TRADITIONAL AFRICAN JUSTICE SYTEM: A BETTER WAY OF SOLVING LAND DISPUTES IN UGANDA.

A CASE STUDY OF THE POST – CONFLICT IN ACHOLILAND

(2008-2015)

BY

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DECLARATION

I Oradu Charles hereby declare that the contents of this dissertation represent my own unaided Work and the dissertation has not previously been submitted for academic examination towards any qualification. Furthermore, it represents my own opinions and not necessarily those of the University.

Name of the student

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Date : 24/06/2015

APPROVAL BY SUPERVISOR

I certify that I have supervised and read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate in scope and quality as a dissertation in partial fulfillment for the award of degree of bachelor of law of Kampala International University.

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ABSTRACT

Post-conflict northern Uganda has witnessed an increase in disputes over land. This has, to a great extent, been as a result of the armed conflict and its aftermath. Beyond that, other chaotic factors embedded in various social, legal, economic, and political aspects of this society have influenced the nature, gravity, and dynamics of these disputes and the way in which Traditional Institutions and the Local Council Courts have attempted to resolve them. Using examples from field research in Acholiland and an analysis of human rights relating to dispute resolution, this paper shows the linkages between (l) the chaotic factors in Northern Uganda, (2) the diverse and unique contestations on land, and (3) the role of Traditional institutions and Local Council Courts. The paper argues that presses to improve the operation of Local Council Courts and Traditional institutions may not succeed without simultaneous efforts to do away with the effects of the effects of the chaotic environment within which they operate.

LISTS OF CASES

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1. African Charter on Human and People's Rights.
2. International Covenant on Civil and Political Rights.
3. The Constitution of the Republic of Uganda, 1995.
4. The Magistrates' Court Act.
5. The Land Act Cap 227.
6. Local Council Court Act, 2006.

LIST OF ACRONYMS

ACHPR:	AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS
ARLPI:	ACHOLI RELIGIOUS LEADERS PEACE INITIATIVE
CAO:	CHIEF ADMINISTRATIVE OFFICER
ICCPR:	INTERNATIONAL. COVENANT ON CIVIL AND POLITICAL RIGHTS
IDP:	INTERNAL DESPLACED PEOPLE
JSD:	DOCTOR OF JURIDICIAL SCIENCE
LCCs:	LOCAL COUNCIL COURTS
NRM:	NATIONAL RESISTANCE MOVEMENT
RDC:	RESIDENT DISTRICT COMMISSIONER
TIs:	TRADITIONAL INSTITUTIONS

CHAPTER ONE

GENERAL INTRODUCTION

Overview

This chapter introduces the research and lays ground for its conduct, findings, recommendations and conclusion.

1.0 Introduction

In Africa, land is a fundamental feature of our heritage and represents a core value in African society: It has been observed that African people are emotionally attached to "their" land,' and that land represents an important source of their identity and is typically seen in a holistic perspective'[1] (No wonder, land conflicts are bound to upset this significant symbol.

The effects of conflicts relating to land cannot be overemphasized. Land conflicts not only increase tenure insecurity, hence reducing land investment and land transactions but also affect the portfolio choice of crops and social capital. Thus, in their study of conflicts in Burundi, M.J Voors, et al., found that households that had land conflicts were doing more poorly in the shares of cash crops grown in total production, and in measures of social capital than their counterparts without

[1] Law and order as a development issue: Land conflicts and the creation of social order in Southern Malawi: Jan Kees van Donge[a] & Levi Pherani in Journal of Development Studies, Volume 36, Issue 2, 1999, p. 50.
(1999).

land conflicts.[2] It has also been observed that small-scale land conflicts have a potential to turn into widespread civil wars, thereby threatening national security.[3]

Post-conflict Acholiland that is comprised of districts of Agago, Amuru, Gulu, Kitgum, Nwoya, Lamwo, and Pader; and Magwe County in South Sudan[4] has been linked to pervasive legal insecurity relating to land. Many scholars have associated the growing land conflicts to weak or non-existent formal land institutions and the failure of current customary land tenure systems to resolve conflicts[5] Other intervening factors that have been pointed at include population pressure; agriculture commercialization, which increases the demand and value for land; across-community migrations and the resulting ethnic diversity; and cultural factors cause land conflicts.[6] Land conflicts, whatever their cause call for the best durable solution to address them for their continuance is a threat to human survival. This study therefore analyses and assesses whether the traditional justice systems or the formal justice system is best suited to solve land disputes in Uganda, more specifically those threatening to tear the Acholi people apart.

