

POLICY BRIEF

On Police Response to Land Crimes under S.92 of the 1998 Land Act

Submitted by the Northern Uganda Land Platform to
the Honorable Inspector General of Police

August, 2017

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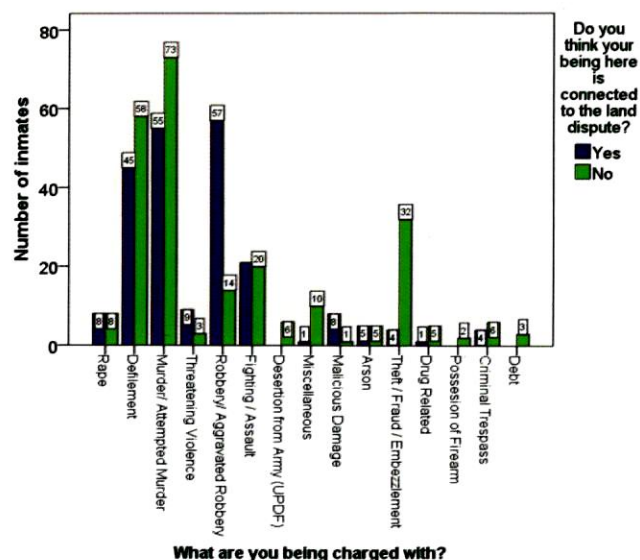
Police are extremely important players in cultivating respect for the rule of law. This is particularly true in northern Uganda, where “land grabbing” attempts are rampant. The purpose of this brief is therefore to present the special context of ‘bad faith’ land disputes, examine the impact of law enforcement’s current response, and recommend specific enhancements to police protocol.

Across Lango, Teso, and Acholi Sub Regions, senior Police and Court officials report that in their duty stations, **at least 70 percent of crimes reported and cases filed are land-related.**¹ Notably, a random sampling of inmates in Gulu, Lira, and Kitgum Central Prisons shows that nearly half—47 percent—of inmates say their criminal charges are connected to a land dispute. Of this group, two-thirds report being imprisoned along with other people for the same land-related case (at times, over 80 people).² Nearly *all* say they previously tried to resolve the conflict through some type of mediation or court process, but it was unsuccessful.

Land disputes are reportedly associated with (see Figure 1 below):

50 percent of rape charges	44 percent of defilement charges
43 percent of murder charges	75 percent of threatening violence charges
80 percent of robbery charges	50 percent of fighting/assault charges
89 percent of malicious damage charges	50 percent of arson charges

Figure 1: Criminal Charges by Nature (Land-related or Not land-related)



THE PROBLEM

The Northern Uganda Land Platform – a body of civil society, cultural, government, and academic practitioners working to realize concrete improvements in land justice and security – has studied potential solutions to the problem of rampant land disputes in the region since 2011.

So far, the Platform has found that non-binding mediation and alternative dispute resolution (ADR) can work well in cases where parties are participating in good faith, but are not enough to address the criminal and bad faith nature of land grabbing cases—illegal under Section 92 of the 1998 *Land Act* (Cap. 227), which states that “a person who... makes a false declaration in any manner relating to land” or “willfully and without the consent of the owner occupies land belonging to another person”... “commits an offence”.³ The Platform defines:

1 Akin, J. (2014) Power & vulnerability in land dispute resolution: Evaluating responses to domestic land grabbing in northern Uganda. A publication of the Northern Uganda Land Platform, pg. 12, 61.

2 Akin (2014), pg. 88

3 Notably, Uganda’s *Penal Code Act* does not mention land-related crime or theft, robbery, or grabbing of immovable property. This discrepancy is often cited as justification for why police do not enforce this law.

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

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

Powerful actors who deliberately use another person's vulnerability in order to deny their land rights feel no need to mediate or respect the agreements they make. They often use police or the court as a tool to defeat justice, rather than uphold it. This poses a serious challenge for both clans and other land dispute mediators, and also supports the prison data described above.

