveal a wide range of factors which have contributed to the land disputes in Amuru Sub-county, types of land disputes, different institutions handling land disputes, experience of a party to land disputes and challenges encountered in land disputes resolution processes. The common land disputes are boundary disputes, land grabbing, breach of contract, inheritance conflicts among others which are handled by traditional leaders, local council courts, Magistrates and High Courts. The study revealed that in as much as the land disputes are handled by the traditional institutions, their decisions are not enforceable, so in most occasions people who disagree with the outcome of the traditional institution file their cases in the local council courts and occasionally high court. However, the major challenges experienced in the process of resolving land disputes are: irregularities, delays, bias and corruption most especially in the local council courts and case bar clog in the Magistrates court. And for most parties to land disputes poverty was a major challenge in that they cannot afford money for court fees, transport and legal representation.

CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

In conclusion, a combination of various factors has contributed to the conflict over land in Amuru Sub-county: breakdown down in customary values and norms, and forcible acquisition of land by mostly rich people and government institutions, sale of land without sale agreements, contested leases and unclear boundary demarcations upon return among others. The appreciation of value of land has created high demand for land during return, expansion of families and death of family members have equally contributed to land conflicts. The other factor which has played a role is the misunderstanding of government directive by people to return to where they came from first, some people have returned to other places which are not necessarily their places of origin. All these factors which have contributed to existing land disputes in Amuru Sub-county also apply to the wider Northern Uganda region and some even to areas where there was no war.

The land disputes in Amuru Sub-county are majorly resolved by the traditional leaders, local council court II, Sub-county court, magistrate's court, chief magistrates' court and some cases by the high court. It's worth noting that when people fail to mutually settle a land dispute with the traditional leaders which is cheaper and they are knowledgeable on boundaries, they often resort to the formal justice system starting with the local council court II, and thereafter if they are dissatisfied appeals are filed in the other courts as discussed in the legal framework and findings. In as much as local council courts play a vital role in the resolution of land disputes, in some occasions cases are not resolved in the right procedure, just and ethical manner. This is because of the irregularities in the local council courts such as bias, bribery, corruption, abuse of office, failure to cross examine, failure to pass decisions, following wrong procedures in court, passing decisions that all parties have won and improper court records among others. The Magistrates Courts play a great role in the resolution of land disputes despite the fact that it is overwhelmed with many different cases yet there is only one Magistrate Grade one working in three districts. The study recommends that there is need to recruit more judicial staffs to handle only land disputes in the different respective districts though the researcher is aware that this is a costly venture for government.

The study also concludes that parties to land disputes and judicial staffs encounter various challenges in the resolution of land disputes. However, the poor and vulnerable people find it very difficult to access justice, due to the costs associated with it such as the money demanded from them by local council court officials, transport costs, court fees, fees for legal representation among others.

The state bears an obligation to protect land rights of its citizens and ensure that they access justice timely. The state should therefore join hands with the community and nongovernmental organizations to strengthen existing institutions handling land disputes, so that they can effectively resolve the land cases in a fair and just manner hence protecting the rights of the people. In as much as the government of Uganda is working hard through the existing insti-

tutions on ground but much more is desired in order to ensure that an effective solution is in place to address the rising land disputes in Amuru Sub-county, and to better protect land rights in the area.

Legal pluralism exists in post war Amuru and other parts of Uganda through the different systems of resolving land disputes and the land tenure systems which have developed overtime. Amidst the rampant land disputes in Amuru Sub-county the customary systems of resolving land disputes is weak and the legal too is characterise with some irregularities, therefore the two systems ought to be strengthened and harmonised to better address the existing post war land disputes. And considering the loopholes of customary tenure systems with regard to security of tenure there is need for massive boundary demarcation and registration to be done by government with the support of community and stakeholders.

5.2 Recommendations

It is recommended that the informal justice system for the resolution of land disputes should be integrated with the formal system to avoid contradictions. In as much as the laws of Uganda recognise the traditional leaders but their decisions are not legally binding. In integrating the two systems the traditional leaders or elders will be better placed to give informed opinions on most especially on land boundary demarcations and who owned what prior to the war.

