LGAF Uganda Series 008 January 2017

DISPUTE RESOLUTION

The Land Governance Assessment Framework Technical Report

LANDnet Code: LN009

ISBN: 978-9970-601-09-7

Authors:
Esther Obaikol
Joseph Francis Ogwapit

LANDnet Uganda
Plot 213 Semwogerere Zone
Mukalazi II Bukoto
P.O.Box 14170, Kampala
Email: info@landnetuganda.org
Tel No: +256-414-373782

The Land Governance Assessment Framework Technical Report:
Dispute Resolution/ by Esther Obaikol. –LANDnet Uganda.
Kampala. 2017©
17p, LGAF Uganda Series 008, LANDnet Code LN009
ISBN: 978-9970-601-09-7

TABLE OF CONTENTS

1.0 INTRODUCTION

Land related disputes are among the most prevalent types of disputes occurring with and among communities in Uganda both in the rural and urban areas. These disputes are fuelled by a number of factors, which include: population pressures, unfair land tenure regimes, changes in land laws, lack of clearly demarcated boundaries, backward and discriminatory customary laws and practices, inheritance practices, outdated statutory laws, underdeveloped land markets, lack of a modern land information system as well as inaccessibility to available land information.

Land disputes do not only stifle investment on land, they also divert scarce resources (labour, time and money) to solve them, thus impacting negatively on productivity and household income generation, resulting into heightened poverty levels. Quite often land disputes result into destruction of property and, in extreme cases, even loss of lives. Very often, 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 obvious need to find effective ways of resolving and/or mitigating land disputes particularly for poor households. Inadequacy and in many cases, lack of information and knowledge about land rights is a cause of fraudulent land dealings due to ignorance and at times lack of concrete information about a given land parcel and the attendant land rights, especially within communities. Lack of information about land seriously impacts on poverty levels in that communities do not have the basis on which to effectively protect their land rights and to plan for the development of their land at optimal productivity levels (Obaikol 2007).

Land tenure on its own is relatively insignificant as a determinant of investment (relative to credit supply, market access, etc.), but in conjunction with other economic, social and political factors can influence investment levels. At the household level, insecurity of tenure or the structure of tenure rights do impact on certain types of investment, for example the construction of permanent structures or the planting of permanent income-generating trees. A high prevalence of land disputes in the absence of an effective and equitable mechanism for their resolution also leads to economic losses through delayed or deferred production and investment. Even among groups whose tenure is believed to be relatively insecure (e.g. customary landowners) the prevalence of land related disputes is clear evidence of insecurity.

Lack of transparency and accountability which is perpetuated by inequitable systems and processes in the Land Sector institutions contributes to the inequality of land distribution and land insecurity due to lack of the appropriate mechanisms to resolve land problems. On titled land, and in particular in urban and peri-urban areas, tenure security is undermined by the inaccuracy or incomplete nature of land records as a result of poor record keeping, out-dated systems, processes and records which result in the proliferation of land disputes. The situation is compounded by the

fact that the Land Register has got divorced from the real and current situation on the ground, which situation has been exploited by fraudsters who impersonate landowners, declare living persons dead or vice verse, forge certificates and illegally sell land to unsuspecting buyers etc.

A robust property system will always generate a fair measure of land disputes. For land held under customary tenure, disputes are often part and parcel of social reconstruction in specific community settings. The Land Act, 1998 under decentralization, established an elaborate structure of land tribunals (implemented under a circuiting model) and appointment of adhoc mediators, initially under Ministry of Lands, later transferred to Ministry of Justice. It is also common for dispute mediation to be undertaken by the offices of Resident District Commissioners, Local Councils and traditional organs (chiefs and clans) (MLHUD 2009).