WHAT HAPPENS

Unlike other regions of the country, much of the "land grabbing" in northern Uganda is silent, difficult to detect at first, and takes place within or between families and communities.

An estimated 98.8 percent of land plots in greater northern Uganda are undocumented.⁴ Because there are rarely any papers to prove land ownership, police must rely on information they receive. But people grabbing land will often do anything to win, including telling lies to the police. In this way, the **police may mistakenly arrest the wrong person(s).**

This is how it happens: By refusing to respect judgments or by continuously appealing the decisions, perpetrators defeat both the clan and Local Council courts, neither of which can enforce the rulings they make. Thus, perpetrators often provoke the victim to the point that they take an illegal action such as assault or malicious damage; the perpetrator then seizes this opportunity to arrest the victim. Because police do not investigate the land case, police are used as a tool. Once the rights-holder is locked up in prison, the land is up for grabs.

Local mediators usually refer serious, violent, or unresolved land cases to courts and police. Yet when they do, they are often told that state law enforcement treats **land cases as "purely civil**

matters" and therefore sends such cases back to the clan or through the lengthy civil process to establish ownership. Police will only arrest or investigate when another more common crime—mentioned in the *Penal Code*—has been committed. **This approach treats only the symptoms of land grabbing attempts, not the crime in S.92 of the Land Act.** The resulting gap in enforcement fosters impunity, backlogged court dockets, and a frustrated citizenry that is faced with the grim option of giving up or taking matters into their own hands (and being arrested for it).

Thus, the places where most land grabbing cases are referred—police and court—are not treating these attempts with urgency⁵ or even as a crime, despite S. 92 of the Land Act.

Police frequently refer land-related cases back to customary authorities for alternative dispute resolution (ADR). But non-binding ADR falls short of addressing land grabbing cases because:

- *To begin with, mediation may not even take place.* At the grassroots, the process is voluntary and non-binding, so perpetrators may avoid, stall, or manipulate the process with no legal consequences.
- *Bad faith creates a layer of negative history to the case* that must be dealt with, or else parties and their families will not be reconciled and the sustainability of any agreement made will be questionable.
- *When mediated, bad faith frequently leads to unjust outcomes for the sake of 'peace.'* Compromise often results in the 'steal two acres, give one back' scenario.⁶ Yet rather

5 Interestingly, however, Regional Police Officers and Resident District Commissioners actively respond to high-profile land conflicts and request updates on such cases in their daily security briefings. The Platform wonders, why should these top security officials be so concerned with mere "civil" issues?

6 See Levine, S., J. Adoko, T. Eilu, M. Aber, & D. Akello (2008). *"What little they have will be taken: How the systematic violation of land rights in northern Uganda is allowed to run unchecked."* Research conducted by LEMU, Lango Cultural Foundation, Iteso Cultural Union, Norwegian Refugee Council, Trócaire, Lutheran World Federation, Justice and Peace

4 Burke, C. and D. Kobusingye (2013). "Securing Women's Land and Property Rights in Northern Uganda (West Nile, Acholi, Lango, Teso and Karimoja)." Oxfam Research Study.

than bringing the harmony, a victim's sense of injustice after such a compromise may actually foster resentment and entrench long-standing grudges, planting a seed for future generations seeking to "grab back" what was "stolen" through mediation—thus fueling cycles of abuse and violence.⁷

WHY IT HAPPENS

Police may arrest the victim of a land grabbing attempt for a variety of reasons. Police may be unknowingly manipulated by a perpetrator, or they may be corrupt and allow the land grab to take place. Yet more often than not, police may not get involved until a recognized crime—which may have been committed by a frustrated victim—occurs.

Understandably, police face a genuine difficulty in proving ownership of land under customary tenure, since there are often no papers but only family members fighting. With no sure way of knowing who has rights, police usually advise parties to "solve it yourselves, it's civil."

Yet there appears to be no major difference between the process of investigating the crime of stolen (movable) property and grabbed (immovable) land.⁸ To make an arrest in either case, police only need to establish **probable cause**—the reasonable likelihood that a crime actually took place.