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[2] Violent Conflict and Behavior: a Field Experiment in Burundi: M.J. Voors, E.E.M. Nillesen, E.H. Bulte, B.W. Lensink, P. Verwimp, and D.P. van Soest (2012). Available on https://www.tilburguniversity.edu/upload/65aeb6b7-5be5-40a8-ab31-366e9ee20394_paperdaan.pdf. Accessed on 13th June 2015.

[3] *Fighting for Survival:* Renner, M. (1997).

[4] https://en.wikipedia.org/wiki/Acholi_people

[5] N. 1 above.

[6] Ibid.

1.1Background of the study

This research is informed by a rich background to land ownership in Acholiland. Land in Acholiland is principally customarily held.[7] But the land disputes that rock the community are not new but date back to the 1900 colonial era and all through the different land regimes in Uganda[8].These conflicts were resolved by the elders of the community through the African traditional systems. However, with the advent of the adversarial system in 1904land disputes were referred to courts of law and subjected to court proceedings and technicalities.[9] This of course has presented a problem so that there is an urgent need to revisit the traditional justice system in abid to ascertain whether such system is suited to address the rampant land issues in Acholiland..

1.2 Statement of the problem.

The long standing conflicts in Uganda have not shown an indication of their ending anytime soon. The formal justice systems have not produced the desired results of sustainable resolution of conflict and peace. Besides, the formal justice systems have their evident shortcomings that are very people insensitive. They are far away from the people, very time consuming, costly and highly formalistic and are borne of confusing procedures and unpredictable outcomes and are focused on individual capability and on the punishment of the individual. It is therefore the researcher's considered opinion that it is about time traditional institutions were

[7] LAND CONFLICT MONITORING *and* MAPPING TOOL *for the Acholi Sub-region* Final Report - March 2013p. ii. Actually, 90% of land in Acholiland is held under this land tenure system.

[8] http://www.mercycorps.org/sites/default/files/mercy_corps_acholilandconflictmarketassessment_aug_2011.pdf. Accessed on 22, June 2015.

[9] Ibid.

examined in a bid to ascertain whether they are a better way of resolving land disputes in Uganda (Acholiland).

1.3Objectives of the study

The objectives of this study are:

(i) To examine the existing justice systems that are being employed to resolve land disputes in Acholiland;

(ii) ((ii) To ascertain whether African traditional systems are better ways of resolving land disputes in northern Uganda

1.4 Research questions

The research questions that this research seeks to answer are:

(i) Are there existing traditional justice systems for the resolution of land disputes in Acholiland ?

(ii) What are the different methods of traditional justice system open to resolve land conflicts in Acholiland?

(iii) Are African traditional justice systems a better way of resolving land disputes in Acholiland?

1.5Justification of the study

The researcher feels justified to conduct this study because of the ways the court system has completely failed to curb the land conflicts in his region of study. The researcher feels that it is about time Alternative Dispute Mechanisms that include but are not limited to the traditional African justice mechanisms were employed in a bid to curb the land problems in Acholiland.

1.6purpose of the study

The purpose of this study is to provide recommendations after examining the applicability of the African traditional systems to the land conflicts in Acholiland. Through these recommendations, something greater is likely to be achieved. The promotion of the traditional African justice systems will in the long run provide a conduit through which customary land rights can be protected in the post-conflict situation in Acholiland.

1.7. Scope of the study

The scope of the study is subdivided into two categories namely; geographical and content scope respectively.

1.7.1 Geographical scope

This study was conducted in post conflict Acholiland between the years 2008 to 2015 Respondents were picked from the whole of Acholiland.

