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Where do I report my land dispute? The impact of institutional proliferation on land governance in post-conflict Northern Uganda

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ABSTRACT

In Sub-Saharan Africa, Uganda has been hailed for embarking on an intensive decentralization programme. Whereas a lot of literature assumes that decentralization leads to improved service delivery, it is unclear to what extent this is the case in practice, especially when it comes down to decentralized land governance. This paper, which is based on ethnographic research carried out between 2011 and 2013, argues that decentralization of land governance in post-conflict Northern Uganda fails to realize the expected benefits and instead has increased tenure insecurity. Decentralization of land governance gave rise to institutional multiplicity by creating new institutions that add on to the already existing authorities and regulations. Institutional proliferation in land governance that is fuelled by legal pluralism and decentralization results into confusion in land dispute resolution and the failure of institutions to effectively resolve land disputes in post-conflict settings. This exacerbates the dilemma of people who do not know where to go to seek redress to land disputes. While this multiplicity of both statutory and customary institutions creates choices and opportunities for both people and institutions in relation to land governance and in particular land conflict resolution, they are also used by power holders and authorities in political competition at local level, complicating the process of land dispute resolution. The struggle for authority between representatives of the state and of customary land institutions becomes especially problematic because it merges with local and national politics.

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Introduction

Decentralization has been a core component of land reforms implemented by many African governments, with the ambition to improve land governance, increase agricultural production and economic growth (Toulmin and Quan 2000; Peters 2004). Decentralization is the devolution of governance from higher to lower level organizations in the

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governmental hierarchy, most commonly from a central government to provincial, regional, district, and sub-district levels (Bartley et al. 2008). Proponents of decentralization argue that it creates space for popular participation, representation of all stakeholders in decision making and encourages accountability in governance (Ribot 2003). Overall, decentralization is believed to improve state–society relations significantly (Meinzen-Dick et al. 2008). Regarding the governance of land, policy makers hope that decentralization improves land tenure security and the resolution of land disputes. It is from such anticipated benefits that over the past two decades decentralization has been a core strategy of Uganda's National Resistance Movement (NRM) government efforts at reforming land governance.

The question is of course how decentralized land governance works out in practice. Like in many other African countries, in Uganda, decentralization of land governing authority by the state does not take place in isolation, but comes down to a re-division of land governing roles at the local level and restructuring of the relations between customary and statutory institutions. In the case of Uganda, decentralization strongly plays into the division of responsibilities between state and customary institutions.

Before the colonial period, land in Uganda was governed by customary institutions according to different cultural norms, practices and rules, and these were different among the various ethnic groups. Generally, such customary systems built around collective rights to land: rights to land were vested in the group (clan, lineage) and the membership of people of these entities. The colonizers introduced statutory tenure, which was significantly different from customary tenure as it granted opportunities for acquiring individual land rights directly from the state and not from an intermediate authority. Yet, the introduction of statutory tenure by the colonial authorities did not replace customary tenure, but instead resulted in a dual tenure system (GoU 2013), with customary tenure systems continuing to exist alongside (and to a certain extent intermixing with) statutory systems. Up to today, 80 per cent of the land in Uganda is held under customary tenure, and only 20 per cent of the land is subject to statutory tenure combining freehold, leasehold and Mailo land (MISR 2003). In Northern Uganda, even 90 per cent of the land is still held under customary tenure, administered by customary chiefs, who are considered to be the custodians of land while the land is owned by individual families (see ARLPI 2010). The Ugandan situation is not unusual: The majority of the people in developing countries continue to access land through customary tenure systems (see Deininger 2003; Wiley 2006; Deininger and Castagnini 2006).

Considering this situation, there is an ongoing debate about the extent to which customary tenure should be replaced or instead might serve as an alternative to provide tenure security instead of statutory systems based on private property and land titles. In the past, customary tenure was considered as irrelevant and in need of replacement by state tenure. Yet, increasingly there is acknowledgement of the often valuable role customary tenure may play in securing local tenure, and of the ineffectiveness or failures to establish state tenure systems. An evolutionist perspective, which is increasingly influential, even argues that the evolution of land tenure towards individual ownership is a gradual process, and that one should not interfere in local land tenure systems but leave them to evolve and determine their own outcomes and eventually result into well-defined property rights (see Platteau 1996; Peters 2004; Fitzpatrick 2005).