For example, when theft of movable property—such as a motorcycle or a herd of cows—occurs, police typically respond immediately by investigating on the ground to identify the person(s) to whom the stolen item belongs. No lengthy civil procedure or documented proof of ownership is required; criminal investigations begin at once upon report of the crime to establish probable cause. It is not clear why the state handles land cases differently.⁹

Commission (Soroti Archdiocese).

7 Interview, Complainant – Rupert vs. Jok-kene, Paicho Sub county, Gulu Dist., 16/05/13

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

9 Police require time, transport, and resources to visit the site of disputed land in order to verify this proof, and these inputs are frequently unavailable to local rural police posts. Yet these same challeng-

Current practice says that land-related cases are first taken through the civil process in order to determine ownership of the land before any criminal allegations can be considered. By itself, the civil process is extremely long, costly, and technical—but those seeking to defend against land grabbing must undergo the additional criminal procedure. And since criminal cases take priority over civil matters, this means that civil land cases may sit stagnant for long periods of time.

The idea is that land cases are civil matters requiring determination of ownership and besides, land cannot be stolen because it is immovable and not mentioned in the *Penal Code Act*. This implies that intervening in so-called "land grabbing" under S.92 of the *Land Act* is not the responsibility of police or the state but of customary authorities, especially when the disputed land is under customary tenure.

WHAT THIS MEANS

- **Land grabbing remains a no-risk activity.** As long as the state does not enforce S.92 of the *Land Act*, land grabbing continues to be an activity where would-be perpetrators can try their luck to see what they can get away with. Ample case study evidence supports this.
- **Violations of S.92 go undetected.** Police non-intervention in land-related cases means that perpetrators are punished only for what is *recognized* as a crime—the assault, murder, or robbery associated with the case—but not the land grabbing attempt itself.
- **Both justice systems are defeated.** Land grabbing attempts are not able to be mediated, so clans refer 'serious' cases to state law enforcement. But state law enforcement, seeing that land cases are 'civil', in turn refers land-related cases back to the clan. With authorities referring to each other—and neither with a final word to enforce land rights—perpetrators go unpunished and citizens lose trust in the ability of *both* the state and customary systems to protect them. Cases may never be investigated and grow cold, files made to 'disappear', or parties simply give up or give in to violence.

es are often present in investigations of non-land related theft as well.

- **Conflicts go from bad to worse.** "Civil" land disputes will continue to be unresolved as long as one party is in prison, since "*the [civil] case is dismissed if the owner of the land is in prison.*"¹⁰ Although recorded as "closed", these dismissed cases are not concluded and may resurface later in the form of newly registered cases or criminal acts due to parties' frustration. If a perpetrator has the victim put in prison for a criminal offense, the civil land case could theoretically be dropped and the perpetrator could have free reign over the disputed land.

This is usually evidenced by the presence of any "warning signs" of bad faith including actions, body language, and statements.

- **POWER: Parties' perceived ability to deprive opponent of land rights.** This depends on the difference in power (wealth, education, political influence, physical strength) between the two parties.

- c) Establish probable cause to make arrests in land grabbing cases

RECOMMENDATIONS

1. *Police and courts need to officially recognize the criminal nature of land grabbing cases and prosecute attempts under S.92 of the Land Act (1998).*

2. *Work with clans and civil society organizations to train police officers in how to:*

- a) Use the technique of a "Family and Community Land Rights and Lineage Tree" (FLR<) to identify land rights in families and communities under customary tenure (as recognized in the 1995 Constitution and spelled out in the *Principles, Practices, Rights, and Responsibilities (PPRR) for Land under Customary Tenure*).¹¹ Copies of each of these books are **attached**.