1.7.2 Content scope

The study was limited to cover specifically traditional justice systems applicable to the land conflicts in Acholiland in the period aforementioned.

10.0 Methodology

10.1 Research design

This research adopted the qualitative method.

Questioners were designed to elicit information about the subject of the research from the different informants. Use was also made interview guides, direct

observation and review of relevant literature gave a background and basis for this research.

10.2 Research approaches

The researcher used both structured and unstructured interviews to solicit information from the respondents.

10.3 Description of the population from which samples will be selected

The case study of this research was in Acholiland. There are different reasons for choosing this particular region, the most prominent of which being that Acholiland is a theatre of land conflicts, the bitterest of which escalated with the civil war that was fought between 1996 and 2009.[10] Thus, the fact that land is principally held under the customary land tenure in the region means that making Acholiland the subject of study is a fair representation of other parts of the country with a similar land holding and facing similar challenges in relation to land. The study was among the indigenous people themselves who know what is best for them.

10. 4 Sampling strategies

The researcher took a sample from all the respondents at the material time of research. The simple random sampling technique and specifically the lottery method was employed. Under this method, names of all the respondents were be listed and numbered to form a sampling frame. These names were written on pieces of paper that were put in an urn or container and thoroughly mixed. A blind-folded individual picked one piece of paper at a time and whoever was picked was included in the sample. The selection was without replacement.

[10] https://en.wikipedia.org/wiki/Joseph_Kony. Accessed on 23rd June 2015.

(ii) the second group was requested to determine whether the answers likely to be given by the respondent represent what the researcher as trying to find out.

To ensure reliability, for purposes of the interview, recordings were used for replaying to confirm the actual responses by the respondents.

10.7 Data analysis

The analysis of the data was unstructured qualitative case study approach. In this regard, the data analysis was before, during and after data collection. Content analysis in line with the research questions was used.

10.8 Literature review

In his study on the subject at hand, Fred-Mensah[11] argues that the weakening of customary land institutions coupled with the absence of formal land institutions is the major cause of land conflicts in sub-Saharan Africa. His argument therefore settles on the failure of current customary land tenure systems to resolve conflicts. He does not however examine the customary land institutions that are responsible at that level for solving land disputes, something that the instant research will seek to do.

In his paper the Acholi Traditional Approach to Justice and the War in Northern Uganda,[12] Patrick Tom discusses the different traditional approaches to dispute

[11] N. 1 above.

[12] August 2006.

resolution and also looks at the formal court system. His however concentrates more on the problem of re-integration by the returnees. The instant study although taking into consideration this will go further to only concentrate on the issue of land. In their study identification of good practices in land conflict resolution in Acholi[13] does examine approaches to solving the land problem in Acholiland. This paper however falls short of examining in detail and in a legalistic manner traditional justice systems, something the instant paper seeks to do.

10.9 Limitations of the study

A number of limitations were encountered; among these was the misconceptions people normally have about researchers concerning funds. People believe that researchers are funded and have money to spend and so will want to avail information upon payment of a fee.

There are other would-be informants in fear of releasing confidential information who clung to it. This problem, the researcher solved by assuring the respondents that the researcher was carrying out the research for purely academic purposes and by assuring them, that the information given would be treated with confidentiality and no body's name would be mentioned during report writing. The researcher also made assurances of the resultant work being of help to the respondent and that their institutions would be strengthened.

In some instances, the researcher had to interview respondents in acting positions, where the targeted respondents could not be met all together.

[13] Christopher Burke and another, November 2011.

There was also a limitation of funds for the intended work. The researcher however dealt with this by seeking financial assistance from relatives and friends.

10.10.Synopsis of chapters

The dissertation was divided into five chapters.

Chapter one; introduces the research and lays ground for its conduct, findings, recommendation and conclusion.

Chapter two; Examines the historical back ground to the role of Traditional African Justice systems in solving land disputes in Acholiland.

Chapter three; presents the field study findings and analysis.

Chapter four; summary, and recommendations of the study

Chapter five; conclusions.