An initiative of boundary demarcation and registration should be undertaken by government with support of the community in Amuru Sub-county and in the entire northern Uganda. This will create clarity on boundary demarcations and reduce the rampant boundary related land disputes in Amuru.

The traditional systems of resolution of land disputes and the local council court system should be strengthened because they are better placed to handle the land disputes on customary land.

There is need for massive and consistent sensitization of the people on land ownership upon return, land rights, access to justice, customary practices and norms, tenure systems and appropriate places that everyone ought to have returned to. This should be undertaken by government, NGO's, elites, elected leaders, educated persons and councillors among others. In conducting this programme particular attention should be given to youths.

The activities conducted by different stake holders with regard to resolution of land disputes and advocacy on land rights should be harmonized, so that they can effectively work together which will enhance further protection and promotion of land rights. This is because currently each NGO and government institutions conduct activities differently yet the target group is the same, this calls for a plat form or forum in which they can meet and discuss various issues, lay strategies and even during implementation they should work together.

There is need for more legal aid providers who can offer free legal services to persons with land disputes; NRC and Legal Aid Project of Uganda Law society are insufficient given the fact that they cover the entire region. More legal

aid providers will ensure continuity of services offered if NRC withdraws or closes down in future since it is the major legal aid services provider in the region.

There is need to conduct a baseline survey and establish statistics on the existing land disputes in Amuru. It is not possible to base on the statistics of the number of disputes reported to courts, since very many people do not report the land disputes. And most local council courts and traditional institutions do not have proper records of disputes handled. It is hoped that all stakeholders should combine efforts in conducting a survey.

There is need to transform the local council court and make it bear the face of a court. It should not be politicized and appointments of court officials should be based on merit and if possible retired civil servants should be appointed to serve in the local council courts.

The local council courts should maintain proper court records so that it is easy to track back during appeals and also for parties to land disputes to refer back.

The Chief Magistrates Court services should be extended closer to the people because persons who wish to undertake executions of decisions of lower courts and appeal against decisions of the Sub-county courts from Amuru Sub-county travel to Gulu Chief Magistrates Court which is very far and yet most people cannot afford transport costs, which makes access to justice a very difficult process.

It is also recommended that priority should be given to mediations in trying to settle matters between relatives, brothers and the inter clan disputes before taking the case before the courts and if possible the LC II Court officials should participate in the mediation process.

The study also recommends that local council court members should be thoroughly trained in land laws and procedures, land rights, legal interpretation and professionalism. This should be coupled with close supervision of these local council court members because there is hardly any supervision by the Chief Magistrate or Grade One Magistrate.

There is a need for translating the laws governing land and land rights into local languages so that people can read in their languages and understand their land rights and procedures. This will reduce on the mistrust and speculation made by the people about the alleged intentions of grabbing their land by the government and other elites.

It is also recommended that in resolving land disputes courts of law should play a reconciliatory role between the parties to a dispute because upon conclusion of the case or even during hearing parties need to live harmoniously in society.

The court clerks should be closely supervised and cautioned to desist from demanding for money from parties to land disputes and the parties too should be cautioned not to offer money. Court clerks should be transferred from one station to another from time to time.

More judicial officers should be recruited to handle the land disputes and clear the bar clog in Amuru and the entire region.

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Appendices

Appendix 1

Time Schedule

Activity	Time
Submission of Research Paper Proposal	11 April 2011
Submission of Research Paper Design	10 June 2011
Data Collection	1 July – 20 August 2011
Data Analysis and writing	20 August – 5 September 2011
Writing Conclusions	5 September – 10 September 2011
Submission of Full Draft Research Paper	19 September 2011
Research Paper Seminars	26 September – 5 October 2011
Final Editing	5 October – 16 November 2011
Submission of final version of Research Paper	16 November 2011

Appendix 2

Field work letter of introduction



ISS is the International Institute of Social Studies
of Erasmus University Rotterdam

10 June 2011

TO WHOM IT MAY CONCERN

This is to certify that Ms Chelimo, Grace Angeline from Uganda is enrolled as a participant in this Institute's Master of Arts Programme (Development Studies) 2010/2011 which is being held from 06 September 2010 until 16 December 2011.