- b) Distinguish between land disputes and land crimes under S.92 using the criteria of:

- **RIGHTS: Land rights of each party.** Drawing and analyzing a family land rights and lineage tree significantly helps determine these rights and establish probable cause.
- **INTENT: Parties' demonstrated willingness to (not) respect these rights.**

3. *Promote having police and court officers who are part of the communities they protect.*

Community policing is a powerful initiative, but the constant movement of JLOS officers is counterproductive. Where police officers and judicial officials are local members of the community they protect and closely linked to the clans in that area, they have a personal interest in making that place safe and are also easier to hold accountable since they are known by the community.

4. *The Inspector General of Police (IGP)'s encourages the Police to investigate land crimes under S.92 of the Land Act.*

5. *Police to know names of all clans and clan leaders in their community. Clan names and leaders in Lango, Teso, Acholi, etc. are known.*

Where clans are upholding the law, police should work with clans to enforce decisions; and where clans are not upholding the law, police should play a monitoring role.

- a) One example of this involves the Police Child & Family Protection Units acting with the clan of the available biological parents to **define the clanship and land rights of neglected children or children born out of marriage** so that the child does not begin wrangling for land upon coming of age.

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

11 Available for Acholi, Kumam, Lango, Teso, Alur, Lugbara and Aringa and Bunyoro sub-regions

6. Police should work with clans and civil society organizations to prosecute high-profile cases in order to set precedence under S.92.

Imprisonment of all perpetrators is not the solution, but showing that land grabbing is not acceptable may serve as a credible deterrent for would-be perpetrators, as seen in other contexts of rampant, unchecked crime.¹²

7. Police should publicize land grabbing tactics

– and the proper procedures for land sales and dispute resolution – on radio and television so as to make citizens wise and reduce exploitation of ignorance.

8. Train Crime Preventers and Special Police Constables well in laws, including in customary land laws before deploying them to intervene in daily community policing in rural areas.

BENEFITS OF TAKING POLICE ACTION

Because police play such an important role in the cultivation of respect for the rule of law, police investigation of land cases based on customary land rights—and with the help of clans—will go a long way to strengthening public confidence in both the state and traditional justice systems. An active and informed police response to bad faith land disputes is therefore likely to significantly reduce crime rates, court backlogs, and the size of prison populations.

WAYS FORWARD

Time and again, the police in Uganda have demonstrated authentic interest in working with civil society to implement programs that positively change the justice landscape of the country. Members of the Northern Uganda Land Platform such as International Justice Mission (IJM), the Land and Equity Movement in Uganda (LEMU), and

Action Aid have worked to train hundreds of police officers in customary land rights, educate countless listeners on radio, and even contribute sections on land justice in the training curriculum for police recruits.

As ways forward, the Platform suggests the following:

- *Training of Police and Clans.* Hold a CSO-sponsored training in customary tenure and land grabbing, whereby police and clans can train each other and develop a plan to work together to enforce land rights
- *Work plan for phase-in of S.92 enforcement.* The IGP, together with civil society and customary authorities, to develop a work plan for the phasing in of police in investigating land-related crimes
- *PPRR in Police Curriculum.* The IGP to discuss streamlining of the PPRR into training curriculum for the Uganda Police
- *National Media Campaign.* Police and the Northern Uganda Land Platform develop a national media campaign to educate the public on land grabbing tactics and how to prevent disputes by writing down family land rights and lineage trees, drawing sketch maps, and planting boundary trees
- *Lobbying.* CSOs and Police to lobby for JLOS to not transfer its staff so often; and for increased funding allocation to police for fuel and transport means to investigate land grabbing attempts before they escalate

¹² This is the approach employed by International Justice Mission (IJM), which recorded a drastic 79 percent reduction over the span of four years in the availability of children for sex in the red light district of Cebu City, Philippines, after just 92 arrests for child sex trafficking were made by local police. For more information, see <http://www.ijm.org/node/109>. IJM is applying the same logic to land grabbing in Uganda (<http://www.ijm.org/news/landmark-property-grabbing-sentence-protects-ugandan-family>).

This publication is made possible by the generous support of Trocaire. It's contents are the responsibility of the Northern Uganda Land Platform and do not necessarily reflect the views of Trociare.



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