In the case of Uganda, a more positive assessment of customary tenure certainly plays a role in the government's approach to tenure reform, which combines decentralization of land governance with legal acknowledgement of the valuable roles of customary institutions in protecting local tenure. The reform of tenure administration in Uganda has been regarded as the most extensive and decentralized of any of Sub-Saharan African countries (Tripp 2004). The 1998 Land Act, which was to strengthen tenure on customarily held land and enhance the resolution of land disputes, aims at comprehensive decentralization of land governance. It extensively elaborates the roles and functions of statutory decentralized land structures like Land Tribunals, District Land Boards, District Land Offices, Area Land Committees and Recorders at the sub-county levels (1998 Land Act), even though up to date land tribunals are not in operation. In addition, the 1995 constitution legally recognized customary tenure as one of the four tenure systems in Uganda. According to the 1998 Land Act, customary land is supposed to be governed according to the norms and practices of a community, and the Act provides for so-called certificates of customary ownership (CCO),[1] for persons, families and communities holding customary land who wish to document their claims on land.

The question is of course how this works out in practice. So far, despite elaborate legislation and policy guidelines with respect to the decentralized land institutions that need to be established, their respective responsibilities, and the regulations that apply, unresolved land disputes and tenure insecurity continue to be present at local level in northern Uganda. The majority of the cases in local courts, both customary and statutory, are land related, and in the villages land dispute mediations have become a daily routine.[2] This resonates with findings by the Ministry of Justice (2008) which reported that land disputes ranked the highest among all conflicts in the country.

This paper demonstrates that decentralization of land governance in northern Uganda itself is part of the problem. The establishment of decentralized institutions is erratic, incomplete and contested. Moreover, though the government had the ambition to decentralize land governance and enable customary authorities to take charge of land governance, it effectively resulted in the establishment of new decentralized state institutions, next to already existing authorities and regulations about land, while the division of responsibilities between those institutions remains unclear. This institutional multiplication and unclearness fuels rivalry and competition between representatives of decentralized state and customary institutions. This local competition is made even more complex as a result of the interference by national politicians in local disputes. Institutional multiplicity and competition, combined with a large number of contested land claims in post-conflict settings creates confusion among people over which institution (customary or statutory) to approach with their land disputes. Local people navigate through multiple institutions to promote their claims on land. Representatives of these institutions even use land disputes to try to (re)establish their authority.

A very problematic consequence of this is indecision in land dispute resolution. Land governing authorities fail to effectively resolve land disputes, either because decisions continue to be contested or are never implemented, due to unclearness and competition about who is in charge. As a result, land disputes remain undecided upon, which undermines tenure security of small land owners and trust in the system of land governance.

Methodology

This paper is based on extensive ethnographic fieldwork conducted in the Acholi sub-region in Northern Uganda. We will focus on one detailed case study; the Kigwe land dispute in Pader district and other smaller land disputes to illustrate our argument. Data for this paper were gathered from 52 interviews, 6 focus group discussion, 4 land dispute mediations and 3 workshops about land issues across the 7 districts of Acholi region including Gulu, Amuru, Pader, Kitigum, Nwoya, Lamwo and Agago districts in Northern Uganda. Interviews were conducted between November 2011 to May 2013 and people interviewed included chairpersons and representatives of the different levels of the local council (LC) system from LC1, LC2, LC3 and LC5, traditional leaders (chiefs and Rwodi Kweri), Area land Committees, District land board members, lawyers, politicians, policemen, NGO employees, conflicting parties and local people. Various topics related to land governance were discussed such as the impact of decentralization, issues of institutional competition, authority of land institutions in the communities, where people report their land disputes, reasons why people choose those institutions, why people use violence in land matters and effects of war on land institutions. One of the researchers worked with a local organization of Acholi leadership called Ker Kwaro Acholi (KKA) that helped her to access the field and later she made independent field visits to verify the data obtained about the different topics.[3]