The Institute of Social Studies offers a full time M.A. Programme. Ms Chelimo is officially registered as a full-time participant in the ISS MA (Development Studies) Programme with specialization, 'Human Rights, Development and Social Justice' (HDS).

Ms Chelimo wishes to travel to Uganda from 14 June 2011 until 04 September 2011 for the purpose of her academic research entitled: "Land Rights in Post Conflict Northern Uganda; the Case of Amuru District", which is being supervised by Dr. Helen Hintjens and Prof. Mohamed Salih. We would appreciate it if you would give her the necessary collaboration and information regarding her research.

After this visit she will return to the Netherlands to complete her studies at the ISS. All assistance you may give Ms Chelimo, Grace Angeline will be highly appreciated.

Ms A. vd Berg
Head, Office of Student Affairs
ISS

International Institute of Social Studies | Office of Student Affairs | P.O. Box 29776 • 2502 LT The Hague • The Netherlands

Kortenaerkade 12 • 2518 AX The Hague • The Netherlands
Telephone +31 70 426 04 60 • Fax +31 70 426 07 55 • student.office@iss.nl • www.iss.nl

Appendix 3

INTERVIEW GUIDE FOR FOR PARTIES TO LAND DISPUTES

Briefing

- Objectives
- Benefits
- confidentiality
- Consent

Questions

1. Do you remember when you finished schooling?
2. How many children and dependants do you have living in your household?
3. Where and when were you born?
4. What is your main occupation? What other activities do you do?
5. When did you return back from a resettlement area?
6. How long did you spend in the camp or away from home? Fromto (And from to.....). Where?
7. When you got home, what situation did you find here?
8. Who was occupying your land, if anyone?
9. Who did you report the matter to, and when?
10. Did your neighbours face the same problems as you? Did they report them?
11. Can you identify your own type of land dispute?
 - a. Land grabbing case
 - b. Inheritance dispute
 - c. Boundary issues with neighbours
 - d. Marital status issue
 - e. It's a mix of several – describe
 - f. Something else (specify)
12. Has the matter been resolved and how?
13. Are you satisfied with the outcome?
14. Has the matter been handled fairly?
15. Which staff handled your dispute?
16. How efficient was these staff in handling your dispute?
Very good good average
poor (Why?)
17. What difficulties did you have in getting your case heard?
18. What are your suggestions for improving the system of handling land disputes?
19. Do you have anything else to tell me regarding your experience or that of your neighbours?

Appendix 4

INTERVIEW GUIDE FOR JUDICIAL OFFICERS, DISTRICT OFFICIALS, ELDERS AND NON GOVERNMENTAL ORGANIZATIONS

Briefing

- Objectives
- Benefits
- Confidentiality
- Consent form signing

Questions

1. Name: _____ Gender: _____ Occupation: _____
2. What organisation(s) do you work with?
3. When did the resettlement process start in this area?
4. How long have you worked in this area, and what jobs have you had?
 - a). 1-5 years
 - b). 5-10 years
 - c). More than 10
5. What kinds of land disputes are there now in this area?
 - a. Land grabbing case
 - b. Inheritance dispute
 - c. Boundary issues with neighbours
 - d. Marital status issue
 - e. It's a mix of several – describe
 - f. Something else (specify)
6. (For those more than 10 years in post) How do land disputes today compare with 10/more years ago?
6. Are you directly involved in handling land disputes?
7. **If so**, How long is it taking you (on average) to resolve land disputes?
8. If you are not involved directly in handling land disputes:
Who/which organisations are handling such disputes in Amuru sub-county?
9. What challenges are there for you/those in resolving such disputes?
10. What do you think could help make land dispute resolution faster?
11. What do you think could make land dispute resolution fairer?
12. Is there any other relevant thing you would like to discuss?