CHAPTER TWO

2.0 THE HISTORICAL BACKGROUND TO THE ROLE OF TRADITIONAL AFRICAN JUSTICE SYSTEMS IN SOLVING LAND DISPUTES IN ACHOLILAND.

2.1 The land setting in Acholiland

Traditional African Justice systems pertinent to land matters in Acholi land are not distinguishable for they are the same systems through which other grievances are channeled.

Thus, in the Acholi tradition, land matters are mainly handled within the traditional clan structure. The traditional clan structure is comprised of a "kaka" meaning; "an extended family unit comprising of a generational line including grandfather, fathers, sons and immediate next of kin." [14] Within this very structure, the management of customary land issues, which includes dispute resolution, rests on the clan/kaka family head (Dogola), and the head of household (Won-ot). Within the same structure, the Rwodi (Rwot for singular), Rwodi Kweri (a committee of Rwodi), and Rwodi Moo also play a big role.[15] In practice, the Rwodi Kweri deals with cases between individuals whereas that of the Rwodi Moo covers those cases involving wider communities like clans in Acholi.

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[14]See., Ker Kwaro Acholi, supra note 6, at 14. There are 54 clans, each with a leader. It is these 54 that make up the Acholi Traditional Institution of the Ker Kwaro Acholi.

[15] The Acholi Religious Leaders Peace Initiative (ARLPI) supra note 2, 19.

2.2 The nature and history of traditional African Justice Systems pertinate to land issues in Acholi land

The history of the traditional African justice systems and the role they played in solving land disputes is most interesting. Land in Acholiland is mostly customarily held, meaning that its challenges and conflicts are best handled within the traditional institutional framework. Prior to colonization, the clan was a key unit that wielded power, and it organized the families or communities to make collective contributions for its survival; land being a key resource in this scheme.[16] The Colonial government on the other hand, was an affront to the traditional power centre (the clan) through its establishment of a new authority (the state), which came with a number of issues related to control and management of land. Questions whether the establishment of a "state" over an acquired territory by the colonialists terminated pre- existing claims to land were bound to be determined by the ordinary courts and not the traditional ones as previously done. The western criterion here was the law applicable and nothing was talked about in relation to tradition. Thus, all land held customarily, and to which there is no legal title was presumed not owned, and thereby vested in the colonizer to use just like an owner. But the cases that were arising in other parts of Africa at the time were

[16] Waded Nabudere, Imperialism and revolution in Uganda, London: Onyx Press Ltd and Dar es Salaam: Tanzania Publishing House (1980), 12.

of utmost significance to the situation.[17] The case of **Mabo v. Queensland** [18] held that although the Crown of England acquired some rights over (the then) Rhodesia through conquest, the act of conquest did not extinguish native or local pre-existing rights to land. Ownership of the land was still vested in the locals on the basis of their local customs. But rights to land as known in the African customary sense (of rights in fact) continued not to be regarded as such by the western world but as "abstract" notions.[19] Individual rights rather than communal ones were upheld. Customary land that was not privately owned or alienated as such was subject to ultimate crown title. Ownership of land depended on whether it was customary or otherwise.

The advert of the human rights era that was ushered in by the 1948 Universal Declaration of human rights in 1948 (and other human rights instruments that follow later) did not change much on the ground. In 1955, under the recommendation of the East African Royal Commission of 1955, it was asserted that for purposes of achieving development through use of land, customary land had to be registered and converted into freehold. The post-colonial government of Uganda did not adopt this recommendation. This in essence was good news but the truth of the matter is that the new government did not make any substantial efforts to save customary tenure from its secondary position. Customary land,

[17] See the Rhodesia case of **Mabo v. Queensland (No.21992 HCA 23; 1992 175 CLR 1.)** and **Amodu Tejan v. Secretary for Southern Nigeria** [1921] 2 AC399.

[18] Ibid,

[19] Kevin Gray & Susan Francis Gray, "The Idea of Property in Land" in Susan Bright & John Dewar (eds.), Land Law: Themes and Perspectives, Oxford University press (1998), 15-41 at 37.

which was called Crown land in pre-independent Uganda and was vested in the colonial government, still remained vested in the state as public land at independence. Therefore, the status quo remained in principle unchanged. In the newly independent Uganda, the situation of customary landholders became more vulnerable with time, in the face of development imperatives: the customary rights could be suspended if they obstructed the pursuit of development agendas.