The paper is structured as follows; the next section discusses the notion of legal pluralism which is the co-existence of multiple legal systems and competition between formal and informal land institutions. It further shows how decentralization feeds into institutional multiplicity. Section 3 illustrates how, despite the existence of a well-elaborated decentralized land structures on paper, land dispute resolution in Uganda continues to be problematic. Section 4 on the Kigwe land dispute in Pader district shows how a land dispute can go through many forums but fails to get resolved. Section 5 shows that the presence of many forums for dispute resolution leads to fierce competition among land institutions while trying to authorize land claims but also contributes to weakening of those land institutions because people lose trust in them.

Legal pluralism and institutional competition

In Sub-Saharan Africa conflict over land is intensifying at the local level (Peters 2004). Escalating land conflicts raise questions about the authority of land institutions that are supposed to resolve land disputes and sanction claims on land. Looking through the lenses of legal pluralism, the co-existence of multiple systems of legal order within a society or confines of the state (Hooker 1975; Griffiths 1986; Unruh 2003) might be a useful way of better understanding how people organize land governance when plural legal systems are in existence and how this fosters struggles and intensifies land disputes. Unruh (2003) notes that legal pluralism with regard to land tenure signifies the presence of different sets of rights and obligations concerning land and property. Legal pluralism does not necessarily mean that systems are equal but that they interact with, influence and oppose each other (Peters 2004). In essence, legal pluralism promotes a process of constant renegotiation of land rights and property rights to land-related natural resources. In this process, state institutions critically determine the manoeuvring space in which

representatives of customary institutions may operate. The state can choose to recognize customary institutions or curtail the scope of their powers (Fitzpatrick 2005). In this context of a state, customary institutions cannot be regarded as autonomous but as institutions whose representatives may challenge the authority of statutory institutions (Benjaminsen and Lund 2003). Lastly, customary tenure is not static it keeps on evolving and this process is also shaped by interactions with state institutions, market policies and political crises like war.

FAO defines land governance as a process by which decisions are made regarding the access to and use of land, the manner in which those decisions are implemented and the way conflicting interests in land are reconciled (FAO 2007). In a post-conflict setting land governance becomes challenging and problematic in practice after the guns have gone silent because of the unique circumstances created by war especially in relation to tenure security. In our case, people were displaced for a long time and many died in the IDP camps. The LRA war in Acholi land led to a reshuffle of power because of increasing influence of the Ugandan government. As a result of the war both statutory and customary institutions which are supposed to administer property rights were in disarray (Daudelin 2003; Unruh 2003). War erodes the institutional order in place, and puts it adrift; therefore, new modes of organizing land both customary and statutory may proliferate in order to fill the institutional void created by war. After violent conflict customary and statutory institutions may compete to sanction land claims. This is because those institutions might have "overlapping jurisdiction of authority" (Ribot and Peluso 2003, 170) but also in order to regain their pre-war authority. Areas going out of violent conflict are prone to land disputes because there are multiple actors seeking to access and utilize land (Unruh 2003; Clover 2010). It is thus important to understand how both customary and statutory institutions work to sanction the competing claims to land in post-conflict environments.

In many places in Sub-Saharan Africa there is hardly any land formally registered by the state; most land is effectively under customary tenure; yet there is institutional multiplicity and ambiguity because it is unclear when and where state legislation or custom apply. Different tenure systems may apply simultaneously to the same piece of land. In Africa over 90 per cent of the land is accessed through customary tenure arrangements and formal tenure covers less than 10 per cent of the area (Wiley 2006; Deininger and Castagnini 2006). Little land is formally registered but that does not imply that the land is not governed. Instead most land is still held under customary tenure arrangements and customary institutions govern the land.

