

# Charting the Way for Effective Land Dispute **RESOLUTION** in Uganda



## A Publication of the **Northern Uganda Land Platform**

Written by

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## The Problem

Recent studies show that disputes over customary land—which accounts for 80 percent of the country and nearly all land in Northern Uganda—are on the rise, especially in the wake of new investment schemes, mass returns from displacement, and unchecked population growth.<sup>1</sup> With agriculture accounting for 82 percent of the country's labour force and nearly a quarter of its Gross Domestic Product<sup>2</sup>, the excess of these disputes threatens Uganda's social stability and economic development, especially in the post-war North.<sup>3</sup>

If land is life for ordinary Ugandans, then land conflicts are fights for survival. Sadly, this means that brutality is an element in many land disputes. Arson, destruction of property, witchcraft, assault, murder<sup>4</sup>, and exploitation of the weak (women, children, the aged, and the sick) by the strong (those with money, political ties, education, and/or physical might) often characterize these wrangles.

Having two competing legal systems has not helped the situation, either. Many people who face land conflict are confused about where to go to sort out their problems. Thus, a wide variety of actors—ranging from civic groups to cultural institutions to the Police—have stepped in to try and help parties navigate the gaps between the clan- and court-based justice systems.<sup>5</sup> Still, the very nature of customary tenure, in that land is managed according to locally established customs, presents key questions for those seeking to resolve these cases in culturally appropriate and legally effective ways.

Most efforts to mediate land disputes in Northern Uganda have gone unrecorded and unanalysed to see whether these processes are fair, making a lasting positive impact, and uphold state and customary law.<sup>6</sup> If these interventions are not carefully examined, who is to know whether they are contributing to the solution or problem of rampant land injustice in the region? And if actors continue to “mediate in the dark” in areas plagued by insecurity and vulnerability, how can we be sure the settlement agreements that result are not just veneers over deliberate land rights abuse?<sup>7</sup>

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<sup>1</sup>Rugadya, M. (2008), Northern Uganda Land Study for the World Bank; IOM, UNDP, NRC (2010), *Land or Else: Land-Based Conflict, Vulnerability, and Disintegration in Northern Uganda*; Rugadya, M. (2009), *Escalating Land Conflicts in Uganda: A Review of Evidence from Recent Studies and Surveys*.

<sup>2</sup>CIA World Factbook (2011).

<sup>3</sup>Kigula, J. (1993). The Uganda Bureau of Statistics found in 2006 that 6.7 percent of households nationwide reported having had a land dispute, while the prevalence rate is upwards of 16.4 percent in the post-conflict North (Rugadya, M. (2008)).

<sup>4</sup>Land and Equity Movement in Uganda (LEMU) and Arbeiter Samariter Bund (ASB) (2010). “Unable to Return: Profiles of Internally Displaced Persons Seeking Defense of their Customary Land Rights” (working paper)

<sup>5</sup>While Section 88 of the *Land Act* gives traditional authorities power to determine or mediate disputes over customary land, section 10(1)(b) of the *Local Council Court Act* (2006) establishes the LC 2 as the court of first instance for land disputes and does not include traditional authorities anywhere in the reporting process. This is problematic in regions such as Lango, Teso, and Acholi where, most people prefer to first bring their disputes to clan bodies that arbitrate, mediate, or conduct other reconciliatory processes. (See Uganda Land Alliance (2010), “Milestones towards the integration of informal justice mechanisms into the formal system: Findings from Amuru, Apac, and Katakwi Districts,” pg. 15; LEMU (2009), “Let's face up to land grabbing,” Brief No. 3, pg. 2; IOM, UNDP, NRC (2010), pg. 33; Mugambwa (2002), pg. 110.)

<sup>6</sup>Kakooza, A. C. (2007), “Land dispute settlement in Uganda: Exploring the efficacy of the mediation option.”

<sup>7</sup>Dennison, D. B. & Akin, J. (2011), “What we meant for good: Intentions and consequences in Uganda.”

As members of the Northern Uganda Land Platform, a group formed in 2010 to coordinate land policy and practice across the region and now representing more than 25 organisations, we set out to answer these questions. This paper summarizes the findings of our study and the recommendations that have come from months of research, critical dialogue, and reflection.