Therefore under the Land Act, new devolved machinery for land dispute resolution was established, consisting of dedicated Land Tribunals at district level. The role of Land Tribunals in land dispute resolution in Uganda is stipulated in the LSSP as being: "to provide for easier accessibility to justice by landowners and users, by moving away from the formal court structure whose ambience is intimidating, complicated and alienating". The processes of the law courts system were seen as being too expensive and time consuming to the very often poor ordinary landowner and user, and are characterized by a high rate of case backlog and delays in the conclusion of land cases. Access to justice and dispute resolution in regard to the land sector was identified as having a direct connection with good governance and contributes to poverty eradication, and was therefore highlighted as a priority area for LSSP. The provision for Land Tribunals at district level was intended to combine easy accessibility with enhanced fairness of the system, as well as affordability and expeditiousness to the land owners, land users and the Government alike, in land dispute resolution, within the specific provisions of the Land Act.

Accessible and fair land dispute resolution is critical to tenure security especially for poor and vulnerable groups. Under LSSP the dispute resolution system will be based on local courts at the lower level, strengthened to improve the transparency and fairness of their decisions, with an upper tier of impartial appointed Tribunals to consider higher value cases and appeals.

1.1 Objectives

1. Gather evidence to make an expert assessment on a prescribed set of indicators from the LGAF Module that describes the level of governance in dispute resolution.

2. Deduce Policy Recommendations that would be in line with the best practice given the contextual setting of Uganda.

2.0. OBJECTIVE 1: GATHER EVIDENCE TO MAKE AN EXPERT ASSESSMENT ON A PRESCRIBES SET OF INDICATORS FROM THE LGAF MODULE THAT DESCRIBES THE LEVEL OF GOVERNANCE IN DISPUTE RESOLUTION

2.1. Responsibility for Conflict Resolution is assigned to Competent Bodies and Decisions can be appealed against

Before the Constitution of 1995 and the Land Act of 1998 were made law by Parliament, disagreements on land were taken to the Local Council courts or to the Magistrate's courts or to the High Court depending on the value of the land over which there was a disagreement. The Constitution of 1995 changed the procedure of resolving land disputes by setting up Land Tribunals and Local council Courts to handle all land matters.

1. Land Tribunals

In section 74 of the Land Act, the creation of a tribunal for very district in Uganda was provided for. Each tribunal was to consist of a chairperson, who must be a lawyer and two other members who are not required to possess formal qualifications but should have been knowledgeable and experienced in land matters. All were appointed for five year terms. The tribunals had the same power as Grade 1 Magistrates Courts and were the final body of appeal on land disputes within the district. Subsequent appeals against the decision of a District Land Tribunal had to be made to the High Court. Although the Land Tribunals have powers equivalent to a court of law, the Land Act 1998 envisaged that they would follow different rules of procedure from ordinary courts. It was hoped that by being less formal and legalistic these tribunals could make themselves more accessible to ordinary people and bring justice closer to the community. However, the subsequent transfer of land tribunals from the Ministry responsible for Lands to that responsible for Justice (Supervisory powers have been given to the Chief Registrars of the High Courts and all property of tribunals to be transferred to the Secretary to the Judiciary) was not followed by sufficient allocation of resources under the Judiciary. The Judiciary upon expiry of their term in 2007, they were closed down, their jurisdiction over land matters was transferred to main stream courts and split between Magistrate Grade 1 and Chief Magistrates Courts.

2. Local Council Courts

These courts are established under the Local Council Courts Act 2006. Under s.3 of the LCC Act they are meant to be courts of first instance at every village, parish, town, division and sub county level. Under s.10 of the Act, the LCCs have jurisdiction/power to try and determine matters relating to land held under customary tenure within the territorial area where the court is located. However, this means the LC Courts have no power to

handle disputes falling under Mailo, leasehold or freehold tenure; they only have power to handle disputes over customary land. Under s.13 of the Act, in any customary land dispute the LCCs have powers to order for the following:-

a) Reconciliation
b) Declarations
c) Compensation
d) Restitution
e) Costs or
f) An apology.