Reform programmes do not necessarily resolve this ambiguity. Instead, reforms often result in new struggles between people that try to use these systems and the opportunities provided by legislation and acknowledgement of particular forms of authority by the state to their advantage. Statutory institutions may in fact be created to oversee land matters in customary tenure. However, the introduction of statutory tenure does not necessarily lead to increased tenure security (Peters 2004) but rather this gives opportunity to conflicting parties to manipulate the overlapping jurisdiction which is put in place when statutory institutions come in to manage customary tenure (Fitzpatrick 2005). But also since customary and statutory land systems were never merged, it might not be clear who has the authority to define rights and deal with land disputes (Carfield 2011). Literature on legal pluralism fronts the notion that the presence of more than one legal order in land governance provides individuals and institutions with opportunities to use either of the systems

(Fitzpatrick 2005; Carfield 2011). However, important to note is there might be conflicting rules between these institutions over authority to determine land rights but also conflict between local people and institutions that govern land (cf. Lund 1998b, 2).

Institutional competition promotes forum shopping by people that approach those institutions that might best serve their interests in a conflict (Von Benda-Beckmann 1981; Firmin-Sellers 2000). Forum shopping is the ability of some actors to select the arena of law or custom that will favour their objectives (Ribot and Peluso 2003). In situations of post-conflict where there is lack of clarity about the role of statutory and customary institutions in land governance (cf. Deininger and Castagnini 2006) room is created for forum shopping in land governance institutions according to what suites people's interests (see Lund 1998a, Unruh 2003). Legal pluralism may facilitate the resolution of land disputes by providing choices (Unruh 2003) or contribute to confusion (Ramirez 2002) because there might not be a clear structure to follow and this might contribute to indecision in land dispute resolution. In sum legal pluralism fuels into institutional competition among land governance institutions and this competition between different authorities may make both customary and statutory systems dysfunctional (Eck 2014). This might explain the persistence of land disputes in post-conflict settings.

The other side of the story is that institutional pluralism provides representatives of institutions that govern land with opportunities to look for claims to authorize in order to solidify their legitimacy in relation to competitors (see Boege 2006; Sikor and Lund 2009; Huber 2010). This is not a level playing field; power is very important in the extent to which certain people may use institutions to their advantage, and some in particular fail to reap the benefits of institutional competition for example single women. Institutions are not neutral, but often reflect power relations in a given society thus conflicting parties may take advantage of a situation where power holders are competing for authority to achieve their interests in land (cf. Okuku 2006; Lund et al. 2006; Bartley et al. 2008). Therefore, power struggles and competition that occur among institutions create opportunities for conflicting parties. The important question is how people representing competing land institutions are able to assert their authority and influence the resolution of land disputes and tenure security.

Recently more attention has been given the renegotiation of authority and legitimacy in situations of institutional multiplicity. In particular, the paper demonstrates that a major consequence of institutional multiplicity is not just the negotiability of regulations and authority (see Francis and James 2003; Ribot and Peluso 2003) but also the indecision in land dispute resolution. Indecision in land dispute resolution is a result of many processes for example limited authority to implement and sanction decisions, as a consequence resolutions of such institutions may not be binding; lack of commitment of dispute resolvers that are more interested in establishing their authority than in solving disputes; the fact that in a situation of institutional multiplicity those involved in conflict may always approach another institution to present their land disputes or interests; and the reality that one of the conflicting parties does not recognize the legitimacy of one of the institutions in case they get a negative decision.

Decentralization of land governance in Northern Uganda

Decentralization in Uganda is regarded as a strategy of taking services closer to the people, and it is implemented through a hierarchical local government structure. Through

decentralization some functions, powers and responsibilities are devolved and transferred from the central government to local governments (GoU 1995). Uganda's decentralization has often been hailed and taken as an example for the rest of Africa especially by the way power has been devolved to lower levels of government (cf. Francis and James 2003; Green 2008). However, the way decentralization is implemented has instead contributed to the mushrooming of local governments in form of new local government units (Green 2008; Hilhorst 2009; Kobusingye 2010).

