

Enhancing Legal Empowerment through Engagement with Customary Justice Systems – Small Grants Program

Towards Legal Empowerment: Evaluating the Integration of Customary and Formal Law Land Dispute Mechanisms

Project location: Uganda

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Context

The prolonged period of conflict in Northern and Eastern Uganda has had a devastating impact on civilian life. Non-government organizations (NGOs), religious leaders, and the donor community have been actively involved with peace-building and humanitarian efforts. Now that the conflict has subsided and communities are beginning to rebuild, conflicts of a different kind are emerging. A recent study commissioned by the Justice, Law and Order sector on Transitional Justice in Northern and Eastern Uganda and some parts of the West Nile Region found that land conflicts were ranked as the second highest concern (42%) with only domestic related disputes ranking higher (45%). Furthermore, the study found that over 90% of the domestic related disputes were related to land conflicts.

Land disputes and land-related family conflict are among the most prevalent types of disputes occurring within communities in Uganda both in the rural and urban areas. Land disputes have resulted in destruction of property and, in extreme cases, even loss of lives. The disputed land becomes a 'no-go' area and is not available for use while the dispute lasts, which results in the withdrawal of a critical factor for wealth-generation from productivity. Thus, there is an obvious need to find effective ways of resolving and/or mitigating land disputes particularly for poor households.

Despite the high number of disputes, the use of formal legal mechanisms to resolve these disputes is very low. The study revealed that most respondents in the target areas were unfamiliar with the Ugandan court system and preferred utilizing the Local Council ("LC") or clan court system to settle land disputes. It was reported that there is limited sensitization on the operations of the Uganda court system. Overall, the respondents preferred LC courts reportedly because there is less corruption in the LC system compared to the formal courts. The formal court system was preferred only for serious offenses such as murder. According to the respondents, land disputes should be tried in the local council and clan courts. It was said that clan leaders are effective in land cases because they know the land boundaries. At this point in time, clearly the majority of Ugandans are more likely to turn to the LC system to settle a land dispute. Years of insecurity and violence in the Northern and Eastern Uganda have made it even more difficult for people from those regions to access the formal justice sector. As such, it is critical to focus on the LC system as the court of first instance for most land disputes and to explore ways to integrate the LC courts and Ugandan national courts of law.

Uganda Land Alliance ("ULA") has received funding to conduct a pilot project in three communities (Amuru, Apac and Katakwi) aimed at enhancing the capacity of the Local Council and the clan authorities to resolve land disputes. The project, entitled *Land*

Justice for Peace Building in Northern and Eastern Uganda: Traditional Authorities Making a Difference at the Grass Roots, (hereinafter referred to as “Land Justice”) seeks to 1) undertake community sensitization and land rights awareness, 2) conduct trainings on the Local Council’s role in litigating land disputes, and 3) train traditional authorities, especially the clan institution, through human rights and land rights training and capacity building. Ultimately, the goal of the project is the integration of the traditional dispute resolution methods with the formal land justice delivery mechanisms.

Uganda Land Alliance

ULA, a national civil society consortium comprised of organizations and individuals, was founded in 1995 to advocate and lobby for fair land laws and policies. Since its inception, ULA has been pivotal in accelerating the constitutional recognition of customary tenure and above all land and property rights for women. In addition, ULA has initiated Land Rights Centres in a number of localities, conducted public interest litigation, as well as research which included action research. Priority issues addressed by ULA are:

- Customary land tenure security
- Land rights awareness
- Land legal and policy reforms
- Organizational development

ULA is a very reputable organization with broad support. It has a history of effectively working with not only local communities and informal authorities, but also formal political and judicial institutions. As such, it is in an excellent position to attempt to bridge the gap between customary law and formal law institutions.

Uganda Land Alliance’s Land Justice Project

As discussed above, following the cessation of hostilities in Northern and Eastern Uganda, a new era of conflicts is arising with land conflicts at the forefront. ULA’s *Land Justice* project seeks to reduce the occurrence of land dispute conflict in Northern and Eastern Uganda by equipping the traditional authorities with skills on land issues and dispute resolution and working with the formal justice sector to recognize and give weight to informal justice delivery mechanisms. An excerpt from ULA’s own description of its pilot project appears below:

The Land Act Cap 227 explicitly provides for the role of the traditional authorities in dispute resolution but no efforts have been made toward empowering them to effectively undertake their role.

Recommendations in the Transitional justice study proposed not only the recognition of the traditional authorities in dispute resolution but the integration of this system with the formal justice delivery mechanisms. Particularly the recommendations stressed that:

“Traditional systems of justice have been largely overlooked by most reform agendas in post conflict countries. Exploring the potential of indigenous and traditional systems to enhance access to justice, particularly in post conflict contexts, and examining how they can link to formal systems and how human rights standards and principles can be introduced may often be useful entry points. The two working in tandem is critical in post conflict settings where the formal system is often in an embryonic stage and unable to handle a colossal caseload.