### **The Land ADR-tistry Study**

It is commonly said in Uganda that if an NGO or a politician wants to get chased out of an area, they should get involved in land issues.

But in January 2011, the members of the Northern Uganda Land Partners Platform met and agreed to begin an in-depth assessment of current land alternative dispute resolution (ADR) efforts in the region.<sup>8</sup> With clearance from the National Council for Science and Technology,<sup>9</sup> the appointed team conducted field visits with different members of the Platform for more than 12 weeks between March and July 2011.<sup>10</sup> Five member organizations were chosen as Primary Informant NGOs for their role as active, experienced, and leading land ADR actors in the region and their wide geographic coverage representing 8 Districts within Lango and Acholi. Secondary Informant NGOs were those met during the course of the study whose unique involvement in different forms of land ADR struck the researchers as important to include.

The purpose of this investigation was to find out exactly what is happening on the ground regarding land dispute resolution. The central research questions were:

- 1) *What ADR approaches are practitioners using today to resolve land conflicts in Northern Uganda?***
- 2) *What practices are associated with ‘successful’ outcomes?***
- 3) *What practices are associated with ‘unsuccessful’ outcomes?***

To answer these questions, the researchers observed more than 10 field mediations led by various NGOs and community actors and reviewed NGO caseload records representing a total of 1406 cases over a period of 3 years. In addition, the researchers conducted extensive interviews with 12 NGO legal staff, 55 community mediators, and 25 participants in prior mediations.

Community actors were selected on the basis of their good working relationship with participating NGOs. Community actors were selected on the basis of their good working relationship with the NGO, length of experience in handling land disputes in areas known as

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<sup>8</sup>See Northern Uganda Land Platform meeting minutes, 24-25th January 2011, Lira Town.

<sup>9</sup>UNCST Study No. SS-2522

<sup>10</sup>The research team was comprised of: Jeremy Akin (U.S. Fulbright Researcher, Faculty of Law, Uganda Christian University); Katono Isaac (Ph.D., Faculty of Business and Administration, UCU); and Odongo Martin (Luo interpreter, Driver, Co-analyst, LEMU)

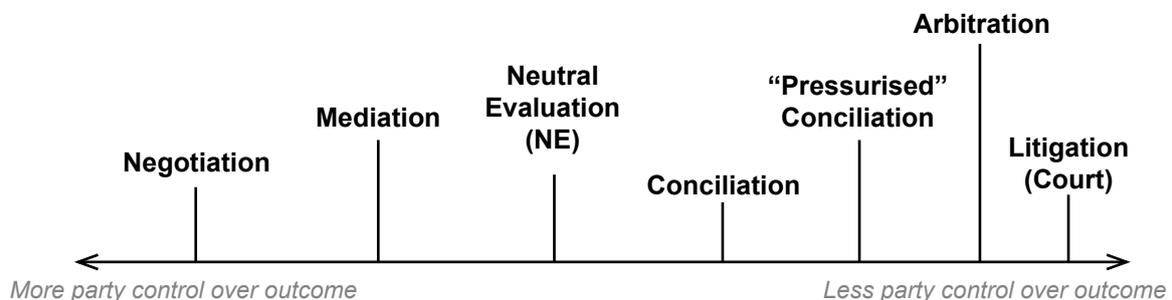
“hotspots” for land conflict, and the level of public legitimacy given to their ADR efforts. Prior mediation participants represent both ‘successful’ and ‘unsuccessful’ cases and were party to a land dispute reported to and/or mediated by the affiliate NGO or community actor within the past 7 years (since 2005, the year in which significant numbers of Internally Displaced Persons (IDPs) began returning home from the camps).

The researchers manually entered and analyzed available caseload data using Microsoft Excel. To supplement the Recommendations portion of the study, they also facilitated a large Focus Group Discussion of 35 NGO and community practitioners during the Platform meeting on 18-19 July, 2011 in Lira Town. This meeting featured small group breakout sessions for focused discussion of key issues.