3. Traditional or Customary Methods

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

4. Mediator (s.30 Land Act)

The Act also makes provision for the appointment of mediators, on an ad hoc basis, in an attempt to resolve land disputes. A mediator is not required to hold any formal professional qualifications and his or her main role is envisaged as attempting to narrow any difference between the two parties.' The Act specifies that the services of a mediator may be used in negotiations between landowners and tenants who are either seeking to gain occupancy rights or conduct a transaction relating to the land in question.

2.1.1 There is clear assignment of responsibility for conflict resolution.

According to a study carried out by Makerere Institute for social Research in 2003, over the last 20 years, it has become apparent that multiple law regimes and dispute resolution mechanisms are a precursor to land disputes. Apart from the multiple law regimes, which create a different set of problems, the number of options available to decide the disputes complicates matters. There are currently 5 different land disputes resolution mechanisms, 3 of which are basically quasi judicial organs set up under the 1998 land Act in an effort to bring land services closer and more acceptable to the users. These are 1. The traditional institutions (clan leaders and elders), 2. Local Council courts 3. Magistrates courts 4. Mediators and 5. Land Tribunals.

Multiple dispute resolution mechanisms impede quick disposal of disputes, as the number of the options available to decide any given dispute complicates matters by leading to a tendency on the part of the litigants to resort to try all the available avenues, sometimes at once, a phenomenon known as 'forum shopping'. The study referred to Mijumbi's (2002) pertinent questions with regard to forum shopping as:

- Nature of dispute;
- The first level of contact for arbitration;
- The reasons for the choice;
- Whether or nor the dispute was resolved to the satisfaction of the affected parties;
- Cost, duration in solving the dispute;
- Impact of the dispute to the households involved.

The study therefore concluded that the availability of options through which land disputes can be resolved has dual effects on the operations of the dispute resolution mechanisms and to the litigants, which are:

- The options provide choice to the litigants but,
- They are also used to create stalemates by staying execution of judgment, confuse and stifle the resolution of processes resulting in backlogs of unresolved cases.

Article 243 of the 1995 constitution of Uganda provides for establishment of a law which is the Land Act (as amended),

> *"to provide for tenure, ownership and management of land; to amend and consolidate the law relating to tenure, ownership and management of land; and to provide for other matters related or incidental matters"*

This is contained in the preamble of the Land Act, 1988.

Whereas the Land Act consolidated, the law relating to tenure, ownership and management of land, the then existing laws like Registration of Titles Act, Succession Laws, Local Council (Judicial Powers statute the Local Councils Act No.12/2006 seem to have alienated them instead. The inconsistencies eventually led to operational problems especially dispute resolution. The same has been worsened when new legislation is made without due care to Land Act that provided fundamental changes following the 1995 Constitution of Uganda.

Whereas the Land Act (S.76A) provided for Parish/ward LC.II) as Courts of first instance in land matters with appeals to sub-county (LC.III); District Land Tribunals and High Court, S.32 of the Local Council Courts Act, No.12/2006 provides for LC.I (village) as court of first instance with jurisdiction to try land matters [S.10 (1) e].Appeals lie here from to LC.II, III and Chief Magistrates and High Court. This inconsistence leaves out

tribunals in the appellate structure of land matters. There is every need to harmonize these laws especially in appellate jurisdiction.

Whereas, S.29 of the Land Act provided for lawful and bonafide occupant, it does not give comprehensive definitions for each and more often than not, it confuses most people affected later alone lawyers alike. A precise and clear legal definition should be sought to provide simplified remedies to those affected in the two categories as distinct by removing the ambiguity. The controversial S.39, Land Act should actually be provided for under the domestic relations law (bill) instead of hereof where it has proved impotent. Whereas the law is in place, unless it is a court matter, spouses and other beneficiaries. Consent is omitted in land dealings with the major reason being that it is hard to find, unless in a village setting, land where both sustenance and residence are obtaining. The principles of tenancy in common and joint tenancy should be left at will than legislation.