The decentralized government structures have their origin in the Resistance Councils (RCs) that had their roots in the civil war staged by the National Resistance Army which were a system of organizing the community. These RCs were later moulded to become LCs by the 1995 Constitution. The LC system of local government has five levels ranging from village to the district. These include LC1 at village, LC2 at parish, LC3 at Sub-county, LC4 at County and LC5 at district level (GoU 1997). With this decentralization of the administration, decentralized land governance structures like district land boards, land tribunals, area land committees were put in place. Despite the decentralized statutory structures being closer to the people, management of land disputes continues to be problematic and a source of further conflict in land governance. As we will see in the case of Kigwe there is decentralized land governance on paper, but in reality it is largely the informal system that is dealing with conflicts about land on the ground. Land disputes are still rampant in Northern Uganda despite the existence of these well elaborated decentralized land administration structures. This requires us to further explore how decentralized land governance works out locally.

The 1995 constitution clearly stipulates the various functions of decentralized land structures for example district land boards are charged with holding and allocating land in the district which is not owned by any person or authority and facilitating the registration and transfer of interests in land. The district land tribunals are charged with a role of determining of disputes concerning land matters within the district.[4] Section 38 (1) of the Land Act provides for Area Land committees at the sub-county level that are responsible for inspecting land, determine if there are no land disputes and aid in the process of issuing CCOs on customary land. CCOs as earlier mentioned were envisaged by government to increase tenure security under customary tenure. There is also a provision for the CCOs to be converted to freehold titles. The area land committees undertake the process of issuing CCOs without consulting customary leaders or chiefs whereas before the war the chiefs made all the decisions on customary land. Therefore, the issuance of CCOs by statutory land institutions is perceived by the Acholi as a mechanism by the state to take away their customary rights to land. And it is seen as a starting point of aiding the process of converting customary tenure into statutory tenure. Thus, policies to enhance the role of customary tenure in land administration and land dispute resolution in fact seem to contribute to the contrary.

Formal structures (statutory) that directly deal with land dispute resolution include; the LC2 which is the first court of instance for land disputes, the sub-county court committee at LC3 which handles land disputes that are referred from LC2, the chief magistrate's court which adjudicates land cases that are referred from LC3, and the Residential District Commissioner (RDC) at the district level (LC5). Conflicting parties can also take their land disputes to the president's representative, High court and police. However, the police only comes in when a civil land case/dispute turns criminal in nature through assault,

malicious damage or murder. These decentralized land governance structures are a contributing factor to the confusion in land conflict resolution and institutional multiplicity as we will see in the Kigwe case.

The customary structures that handle disputes in Acholi region include; Rwodi Kweri (chief of hoe), the first instance to handle land disputes at village level under the Acholi customary system, the Rwodi Moo (council of chiefs) to mediate land disputes at clan level that fail to be resolved at the Rwodi Kweri level, and the Ker Kwaro Acholi (KKA) at regional level which is headed by the paramount chief, which consists of customary chiefs and is the highest institution in the Acholi customary system. Other institutions that are outside statutory and customary spheres but engage in land matters include NGOs and religious leaders who offer legal and financial assistance and also engage in mediation of land disputes. In practice, all the mentioned structures above have some powers to resolve land disputes but lack a clear structure to follow.

The decentralized statutory land governance structures were created by the state in a hurry without proper planning and a clear division of power between the different levels of government but also between state and customary institutions. For example the land tribunals at LC5 that were mandated to deal with land disputes and were part of decentralized land governance could not resolve land disputes due to lack of funding. The LC2 is taken to be the first court of instance of land disputes in decentralized land governance while traditionally in Acholi that same role is played by the Rwot Kweri (the chief of the hoe) who existed since time immemorial.[5] So at this level there is a parallel offer of services in land governance. The institutions do not collaborate and thereby contribute to confusion, because people are in dilemma over which institutions to approach in order to resolve their land disputes. Local people continued to suggest that the best system to manage land disputes is the customary institution through the Rwot Kweri because they live with the community and know the boundaries of people's land more than anyone else.[6]

In addition in the last 10 years, there have not been elections of members of LCs 1 and 2, yet these decentralized structures are supposed to play a big role in the administration of land disputes. Local people pointed out that the LC 1 and LC2 chairpersons and their committees were last elected in 2001 and now they lack legitimacy due to the expiration of their mandate. In reverse, LC1 and LC2 committees do not feel obliged to serve their people but it also unclear whether their decisions will eventually be legally binding, considering that elections did not take place. The structures are closer to the people and they are supposed to be the first court of instance of land disputes at parish level. However, despite these structures being "illegal" people continue to take their land disputes to them. Local people are not interested in the legal status of institutions but in the legitimacy of their operations and decisions. This explains why in Uganda people continue taking their land disputes to LC2 despite the structure being regarded illegal by the judiciary.