### Major Findings from the Study

- **At least seventeen (17) different actors are involved in settling land disputes on the ground.** These include: 1) Clan leaders; 2) Cultural Institutions; 3) Police; 4) LC 1 Courts; 5) LC 2 Courts; 6) LC 3 Courts; 7) Sub-county Land Conflict Mitigation Committees; 8) District Courts; 9) Traditional land chiefs: RwodiKweri (Achoi), Adwong Wang Tic (Lango); 10) Community paralegals; 11) NGO staff; 12) Advocates; 13) Resident State Attorneys (RSAs); 14) Resident District Commissioners (RDCs); 15) Clergy/Religious Leaders; 16) Traditional Healers/Witches; and 17) Chief Magistrates Court.
- **Forum shopping is common.** The wide variety of land dispute resolution actors enables parties to choose the way their case is handled. In a sample of 25 prior participants in NGO-led mediations, the average number of places each case had been reported was 3.44. The median for this data set was 3.
- **Actors use a variety of Alternative Dispute Resolution (ADR) styles<sup>11</sup> to resolve land disputes.**

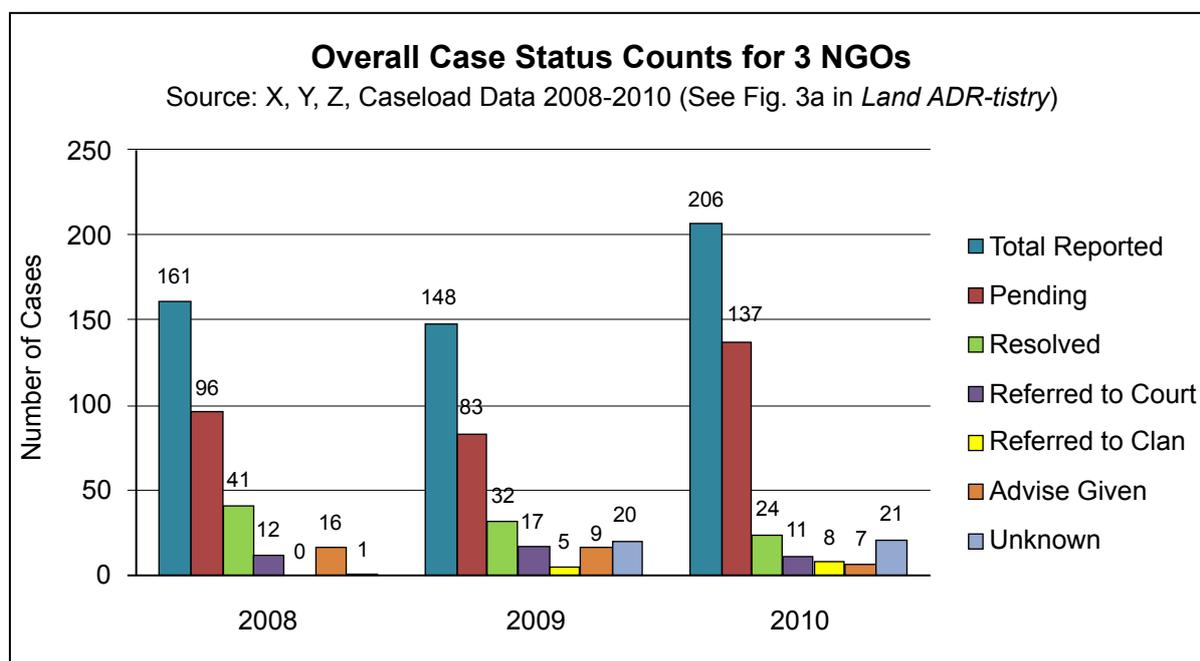
#### A Dispute Resolution Spectrum



<sup>11</sup>Brainch, Brenda (2006). This diagram represents only a simplified version of the various types of dispute resolution found on the ground.