Common interests of communal land users; association is also not feasible as cost effective. An amendment to the effect of compulsory, government systematic demarcation like was done in Kenya would be a better option to clear this problem once and for all than selected areas accessible to the land fund under S41 (Land Act).

Special powers of rectification of certificates of title or instrument, cancellation are so arbitrary that in many occasions have occasioned miscarriage of justice especially that they cannot be challenged in courts. An amendment should be targeted to having the District Land Courts (Tribunals) reserve these powers of not only adjudicating but also orders of matters of titled land that they will have heard and determined.

This will reduce on not only delayed justice but also backlog of cases at High Court where each judge has over 400 cases per annum Chad Registry records. The Judicature Act (Ss.3 – 18) provided for the structure of courts of Judicature and had for under stable reasons as to them having been under Ministry responsible for Lands and also for nomenclature of “Tribunals”. Article 262 considers Tribunals whatsoever named as courts under subordinate category.

In Masalu Musene & others vs. Attorney General; constitutional case No.5 of 2004 land tribunals were excluded from judicial officers not taxable with a reason that they were quasi judicial for operating under Ministry responsible for Lands. However, upon transfer to the Judiciary, only change of nomenclature from “tribunal” to “court” should be done and Article 237 providing for land tribunals separately will be rendered redundant if not call for a separate statute than Land Act to serve Land Tribunals as special Land Courts within the Judiciary.

It is also common for dispute resolution to be undertaken by the President’s

Officer (Director for Land Affairs), and the offices of Resident District Commissioners. This situation has left the justice-seeking public confused, delays in settlement of disputes and creates a backlog as disputes escalate. It should be noted that the multiplicity can only be positive if it is creating variety rather than confusion amongst users to the extent that they are viewed as complimentary (both formal and informal). However the duplicity in roles, hierarchy and jurisdiction needs systematization, while recognizing the values and incorporating the roles of traditional institutions in defining the functions of statutory institutions (Rugadya 2009:21).

The Land Sector Strategic Plan (2001 – 11) sought to simplify the land dispute resolution framework by modifying the version of the structure as provided in LA98. LC2 and LC3 Courts will handle the bulk of cases at parish level and below. Appeals will be to District Land Tribunals which will operate on a circuit basis. Higher level cases will be handled through the High Court and Court of Appeal as normal.

The sector supported land administration by strengthening the Land Police Protection Unit, the High Court Land Division, and rolling out land courts in magisterial areas. The sector in addition fast tracked the Registration of Titles Act together with the Ministry of Lands. This has led to decongestion of registries through the creation of sub- regional offices (JLOS 2013: 14).

Furthermore, Land courts have been rolled out by the Judiciary to reduce backlog and streamline the land justice delivery system (JLOS 2013:44)

Mediators

Mediators are provided for under the laws Land Act (S.89) procedure [Rule 6(6)] on adhoc basis as a mandatory form of ADR before full scale hearing commences.

The legal position that is in line with the normal Civil Procedure Rules, scheduling conference procedure (0.10) is well intended and a very acceptably short form of adjudication.

However, the remuneration of mediators is not forthcoming as funds have never been provided save difficulty in maintenance of same mediators, being adhoc and to each case not area. There is an apparent need to streamline this area and put ADR – (mediation) to performance. Probably the two members could handle the mediation and later a full scale hearing proceed at a quorum of 3 including chairpersons upon failure to succeed in the mediation.

The Judicature (Mediation) Rules No 10 of, 2013 provide for mediation of all civil actions filed in or referred to the High Court and any subordinate to the High Court. The court shall refer every civil action for mediation before proceeding for trial. Where a civil action has a question of law which may dispose of the civil action the registrar or authorized court officer shall refer

the civil action to a Judge or Magistrate, whichever applies, or determination.

Mediation under these rules may only be conducted by-

(a) A Judge;
(b) A Registrar;
(c) A Magistrate;
(d) A person accredited as a mediator by the court;
(e) A person certified as a mediator by CADER; or
(f) A person with the relevant qualifications and experience in mediation and chosen by the parties.