Article 237 of the Constitution, which reinstates customary tenure as an equally recognized tenure in Uganda has restored the place of customary law. Section 88(1) of the Land Act also acknowledges their existence and the role they play in handling land matters arising from customary tenure.

In a bid to not only prevent but also deal with land disputes, there are roles that have since time immemorial been played by traditional African Justice systems in Acholiland and these are:

(i) To be custodian and to protect the rights of all paco/dogola or (family or household) members;

(ii) To allocate land to heads of households (Won-ot) or individuals within their family;

(iii) To ensure that land is used for agreed purposes;

(iv) To manage the family/household reserve land;

(v) To mark boundaries of the land in consultation with the kaka (clan), Dogola (family), for (household) and neighbors;

(vi) To make decisions affecting family land equitably (fairly) taking account of the interests of all family/household members.

(vii) To obtain consent from the family/household members and clan when making major decisions affecting land (e.g. transfer).

(viii) To hear and resolve land disputes peacefully;

Traditional institutions in Acholiland are mainly mediators or reconcilers of parties to land disputes within their above stipulated jurisdiction. They also deal with conflicts that though not directly connected to land nevertheless have a bearing on it. Such cases include but are not limited to cases dealing with accusations of witchcraft; that are many a time distinguished to deprive one of his/her land.[20] They have covered issues like witchcraft in relation to customary land use and ownership. In such cases, reconciliation is the most suited approach. In line with the above, TIs aim at community cohesion, by promoting mediation or reconciliation in dealing with land disputes as a way to promote peaceful co-existence of members of the family. Peaceful resolution of a matter (win-win outcome) is normally of paramount importance in many cases; for example in the earlier cited case of **Olwenyi Samuel and another v. Arach Albina**[21], it was obvious that the respondent had transgressed the morals of society by side stepping the authority of the elders in matters of land allocation when she allocated herself the four acres of land. The logical decision in this case would be that she vacates all the four acres and hands them over to the rightful owners. The elders deciding this case did not take that route, but instead opted for another that would promote the Acholi culture of respect for graves and peaceful co-existence between the conflicting families. The respondent was therefore allowed to retain some of the land including portions of it on which lay her parents' graves.

[20] See the case of Salvatori Abuki.

[21] Civil Suit No. 033 of 2003.

Because they aim at reconciliation, traditional African Justice systems may sometimes be viewed as being unjust. For example, even a land grabber will not be requested to return the whole piece of land grabbed but will keep some and be forced to return the other piece; this sort of thing meaning that the owner of the grabbed land loses that chuck left with the grabber.

To add to the above, reconciliation rituals at times come with a cost, which cannot be met by everyone in need of dispute resolution services before the traditional authority such as the slaughtering of animals.

Of importance, long before the advent of armed conflict in Acholiland[22] traditional systems of justice had a significant role to play in the society. The consequences of armed conflict have however diminished the role of these institutions with blatant poverty, and other social, political, and economic aspects greatly affecting the operation of the office bearers on land matters. The conflict also affected and disrupted the social, cultural, and political-economic systems and as a consequence weakened the pillars of traditional authority thus rendering the traditional systems insignificant. Challenging of decisions reached by traditional systems slowly became a norm and this followed the knowledge of how compromised the elders were becoming.

[22] Op. cite.

Other challenges also became eminent. For example, the Local Council Act made it possible for people who knew nothing about the culture to become members of the court who would determine land matters on a cultural basis.

Over a time, the inaccessibility of the ordinary courts and the challenges posed by LC courts have made the traditional justice systems stand out as a viable option, albeit their shortcomings alluded to above.