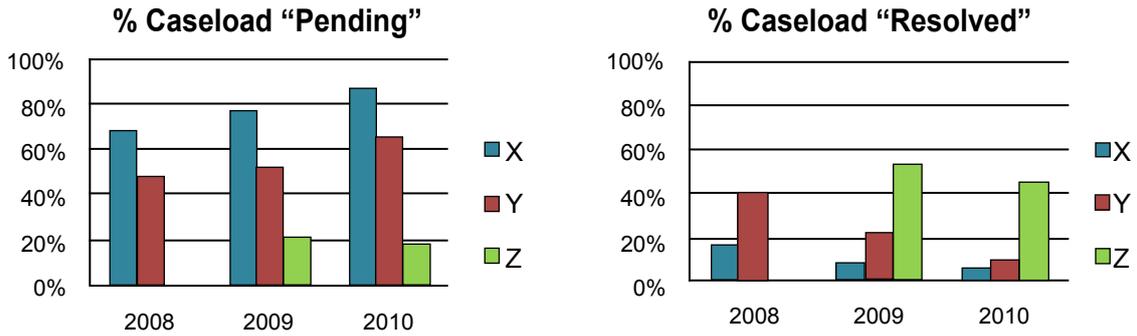
Data reveals that practitioners use every strategy from mediation, to litigation, to everything in between to approach land conflicts. Most community actors describe or perform their “mediations” as situated more on the adjudicative (less party control over outcome) side of the dispute resolution spectrum. Of the 7 NGOs featured in the study, 6 incorporate some kind of Neutral Evaluation (NE) based on customary and/or state laws into their approach.

- **Different types of ADR work better with different types of cases.** For instance, Conciliation—a process in which a third party guides the persons they feel is the “winner” to give concessions to the “loser”—is associated with greater settlement rates in Contested Land Gifts and Sales. Mediation, on the other hand—a process in which a third party helps the parties reach a mutually acceptable “win-win” solution—is associated with greater settlement rates in Family Land Wrangles, Inter-clan disputes, and Contested Ownership cases.
- **NGOs need increased capacity** to manage growing caseloads. Records from three leading NGOs<sup>12</sup> show that while the total number of reported land disputes during 2008-2010 is on the rise (from 161 to 206), the total number of “resolved” cases is decreasing (from 41 in 2008, to 24 in 2010). At the same time, the size of the yearly backlog of “pending” cases is growing (from 96 to 137).



In each of these NGOs, the share of “resolved” cases is decreasing over time.

<sup>12</sup>The small size of this dataset represents what little data is currently available. Of the five primary informant NGOs (V, W, X, Y, and Z), four keep annual caseload records. Of these, only three (X, Y, and Z) have specific data concerning the types and status of land disputes that come before them.



Source: X, Y, Z Caseload Data 2008-2010. (See Figures 4a, b in *Land ADR-tistry*)

For all their hard work, NGOs have a limited carrying capacity. The rate at which these three NGO mediation teams tend to digest land disputes is around 45-70 cases per year. Thus, cases above and beyond this cap are likely to remain pending. If the case processing rate of these NGOs remains constant while the number of reported land cases steadily rises, it is no surprise that the share of pending cases will increase while the share of resolved cases continues to decrease. Data shows that another reason for this trend may lie in the difficulty of the kinds of land disputes being reported over time, since some are less likely to be resolved than others.

- **Some types of land disputes are more likely resolve through ADR than others.**
  - o The types most likely to go unresolved through ADR include: Contested Ownership, Inter-clan disputes, and Contested Land Gifts.
  - o The types most likely to be resolved through ADR include: Contested Land Sales, Boundary/Encroachment, and Family Land Wrangles.

**Top Ten Cited Root Causes of Land Disputes in Acholi and Lango**

1. Relative Vulnerability (tied with No. 2)
2. Greed/ Commoditisation of Land (tied with No. 1)
3. Abuse of Custom
4. Vacancy/ Long Absence (Displacement)
5. Population Pressure/Scarce Resources
6. Relational Feuds
7. Unknown Boundaries (Displacement)
8. Bias Against Outsiders/ Foreigners
9. "Clan Tenure System"
10. Unclear Terms of a Land Gift/Sale

Source: Interview Data (Composite), Table 2, *Land ADR-tistry*

- The type of case most frequently unresolved is *Contested Ownership*. A top root cause for land conflict is *Relative Vulnerability*. **Together, these findings suggest that Land Grabbing is prevalent.**
  - o Contested ownership—where one party claims the land occupied by another—is a label that syncs very well with the “It’s mine, now you leave!” storyline seen to characterize many Land Grabbing cases. Moreover, the Relative Vulnerability—cited as a top root cause—matches precisely with the definition of land grabbing<sup>13</sup> as a situation in which party A is intentionally seeking to take advantage of some perceived weakness in B in order to claim B’s land. Taken together, these two findings confirm what many locals already know: predatory land grabbing is prevalent in Northern Uganda today.
  