In the rest of the paper we will discuss some cases from northern Uganda, and demonstrate the unpredictability of outcomes of reform that result from this. This argument is made by exploring the case of Kigwe land dispute in Pader district, northern Uganda and interviews across the Acholi region. According to interviews and field observations, the common types of land disputes experienced in Acholi region include the following: boundary disputes, which occur between neighbours and between neighbouring clans especially over hunting and grazing lands; double sales where the owner of the land sells it more than once; false sales where people pretend to be the owners of land and sell it;

land grabbing where the targeted land is usually for the widows and other vulnerable groups; and retracted land gifts where the youth or younger generations demand back land that was given by their grandparents.

Institutional proliferation and land dispute resolution – the case of Kigwe dispute in Pader district

Northern Uganda experienced one of Africa's most brutal civil wars which resulted into the displacement of over 2,000,000 people. The war that started in 1986 and ended in 2006 destabilized the entire greater northern region and specifically displacing 90 per cent of the population in Acholi region. When the war ended, there were a large number of competing claims on land because of previous displacement, return and re-accessing of land. People took the opportunity to claim land that belonged to others but also people may have forgotten their boundaries. To make matters worse this took place in a situation where the institutions that deal with land were incapacitated to carry out land conflict resolutions. People lost trust in these land governance institutions when they failed to ascertain or protect people's claims on land. This situation not only created opportunities but also reasons for people to leap from one institution to another in order to find a solution to land disputes.

The Kigwe land dispute is an interesting case, because it has been taken to over six forums but a settlement of the conflict has never been reached. It is a unique case that meticulously explains why a land dispute can go through many institutions but a resolution is not arrived at. It demonstrates that (1) the ambiguity of land governance attributes of different institutions; (2) decentralization and institutional competition evolving between customary and statutory decentralized land institutions; (3) the failure of those institutions to reach a conclusion on the case or to implement it; and (4) the particular role of the post-conflict context in Acholi land in this process.

The dispute is about land that was acquired or given in the past before the LRA war but contentions over the land came up after the end of war. The actors that are involved in the land dispute include; the two conflicting families, the LC structures and the customary institutions.

The two families are the family of Obalim which received land and the family of Akena which gave land. The contested land is over 1000 acres and located in Laguti sub-county, Aruu county, Pader district. The family of Akena gave land to the family of Obalim as a gift around 1967 and the two families lived peacefully together until the war between the LRA and NRM government broke out and everybody left for IDP camps in 1997. The two families stayed in different IDP camps during the war for 10 years. The family that gave the land went to Pajule camp and the family that received the land went to Lacekocot camp, all the camps were in Pader district. When the war came to an end in 2006, the government disbanded IDP camps and both the families returned to their land in 2008.

After returning from the IDP camp, the family of Obalim started to cultivate their land in 2009 and then the dispute began. While working in the garden, the family of Obalim was disturbed with gun shots by soldiers who were acting on the orders of the family of Akena. The family of Akena claims the land belongs to them because the family of Obalim only stayed on that land for only three years and relocated to two other areas before the war so they argued that the family of Obalim no longer had a right to the land in question.

The family of Obalim took the case to the LC3 chairman of Laguti sub-county who referred them to go to the police because it was now also a criminal case since the family of Akena had used violence. The police dealt with the criminal part of the case and told the families that land disputes are civil cases that are not handled by the police. The family of Obalim then took the case to the RDC and LC5 they both advised the families to resolve the dispute through mediation. The RDC and the LC5 chairperson tried to solve the land dispute and advised the family of Obalim to go back home and ordered the family of Akena to stop accessing the contested land until a solution was found. However, the family of Akena did not heed to that advice and continued utilizing the contested land. When the family of Akena continued to utilize the land despite the recommendation from the RDC and LC5, the family of Obalim reacted by accessing the contested land too.