CHAPTER THREE

3.0 FIELD STUDY FINDINGS IN RELATION TO THE VIABILITY OF TRADITIONAL AFRICAN JUSTICE SYTEMS IN SOLVING LAND MATTERS

3.1Introduction

As pointed out above, the civil war in Acholiland disrupted the setting in the land and also the place enjoyed by the traditional African Justice Systems. This chapter will seek to analyze the field findings in a bid to ascertain whether or not Traditional African Justice Systems are a better way to solving land disputes in Acholiland.

3.1 The African traditional systems in Acholiland: an analysis

It was ascertained that the elders, clan leaders, joined by LC I, LC II, LC III, LC V deal with land matters on a cultural basis. In ordinary courts and other bodies such as the police, Chief Administrative Officer (CAO), Resident District Commissioner (RDC) and Land Boards, customary law was given effect to but with courts insisting that such customs meet the legal criterion required to be admissible. Because of a number of reasons that include the similarity in character and the fact that traditional African Justice Systems and the LC courts are not fully functioning as they ought to, these two organs cooperate a lot. But this cooperation has not defeated the fact that there is double jeopardy with cases being heard by

both institutions with different pronouncements thus leading to more conflict between the parties.

There are indeed significant challenges impeding the full operation of Tradition African Justice Systems in Acholiland. Since after the war, these institutions and the LCs have continued to operate in a chaotic environment characterized by a number of high imperfections like, weak laws and institutions, and neo-patrimonial politicians that use land disputes to garner political advantage.[23] This is in addition to normative issues that touch both customary law and institutions as a valid source of law, and also the ability of such institutions and LCCs to handle land disputes in such a way that promotes respect for human rights. The various laws in place alongside the institutions that were created to address land issues in Uganda as a whole that also includes Acholiland have proved that none has dealt with the actual cases relating to land wrangles.

The violence that met the beneficiaries of the judgment in Arach Valiriano vs. Odong Richard[24] under which there was a complete objection to the enforcement and implementation of the Order of the Chief Magistrate with political back up by the objectors points to how aggressive people can get when rights are ruled upon by traditional courts. It is the researcher's observation and argument that the

[23] This was a general observation.

[24] Case of Arach Valiriano v. Odong Richard Syrayo. Miscellaneous Application No. 076 of 2009. Arising from the judgment of the Local Council Court Committee of Patiko Sub-County, Gulu District dated October 17th, 2008, at 51-52.

gentleness with which the Traditional African justice system approaches and handles the issues could help evade such situations as those above.

Some people interviewed did acknowledge the good job that the LCCs do in resolving land disputes, but there were clear concerns about the many deficits in the mode of operation of these courts. Serious human rights issues have also been raised, regarding the way in which LCCs handle matters. They present an increased risk of violating the rights of a "looser," since it is not in all cases that the "winners" in these courts, would deserve to be the genuine winners under normal circumstances.

• Most of the LCCs do not keep proper documentation of the cases before them and neither do they have registers. Part of the reason, the researcher discovered could be that some of the members of court are not knowledgeable in regard to what are termed material facts of the case, issues and the decision of case. Therefore, in land cases such as disputes based on alleged illegal transfers, the researcher discovered that the dates of the alleged transfers were missing from the record, copies of the transfer agreement were not tendered to the court as evidence, and there was no record of whether the members of the court had a look at them before, or during the proceedings. This has costs in the sense that if such a case goes on appeal, the appeal court does not have a proper record upon which to base its hearing, but has to send the case back to be heard afresh hence delaying justice. This also contravenes some standards of fair hearing.

This state of affairs makes it very difficult to trace a case for any reason (say appeal or academic/research purposes) even if it is merely a few months after it has been decided.

. Secondly, even if the LCC Act does not obligate the Court to conduct proceedings on the site or the land in dispute, but at a designated place within its area of operation, the manner in which LCs handle proceedings at the locus in quo leaves a lot to be desired. It was the researcher's finding that when some LCCs conduct a locus in quo, they only produce a list of people in attendance but no

record of proceedings, yet they rely on the evidence adduced during the proceedings to come up with a final decision.