- **The lack of reliable enforcement compels land ADR actors to refer parties “up the ladder” to find justice.**
  - o Currently, land ADR actors are deciding, determining and negotiating resolutions to cases, only to later refer them “up the ladder” when one party proves uncooperative.
  - o An uncomfortable 50 percent (9 out of 18) of prior Complainant interviewees indicate that, despite having won their land case with no appeal made against the ruling, they were “referred” to the next level by the clan, LC 2, or LC 3 Court because the Respondent refused to comply with the decision. One man in Amuru District informs that court brokers are charging 6 million UGX to enforce an LC 3 ruling in his favour. To him, and to many others in Northern Uganda, this price of justice is simply out of reach.
  - o NGOs and other community actors are simply not able to guarantee the authority of the mediation agreements they facilitate.
  - o This practice of appeals by the winning party greatly undermines the social legitimacy of the LC courts, clans, and NGOs to provide meaningful and decisive outcomes. People involved in such disputes often become frustrated by the delays, costs, and lack of recourse associated with this process. Some who feel greatly wronged even express active interest in taking the law into their own hands.
  
- **Land disputes have personality.** “Genuine” land disputes are characterized by the sincerity of each party and their willingness to mediate in good faith to find a solution. “Land Grabbing” cases, however, are those in which party A is deliberately seeking to take advantage of some weakness in B in order to claim B’s land. Here, one party approaches the process not in good faith, but with a predatory agenda. These types of situations may not really be land disputes at all and thus require a stronger, more authoritative intervention than homespun negotiation.<sup>14</sup>

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<sup>13</sup>Presented by seminar participants—including land ADR actors from national and international NGOs, communities, traditional institutions, and advocates—during a meeting of the Northern Uganda Land Partners Platform, 18-19th July, 2011 in Lira.

<sup>14</sup>They may also require offering alternatives to land grabbing, such as jobs and livelihood projects.

- **Mediation and other ADR styles that rely on the parties' good faith to be effective may not be appropriate in serious cases of Land Grabbing.**
  - In processes where parties (rather than a judge or the state) have more control over decision-making, powerful parties seeking to take advantage of the other party may also use this opportunity to take advantage of the system by refusing to either: 1) participate at all or 2) honour the promises they make. This suggests that ADR strategies that rely on the sincerity and voluntary willingness of parties to participate often—but not always<sup>15</sup>—fall short when one party has an intentionally abusive agenda.
  - ***This has important implications for land dispute resolution in Uganda.*** Since the formal authorities in place—Local Council Courts, Magistrates, and police—currently do not adequately recognize, address, or enforce decisions against land grabbing<sup>16</sup>, it is doubtful whether non-binding mediation and conciliation alone can serve to end the climate of fear and impunity surrounding land grabbing in Northern Uganda. Some form of reliable enforcement is needed.

## POLICY RECOMMENDATIONS

*The following proposals are intended to be starting points for discussion among policymakers and practitioners alike. They have each been refined through months of debate among Platform members and are agreed upon as being of great importance to the attainment of land justice in Uganda.*

### **1) Clarify the reporting pathway for all land disputes.**

A legal environment of uncertainty and criss-crossing frameworks allows land criminals to manipulate the justice system to their advantage. This has been the case in Northern Uganda for several decades. This trend of abusive forum shopping can be reversed, however, by clearing up the confusion about where to appropriately report land disputes.

- We propose the following single pathway for disputes arising over land under customary tenure from now on:

**Clan Hierarchy → G1 Magistrate → High Court**

- If the parties reach an agreement in mediation, then a copy of the agreement is filed with the court as a Consent Judgment. If the case is arbitrated, the arbitrator's judgment is written and filed with court. In both processes, the case is then considered closed and cannot be appealed, except in extreme circumstances.