2.1.2 Conflict resolution mechanisms are accessible to the public.

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

According to the 2004 National Service Delivery Survey Report (NSDS), 80% of the households are located more than 19 km from the High Court; 66% are located more than 10 km from the District Land Tribunal and 48.8% from the Magistrate's Court.

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

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

Land Tribunals; 7.3% in the LC1 Courts. Bribery was least common in the customary courts where only 2.7% of the households paid a bribe.

2.1.3 Mutually accepted agreements reached through informal dispute resolution systems are encouraged.'

Alternative Dispute Resolution is encouraged through the use of mediators or the traditional leaders. The courts of law now apply ADR for most cases before going into formal hearing. According to the JLOS baseline survey 2012, public confidence in the enforcement of existing laws stands at 29%, use of ADR generally is at 80% but only 26% of the cases in courts and tribunals are resolved through ADR. The Services of legal aid are recognized by government as crucial to resolving land disputes.

The Justice, Law and Order Sector is working to ensure that there is a functional legal aid system that integrates the state brief; standards for legal aid provision and complements the pro-bono scheme; and low cost models of legal aid. A legal aid policy was finalized and approved by the JLOS Leadership Committee and only awaits Cabinet approval. In anticipation of the approval work commenced on the proposed draft Legal Aid Bill to implement the policy

At the Uganda Law society, provision of legal aid services through the Legal Aid Project and pro bono services continued following the opening of 3 new Legal Aid Clinics in the districts of Mbarara, Arua and Soroti. In the reporting period, a total of 8,359 clients were handled through the legal aid clinic. Of these, 4,691 were new clients representing 56.1%. The male were 5,510 while the female were 2,849. In the reporting period 506 cases were concluded in Court while 774 cases were concluded through mediation. Also 804 cases are pending mediation in ULS while 3,503 cases are pending in Court. In total 1,378 clients received legal advice, 337 were referred to pro bono scheme while 57 cases were closed for lack of merit (JLOS 2013:57).

Justice Centres Uganda, a pilot for state provision of legal aid reached out to 16004 people, 5067 of whom were women. Community awareness outreaches is one of the major activities of Justice Centres Uganda, mainly to respond to call in and walk in issues raised to Justice Centres as well as to serve as an avenue for community mobilization and awareness on human rights and how to pursue such rights. During the reporting period, 157 community outreaches were conducted in different centres focusing on specific issues notably on how to resolve land conflicts, family disputes especially related with custody and child maintenance as well as criminal law.

Justice Centres Uganda continued to resolve disputes through Alternative Dispute Resolution. This Period, 689 cases (329 female, 360 male) were

processed through ADR/ mediation with 321 (151 male and 170 female) cases successfully resolved through ADR. 294 cases are in the final stages of conclusion, while 74 cases failed because the parties failed to reach a compromise and as such they were filed in court.