Furthermore, the law sets the mandatory quorum for the parish court (LC II) at five members that include two women and for the sub county court (LC III) at 3 members, one of whom must be female. One of the members of the Paicho sub-county court in Acholiland, talked to during the field research, mentioned that there is a technocrat appointed by the district (secretary to the sub- county chief) that sits in, but does not take part in decision-making. A visit to the field in Acholiland revealed that some customary land rights cases have, on various occasions, been heard and decided without the right quorum. The quorum is not realized, something that is very illegal.

Besides that, there were reported instances of the court relying on, or adopting the decision of one of the members (in most cases that of the chairman) who would have been most likely to take notes during the proceedings. Although this was denied by another member, what is clear is that if this is the case, then LC Courts pose a problem for one-person judgments are problematic since they do not reflect the opinions of all members of the court in a given case.

One citizen remarked, "they do not know the procedures. They are like a boat without anybody steering it." There are other things that the LC courts are borne of and these are:

- The LC courts suffer from case backlogs that they attribute to the fact that they are not well facilitated by government.
- The Local Council Court Regulations, 2007 provides for fees to be charged for various services but , LCCs still charge extra/illegal fees ranging between UShs. 65,000 and above to litigants thus making access to justice expensive if not impossible.
- Limited knowledge of customary law by the LC Court was a problem citied by some litigants. The failure to apply the appropriate laws leads to miscarriage of justice for those who ought to have benefited from the protection of the law, had it to been applied correctly.

One of the challenges facing the traditional African justice systems in relation to land disputes in Acholiland is that Acholi is now comprised of people who do not necessarily prescribe to the Acholi culture, thus making it difficult, if not impossible for courts to enforce the relevant customs on them. Such people include but are not limited to the Alur.

And then, there is the problem of politicians with vested interests in the land issues who keep on interfering with the justice process.

Record-keeping is among the revered attributes of a judicial or quasi-judicial system that is anchored in formal or written law systems but yet it is not within the cultural setting of TIs to consistently keep records of proceedings. Record keeping is mainly for records of proceedings and documentation of a number of aspects relating to customary tenure rules as they are according to Acholi custom.[25] The lack of records and documents, in some cases decided by previous Rwodis, affects the work of the current Rwodi and that of the (Chief) Magistrate Courts that handle cases involving customary land.[26] According to the Chief Magistrate of Gulu, Rwodi Kweri in Acholi and Adwong Wang Tic in Lango, together with clan chiefs, were tasked with allocating and demarcating land and settling boundary disputes. They basically knew (almost) where all the boundaries were. Not all these boundary disputes resolved before the armed conflict broke out were recorded, and some of those that mediated them died. Yet, there are instances where new cases arise from such disputes already settled, but there is no record to be referred to and neither are any of the Rwodi that were involved in mediating such cases, alive to be called as a witnesses to testify in the (Chief)Magistrate Courts. This poses a problem of continuity and lack of distortion.

Other issues of concern from the field (which also apply to LCCs) are the limited likelihood of fair decisions from these institutions. It was pointed out that the

[25] Note that some of this has been done by the Ker Kwaro Acholi although more needs to be done and in depth.

[26] The (Chief) Magistrate especially if cases are appealed at that level. The shortfalls of the TIs would affect the work of the magistrate.

traditional personnel that deal with land matters operate within their geographical area, usually where the majority of the people are relatives. This increases the likelihood of bias against a party.

Mediation proceedings of the traditional justice systems are not binding although they do have their moral value. Thus, the outcome of mediation by the Rwodis is not binding on the parties, although they have a moral obligation to respect and abide by it. And these days, because these traditional systems have lost their glory, people do not feel as much morally (or socially) obligated to abide by a decision passed by the authority, which, after all, is not backed by any social or legal sanctions.