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<sup>15</sup>According to X, Y, and Z Caseload Data, a total of 10 Land Grabbing cases were recorded as "Resolved" during 2008-2010. This represents 23% of all such cases reported, and may either mean that the disputes were simply settled and not truly resolved—which interview data from prior participants suggests—or were actually effective in changing the hearts of those seeking to grab land.

<sup>16</sup>IOM, UNDP, NRC (2010), Land or Else, pg. 32-35

- If the parties fail to reach an agreement in mediation, or to accept the arbitral judgment, then the case proceeds to the regular court process.

To ensure that decisions take into account this history of a case, it is vital that these courts obtain and consider the records of proceedings from all lower courts that have previously heard the case. (This does not include minutes taken during mediations). This coordination will help improve public confidence in the judiciary, since fully informed rulings are less likely to be perceived as arbitrary.

## 2) Clarify enforcement mechanisms to identify and address land crimes.

Up to now, stakeholders continue to debate who is responsible for handling land-related crimes. Should it be police? Court brokers? Clan askaris? Meanwhile, however, these situations are going unaddressed and citizens are faced with the grim option of taking the law into their own hands. Without reliable enforcement for court decisions and mediated agreements, parties have little confidence that their land rights will be respected. This lack of accountability makes it easy for people to grab land and get away with it. In reality, failure to abide by a court ruling or mediated Consent Judgment qualifies as Contempt of Court, and needs to be effectively dealt with.

## 3) Recognize land grabbing and land grabbing attempts as the crimes they are.

- Three criteria must be met to determine whether a land case is “Genuine” or “Land Grabbing”:
  - 1) **INTENT**— reasonable proof that one party intends to take advantage of the other;
  - 2) **VULNERABILITY**—the relative strength (power) and weakness (vulnerability) of each party; and
  - 3) **ANALYSIS OF LAND RIGHTS**—understanding who has what rights to the land under custom. Family and social relationships usually determine these.<sup>17</sup>
- **Mediation should no longer be the preferred method to deal with cases deemed to be “Land Grabbing”.** Due to their criminal and bad faith nature, Land Grabbing cases should instead be handled by the courts (beginning at the Magistrate Grade 1 Court).
- **Police must be equipped and supported** to effectively deal with land crimes. Police should be trained in customary tenure, mediation skills, and issues concerning land grabbing.

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<sup>17</sup>Section 27 of the *Land Act* states that land under customary tenure is governed “in accordance with the customs, traditions, and practices of the community concerned...” In essence, therefore, when someone violates another’s legitimate customary land rights, this person is also breaking a state law.

- Budgeted resources are needed to cover the cost for this enforcement response. This will prevent poor parties from being unable to “afford justice” by having to pay for costs such as fuel for police motorbikes.

#### **4) Harmonise land dispute records using a common Caseload Management System.**

Inconsistencies in terminology, types of data captured, and storage tools among today’s land dispute resolution actors make it difficult to paint a bigger picture of land disputes in Northern Uganda. This bigger picture is critical because it allows stakeholders and policymakers to understand and respond to realities on the ground.

- **Key land dispute resolution players must agree on what data are most important to gather**, specific to each case and party. For example:
  - Age, gender, marital status
  - Relationship of Complainant to Respondent
  - Where case was previously reported
  - Vulnerability factors (disabled, childless, widow, etc.)
  - Follow-up data to document improvements in behaviour, living conditions post-intervention
- **Design and test-pilot a common Case Intake Form** that features agreed upon data items to be collected when registering a case. The streamlined data on these forms can later be entered in an electronic database with the help of Legal Aid Service Providers’ Network (LASPNET).
- **Design and test-pilot an Electronic Caseload Database** that applies the agreed-upon typologies.

#### **5) Promote effective legal backing for mediated agreements.**

When ADR agreements become “binding” and authoritative, disputes will end in unappealable<sup>18</sup> Consent Judgments, rather than dragging on indefinitely. This will help reduce backlog in the courts and bring a note of finality and closure to the mediation process. Should one party refuse to do what they previously agreed, they are in Contempt of Court.

- **Devise a strategy to register mediated agreements as Consent Judgments.**
  - o **Involve the following actors** in designing a pilot strategy: District ChainLink Committees, Chief Magistrates, Grade 1 Magistrates, Legal Aid-providing NGOs, police, LC2 and LC3 Courts, clan leaders, cultural institutions, and court brokers.