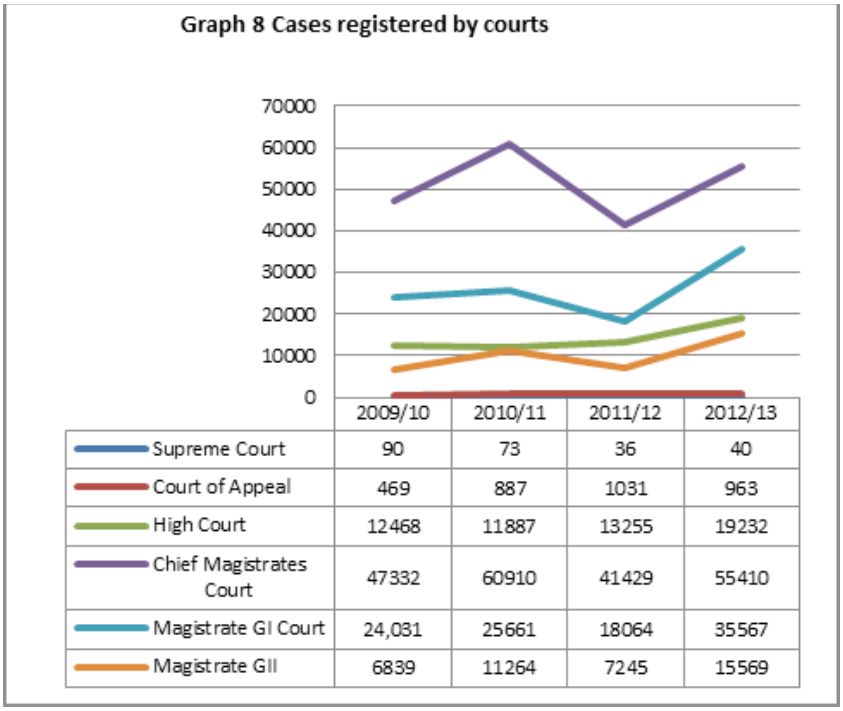
Most successful cases during the period have been family and land related matters. However, even though most family matters have been addressed and a memorandum of understanding signed during ADR, there is need for continuous monitoring to ensure that the memorandum of understanding is being implemented (JLOS 2013:58).

Sections 16 and 17 of the Judicature (Mediation) Rules No 10 of2013 provide that where the parties resolve some or all the issues that are the subject of mediation, the parties shall enter an agreement setting out the issues on which they agree. The agreement shall be in writing and signed by the parties. The agreement shall be filed with the registrar, magistrate or authorized court officer responsible for mediation in the court. The agreement filed with the registrar, magistrate or authorized court officer responsible for mediation shall be endorsed by the court as a consent judgment. Where there is no agreement on all the issues subject to mediation, the mediator shall refer the matter to the court. There shall be no appeal to any order granted under these Rules except as part of a general appeal at the conclusion of the civil action in respect of that mediation.

2.1.4 There is an accessible, affordable and timely process for appealing disputed rulings.

Appeals are required to be filed within 14 days of passing of judgment. In the Supreme Court, of the 40 cases filed, only 12 cases were disposed of. This was attributed to lack of Coram. In the Court of Appeal, of the 963 cases filed, only 205 Appeals were disposed of due to lack of Coram, bias on hearing constitutional petitions and failure to hold sessions outside Kampala, a practice that had previously proved very successful (JLOS 2013: 17).

It is however, not possible to determine form the data available whether these courts are accessible and affordable. It is evident thought that they are not efficient in disposing of land maters.



	2009/10	2010/11	2011/12	2012/13
Supreme Court	90	73	36	40
Court of Appeal	469	887	1031	963
High Court	12468	11887	13255	19232
Chief Magistrates Court	47332	60910	41429	55410
Magistrate GI Court	24,031	25661	18064	35567
Magistrate GII	6839	11264	7245	15569

JLOS Annual Performance report 2012/2013.

2.2 The Share of Land Affected by Pending Conflicts is Low and Decreasing

However, by the time their mandate expired in November 2006, there were 6,000 land cases pending today there are 20,000 cases pending (JLOS2013:31). This means that land land disputes are on the increase.

Table 1: Disposal of cases by focus area

Row Labels	B/F	Registered	Completed	Disposal Rate Of Registered Cases	Pending
Anti-corruption	264	376	360	96%	280
Commercial	1,585	2,273	1,705	75%	2,153
Criminal	60,558	80,352	75,934	95%	64,976
Civil	51,146	24,882	20,374	82%	55,654
Executions	1,985	2,474	1,359	55%	3,100
Family	15,503	12,790	10,847	85%	17,446
Land	18,719	7,446	5,788	78%	20,377
International crimes	6	-	-		6
Grand Total	**149,766**	**130,593**	**116,367**		**163,992**

JLOS Annual Performance report 2012/2013.