Therefore, a combination of approaches and mechanisms combining traditional and formal institutions should be devised to ensure that strong and effective institutions are developed that will contend with the challenges of transitional justice.”

Traditional authorities like the clan system comprise of the indigenous people who are familiar with the management of customary land and therefore a mechanism of justice resolution. The institution owes its origin from the people and this system like any law or judicial process is derived from the people. This will therefore be the most appropriate means to resolve land disputes of a customary nature given that most of the land in Amuru, Katakwi and Apac is of a customary tenure.

For land justice to be achieved there is need to undertake adjudication of land rights in the greater North especially at a time when many people are contemplating returning to their homes but are faced with difficulty of identifying what is there and which are their boundaries. More permanent methods of defining boundaries should be used. Taking advantage of the ongoing government programme of systematic demarcation of land will go a long way in achieving a lasting solution to land issues in the greater North.

To this end, there is need to undertake lobby and advocacy around the integration of the traditional dispute resolution mechanisms with the formal which will culminate in the preparation of a bill of parliament to ensure this relationship is legalised. This will require close collaboration with the Justice, Law and Order Sector (“JLOS”), the Ministry of Lands, Housing and Urban Development and other civil society actors to push this process forward. Efforts by the Judiciary with the support of the JLOS Secretariat are under way to integrate traditional justice into the formal justice system. This however involves the process of legislation on which the ULA’s proposed intervention would involve advocacy for delivery of land justice through traditional justice in the targeted districts and the greater North.

This proposed project comes at a time when the communities are looking for answers regarding their land rights and the status of customary tenure. They are looking for respect and protection by the state that is reportedly suppressing them. Training of the traditional authorities in dispute resolution will go a long way in providing expedient dispute resolution alternatives to the communities. Secondly, the efforts of the JLOS in reforming judicial processes and land justice delivery institutions in particular will reinforce the protection of rights of a community that is already aware of their rights and that will then use these structures as dispute resolution avenues.

The Uganda Land Alliance will focus its training on the Local Council’s role in litigating land disputes as courts of first instance and appellate court and as actors in alternative dispute resolution. The role of traditional authorities especially the clan institution will be enhanced through human rights and land rights training and capacity building. It is imperative to note that their traditional judicial function on land is entrenched by cultural practices that also govern particularly customary land as a communal resource.

Goals

To foster an effectively and efficiently functioning land justice delivery system through the integration of the traditional with the formal land justice delivery mechanisms

To empower traditional authorities through building their technical capacity to effectively address land rights violations as a means of restoring and maintaining lasting peace in Northern Uganda.

Specific objectives:

1. Advocate for the recognition and integration of traditional justice delivery mechanisms with the formal land justice delivery systems;
2. Strengthen institutional and individual technical capacity of traditional authorities to respond to property rights violations; and
3. Promote security of tenure and respect for land rights through attitude and practice change.

Expected Results:

1. A more responsive integrated land justice delivery system;
2. A secure community using land for production and development;
3. Increased usability of the land rights administration and land justice delivery institutions; and
4. Improved attitude and practice on respect for individual and group land rights.
5. ULA influencing Parliament to integrate land dispute resolution into the proposed Transitional Justice Bill.

Project Activities

1. Consultative process will be a start up activity which will involve a workshop introducing proposed integration of traditional justice
2. Lobby meetings with JLOS, Parliament, the Judiciary and LSSP
3. Formation of working groups and coalition members
4. Building capacity of the LCs and the Clan heads to adjudicate land disputes.
5. Development of IEC materials
6. Training workshops and stakeholder meetings with CSOs, the District, Community, LCs, Clan Heads and Development Partners
7. Data collection analyses
8. Community mobilization and dialogues
9. Networking, joint stakeholder activity and coalition building
10. Follow up
11. Monitoring and Reviews and Evaluation

Conclusion

ULA's pilot project seeks to accomplish legal empowerment around land rights through the integration of customary and formal law delivery systems. Thorough research, however, is needed to evaluate the project in order to discover how such integration might occur, both in Uganda and other contexts. In particular, it is necessary to measure the effectiveness of the trainings undertaken in the community, with Local Council members, and traditional authorities. Such an analysis should be complemented by data collected on the number of land disputes, how they are resolved, and the satisfaction of the disputants with the resolution. Such research should be directed at gaining better insight into the challenges of integrating different methods of land dispute mechanisms, the advantages and drawbacks to utilizing informal and formal dispute systems, and finally, to evaluate and recommend best practices for an integrated approach to legal empowerment.