The right of appeal has never been lost in Acholiland traditional institutions in land matters. One of the elders at the Acholi traditional Institution (Ker Kwaro) asserted that there is a structure of appeal within the bigger structures of the Ker Kwaro. To him, there is a Cultural Tribunal with an appointed committee in every chiefdom that sits and deals with land matters. The Rwot Kweri (head of a community in a homestead that works together) has a tribunal comprised of about 12 people that hears cases and make decisions on them, after mapping the land and demarcating boundaries. Where there is a need for an appeal from their decision, the matter goes to the parish level of a traditionally constituted tribunal. If it is not resolved at that level, it goes to the Chief's committee and his members. Accordingly, the chief coordinates with courts of law and, at times, refers cases to courts of law and also receives cases referred from the courts of law. It was however a concern for some respondents, that there are no established procedures through which one can appeal the decisions of the TI. To them, it would be better to have a system

whereby an appeal from the TIs goes to state institutions, like chief magistrate courts. The foregoing is a good way forward, since it would fill the existing gap of lack of an avenue for appeals from TIs.

As already pointed out, there were complaints of corruption in the traditional justice systems. The relatively stronger social legitimacy of the TIs in Acholiland compared to that of the LCCs tends to promote a cultural norm that spurns corruption. Also, the absence of clear and fully functioning accountability measures at the level of the LCCs has a bearing on the existence of corruption and its varying levels.

CHAPTER FOUR

SUMMARY AND RECOMMENDATIOND OF THE STUDY

4.0. Introduction

In view of the findings in the preceding chapter and the background knowledge that the researcher now possesses, this chapter will seek to make recommendations that would otherwise address the problems poised in chapter three.

4.1 Recommendations of the study

In the first place, there is a need to strengthen dispute resolution mechanisms that would deal with the different dimensions presented by the ever erupting land conflicts in Acholiland. The resolution of existing disputes should however be followed by mechanisms aimed at prevention and improvement of the general environment within which people live as well.

The government should to this end build comprehensive peace in Acholiland. Recourse should also be had to building less antagonistic social relationships among people and structures or institutions that promote justice or reconciliation in many matters, including land. Attention ought to be paid to the lower level justice institutions. Ignoring the TIs and the LCC's, and the way in which they operate, puts the rights of litigants in these institutions at stake. Yet, Uganda is a party to a number of International human rights instruments under which it is obligated to respects rights of such people.

LC courts should be encouraged to keep proper documentation/records of the cases before them. This can be done by trainings and provision of the facilities required to meet the needs of the court in this regard.

Furthermore and connected to the above, the manner in which LCs handle cases at the locus quo should be improved and they should be made to follow procedure more so in relation to taking down evidence.

Politicians should desist from interfering with the traditional justice system.

Mediation proceedings of the traditional justice systems should be made binding once it is established that all parties profess them.

Quorum in the LC courts should be taken seriously and where this is not done, the a higher court should revise such decisions and make orders that are necessary for the realization of justice.

Corruption should be curbed in the LC courts by whatever means.

Traditional justice systems in Acholiland are significant. Harmony should therefore be created between the different warring groups even when they profess different customs and traditions in relation to the land issues before court.

CHAPTER FIVE
CONCLUSION

5.0 Introduction

Although private ownership of land is taking face in Acholiland, the vast of the land is still communal in nature and thus calls for traditional methods of addressing the conflicts arising therein. This chapter will draw a conclusion to the study.

5.1 Conclusions

Land is a key factor of production in Acholiland, and access rights are a major flashpoint for conflict. Limited economic opportunity and the need to survive drive many land disputes, while others are driven by the failure of investors to engage with communities in a manner that is transparent and respectful of local values. These disputes arise in an environment where mechanisms for delineating boundaries, determining tenure, resolving disputes, and negotiating access are hindered by weaknesses in customary and formal law and by misunderstanding between stakeholders.

Ongoing land disputes in turn have so many disadvantages such as inhibiting the productivity of small-scale farms due to reduced cultivation, decreased investment, and loss of economic assets.

In light of the study carried out, it is the researcher's considered opinion that if the recommendations in Chapter four above are taken into consideration, the best way of dealing with land conflicts in Acholiland should be to employ both methods of justice-i.e. the formal system and the traditional justice system to address the problems. Traditional justice systems should be made use of where all warring parties profess the same traditions and if this is not the case but the land is

customarily owned, then, the formal courts should handle the matter but take into consideration the traditions governing the land in issue. In this way, both systems would be complimenting each other.

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