2.2.1. Land disputes constitute a small proportion of cases in the formal legal system.

The Ministry of Justice and Constitutional Affairs' Integrated Study on Land and Family Justice in 2008 found that Land disputes constitute the largest portion of disputes in the formal courts. Many times they will be disguised in the criminal courts as trespass or arson, while in the family court they emanate as succession and inheritance disputes. A baseline survey carried out in 2002 by K2 Consult (U) and commissioned by the Justice Law and Order Sector (JLOS) under the Ministry of Justice and Constitutional Affairs, shows that land and property disputes rank second highest (15%) among the cases received in 1998 in the table below.

Table 2: Distribution of Cases Received (1998)

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

Source: MOJ Criminal Justice Baseline Survey, 2002

The findings from the Joint Survey on Local Council Courts and Legal Aid Services in Uganda found out that land disputes ranked also highest (16%) of the disputes reported at the LC level and this finding closely matches with findings from Criminal Justice Baseline Survey, 2002 (Table 4 below). According to the survey, land disputes were mainly related to boundary

markings, encroachment (particularly in Kibale district), eviction of 'bibanja' holders, sale without spouse's consent, demand for access-ways, double selling, arising upon separation and divorce and inheritance matters. The LC Courts have been found to be the most utilized dispute resolution for a particularly in the rural communities where the majority of Uganda's population reside (LCC/Legal Aid Baseline Survey, 2006). The LCC can therefore easily deal with some types of land ownership especially the customary because these require natives of the village to identify land boundaries

Table 3: Prevalence of Disputes as Reported by LC Officials

Category of Cases	Percentage
Land dispute	15.6
Theft/burglary	15.6
Domestic violence	15.1
Defilement	10.6
Simple fights/assaults	9.2
Animal trespass	7.3
Contractual debts	7.3
Child neglect	4.6
Rape	3.2
Misdemeanors (Rumors)	1.4
Witchcrafts	1.4
Robbery	1.4
Child abuse	1.4
Arson	1.4
Adultery	0.9
Accidents	0.9
Others	4.8
Total %	100.0
Number of Cases	218

Source: MOJ LCC/Legal Aid Baseline Survey, 2006

2.2.2. Conflicts in the formal system are resolved in a timely manner.

On average it takes the Judiciary 26.7 months to dispose a land matter in the high court, 5 months in the Chief Magistrates' Court and 21.5 months in the Magistrates' Court, from the time it is filled until it is disposed. The high lead times in the Magistrates court is attributed to lack of transport and facilitation to visit locus (JLOS 2013). This an improvement from 36 months reported in 2012.

To improve delivery of land justice, Land courts were also rolled out to 15 Chief Magistrates Courts of Mengo, Nakawa, Jinja, Mbale, Tororo, Soroti,

Lira, Gulu, Masindi, and Fort portal, Masaka, Kabale and Mbarara. Land courts have magistrates who are dedicated to hearing only land cases. This gives affirmative action and reduces lead times such cases. It is expected that timely conclusion of land cases will reduce criminal cases that are precipitated by unresolved land disputes. In the reporting period 1,576 land cases were disposed of (JLOS 2013:44).

In the Judiciary an Executions division was created and is now fully operational headed by a Judge of the High Court. In the reporting period as shown in the pie chart 3 below, out of 2474 cases filed for execution, 1359 were disposed of returning a 55% disposal rate of registered cases. It must be noted that 1741 cases remained pending the previous financial year, implying that the total disposal rate of the division was 32.2%. The low rate of disposal of cases by the executions division is attributed to limited manpower as well as executive interference in the execution of court orders especially in cases involving land (JLOS 2013:14).

2.2.3 There are few long-standing land conflicts (greater than 5 years).

There is no readily available literature synthesizing the long standing disputes. However, in a study by Godfrey Kaweesa (2012), the finding was that a civil case does not take less than eight (8) years to move from the High Court, through the Court of Appeal to the Supreme Court. This does not take into account cases that may have emanated from Magistrates Courts to the Higher Courts. Litigating respondents were not only fatigued about the process of litigation, but also decried the high costs involved.