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<sup>18</sup>Consent Judgments, since they have been voluntarily consented to by each party, are only able to be appealed in extreme cases (i.e., when mediator is proven to be grossly unfair).

- The following plan is a proposed starting point for NGOs carrying out mediation:
  - **Appoint, train, and register NGO Neutrals**<sup>19</sup> as is currently done with Court-Annexed Mediators in the Commercial High Court. These Registered NGO Neutrals would be qualified to facilitate mediated agreements that would then be entered as Consent Judgments.
    - **Each agreement must contain a detailed sketch map** of the area drawn by one of the registered neutrals, with all necessary signatures.
    - **Clans would be responsible for planting boundary trees** as necessary.
  - **Agree to a plan for enforcement** if the Consent Judgment is breached.
  - Where disputes mediated by a Registered NGO Neutral do NOT result in agreement:
    - **Registered Neutral writes an evaluation (legal opinion)** of the previously mediated case (according to the Principles, Practices, Rights and Responsibilities (PPRR) and state laws) and **refers the case to the next level** (of the clan or court).
    - **Registered Neutral acts as a “Friend of Court”** to advise the court (or the clan) on the case and provide reasoning for why this case may be Land Grabbing. If found to be Land Grabbing, the case is handled accordingly (i.e., referred to Magistrate Grade 1 Court).

*We, the members of the Northern Uganda Land Partners Platform, appreciate the dedicated work of police, court officials, policy makers, lawyers, civil servants, and community members to resolve the land conflicts that hinder Uganda’s human and economic development. In light of this, we gladly welcome your feedback and questions. Together, we are indeed stronger and more creative.*

*Let us do what we can today to make land justice a lasting reality in Uganda.*

*Please direct all communication for the Platform to Sean Farrell at [sfarrell@trocaireug.org](mailto:sfarrell@trocaireug.org)*

<sup>19</sup>Section 89 of the Land Act (amended 2004) states that “There shall be one or more Mediators in each District who shall be appointed by the District Land Tribunal and the appointment shall be on an ad hoc basis.” Yet today, District Land Tribunals are no longer operative and there is no provision for the appointment and/or registration of these mediators. There is thus need for the Magistrate Grade 1 to determine who is, and is not, a legitimate mediator of a customary land dispute, and who is qualified to mediate and/or identify Land Grabbing cases (Registered NGO Neutrals).

## Northern Uganda Land Platform Member Organizations that sent representatives to the Platform meetings

1. Lango Alternative Dispute Resolution Association (LADRA)
2. Acholi Religious Leaders' Peace Initiative (ARLPI)
3. Concern Worldwide
4. Legal Aid Service Providers' Network (LASPNET)
5. Facilitation for Peace and Development (FAPAD)
6. Land and Equity Movement in Uganda (LEMU)
7. Cooperazione e Sviluppo (CESVI)
8. Norwegian Refugee Council (NRC)
9. Justice and Peace Commission, Gulu Archdiocese (JPC)
10. Uganda Land Alliance (ULA)
11. Tròcaire Uganda
12. Action Aid Uganda
13. ACODEN
14. Cooperazione Internazionale (COOPI)
15. United Nations Development Programme (UNDP)
16. Embassy of the Kingdom of the Netherlands (EKN)
17. United States Agency for International Development (USAID)-SPRING Project
18. International Law Institute-African Centre for Legal Excellence (ILI-ACLE)
19. Uganda Christian University, Mukono (UCU)
20. United Nations High Commissioner for Refugees, Gulu (UNHCR)
21. Office of the High Commissioner for Human Rights (OHCHR)
22. Human Rights Forum (HURIFO)
23. NGO Forum, Gulu
24. CSG
25. ACCORD
26. Comboni Samaritan, Gulu
27. AVSI

The following persons also contributed greatly to the writing of this document: Judy Adoko, Sean Farrell, and Kalungi Carey. The concept of this brief comes from the findings of the 2011 study entitled, *Examining the ADR-tistry of Land Dispute Mediators in Northern Uganda*, commissioned by the Northern Uganda Land Partners Platform.