3.0. OBJECTIVE 2: DEDUCE POLICY RECOMMENDATIONS THAT WOULD BE IN LINE WITH THE BEST PRACTICE GIVEN THE CONTEXTUAL SETTING OF UGANDA

1. Case backlog is still a major challenge for land dispute resolution. There is a need to increase the number of judges or create land justice sessions where judges come from other divisions to expedite the resolution of cases.

2. There is need to streamline the land justice delivery mechanism and separate politics from justice delivery

3. The Justice Law and Order Sector has not prioritized the land justice and yet all the other cases or conflicts seem to be arising as a result of land disputes. There is need to priorities and improve land justice delivery.

4. The role of mediation and Alternative Dispute Resolution needs to be strengthened further as it has supported land dispute resolution. This could be made more effective by linking the informal mechanisms of dispute resolution such as the traditional leaders to the formal mechanisms.

REFERENCES

Deininger Klaus and Castagnini Raffaella, March 2004, Incidence and Impact of land conflict in Uganda The World Bank, World Bank Policy Research Working Paper 3248

The Government of Uganda Constitution 1995

The Government of Uganda - The Judicature (Mediation) Rules, No. 10 of 2013.

The Government of Uganda Land Act Cap 227

The Government of Uganda Land Sector Strategic Plan (2001 – 11)

The Government of Uganda Judicature Act

The Government of Uganda - Local Council Courts Act, No.12/2006

The Justice, Law and Order Sector (JLOS) baseline survey 2012, A Baseline Survey Report on Selected JLOS Indicators.

The Justice, Law and Order Sector (JLOS) Progress Report Presented to the 12th Joint GoU/Donor Review, June 2007.

The Justice, Law and Order (JLOS) Sector 2013 Annual Performance Report 2012/13

Kaweesa Godfrey (2012) Case Backlog and the Right to Due Process: The Uganda Judiciary. A Thesis in Partial Fulfillment of the Requirements for the Award of A Degree of Masters of Laws of Makerere University.

Makerere Institute of Social Research 2003, Land Dispute Resolution Mechanisms in Uganda, Makerere University.

Masalu Musene & others vs. Attorney General; constitutional case No.5 of 2004

Mijumbi P. 2003 'A review of Sources and Types of Land Disputes in Uganda'

Ministry of Justice and Constitutional Affairs (MOJ) 2002, Criminal Justice Baseline Survey.

Ministry of Justice and Constitutional Affairs 2008 Integrated Study on Land and Family Justice.

Ministry of Lands, Housing and Urban Development 2009 National Land Policy Public consultations Report.

Obaikol E. 2007 Poverty Reduction through Conflict Management in Uganda: An Audit of the Land Tribunals.

Rugadya M 2009, Escalating Land Conflicts in Uganda A Review Of Evidence From Recent Studies And Surveys For The International Republican Institute (IRI) and The Uganda Round Table Foundation.

Uganda Bureau of Statistics 2004 National Service Delivery Survey Report (NSDS)

United Nations Development Programme (UNDP), Legal Aid Basket Fund (LABF) Joint Survey on Local Council Courts and Legal Aid Services in Uganda Report: July 2006

LANDnet is an institution registered under the laws of Uganda with a mission to create an enabling environment for effective participation of all stakeholders in the efficient use and management of Uganda's land resources for sustainable development.

The foundations of LANDnet lie in the principles of equity and equality, in the desire to ensure inclusion and equal opportunities in access to and control over productive resources including land. Through this, LANDnet aligns itself to existing global frameworks such as Agenda 2030, the Voluntary Guidelines on the Responsible governaance of Tenure of Land, Forests and Fisheries (VGGT) and Africa Framework & Guidelines on Land Policies in Africa.

The success of LANDnet lies in strong partnerships and a shared vision with its partners.

LANDnet Uganda
Plot 213 Semwogerere Zone
Mukalazi II Bukoto
P.O.Box 14170, Kampala
Email: info@landnetuganda.org
Tel No: +256-414-373782;