In 2010, the family of Obalim returned to cultivate the land and they were intercepted by a group of 30 people from the family of Akena with machetes, spears, bows and arrows. Family members of Obalim were beaten and injured; they reported the case to the LC3 chairman again. The case was transferred to police, and 6 people from the family of Akena were arrested and taken to Pader police station. A customary chief of the clan to which the family of Akena belongs visited the 6 suspects at the police station and they were immediately released. The family of Obalim was disappointed by the release of the suspects from police under unclear procedures before the suspects could be tried before courts of law and then decided to take the land dispute case to the magistrate court. The magistrate court then referred the case to KKA, the highest institution of the Acholi for mediation.

On 22 February 2012 and 1 March 2012, mediations organized by KKA were conducted to find a solution to the land dispute. During the first mediation a resolution was not found because the mediation team did not manage to visit the locus (the disputed land) because the team's car broke down and arrived late for the mediation. In the second mediation by KKA on the 1 March, traditional leaders started the mediation by applauding the family of Obalim for choosing to resolve the land dispute under the customary institution and immediately started pointing out what they felt were shortfalls of statutory institutions. For example "We should leave out government courts and appreciate Obalim for seeking redress to this land dispute from the chiefs, formal courts fill people's hearts with anger, they are not good and people should not waste their time in them."[7]

The mediation team from KKA then invited the conflicting families to present their sides of the story before the gathered congregation. The family of Obalim talked about existence of a tomb of a particular family member in the disputed land as proof of owning that land. The mediation team, elders and other people eventually visited the place and found the tomb however according to all those present; the tomb belonged to a different person. During the mediation the sons of Akena refused their father to speak claiming that he was deaf. It was later discovered that he was not deaf and he was forced by his sons to demand back the land from the family of Obalim. The chiefs then concluded the land dispute mediation by asking the family of Obalim to apologize to the family of Akena. The chiefs promised that later (time unspecified) they would come back to divide the land between the two families. However, they did not yet return to help the two families divide the land. Therefore, no definite resolution has been reached to settle the land dispute and by 2015 the dispute was still ongoing.

From interviews with the conflicting families it appeared that the family of Obalim had relatives within the LC3 and LC5 administrations and this explains why it was easy for

the family of Obalim to approach these institutions. The family of Akena could not accept the resolutions made by LC3 and LC5 because they felt they were not neutral. On the other hand, the family of Akena is related to the chief who heads a clan and this chief has contributed to the indecision of the conflict. He talked to the police and the 6 suspects who allegedly beat up members of the Obalim family were released. But the chief also wants the disputed land to go to his clan mates. He is accused of holding secretive meetings with the family of Akena encouraging them not to accept the land to go to the family of Obalim which belongs to a different clan.[8] The family of Obalim also feels that chief was inclined towards the Akena family because of those relations.

Discussion

Although this study was conducted in a post-conflict setting, the issues of land governance that are discussed are not limited to only post-conflict environments. These also occur and are relevant in non-conflict situations. This case demonstrates that in this post-conflict setting the problem of land disputes is expounded by the confusion about the administration of land disputes. There are so many land governance institutions that people can go to different institutions to seek redress or solutions for their land disputes. The various land institutions kept on tossing the conflicting families without clearly resolving the land dispute because neither of the land institutions has ultimate authority to make a ruling over the dispute. The family of Obalim kept on moving from one land institution to another because they did not know right procedure to follow. Important to point out is that the procedure to follow in the case of land dispute is not well stipulated that is why there is confusion in land dispute resolution. Conflicting parties moving from one institution to another and the land institutions meddling in land disputes.

But there is also the mixing up of official and informal relations, which is the downside of the local level government whether from one side or the other. This contributes to lack of legitimacy of these institutions. From the Kigwe case we see that all the conflicting parties had connections or support from representatives of the different institutions and exploited these relation networks. These relation networks contribute to persistence of land disputes in situations of legal pluralism.

We also see that decentralization changes local politics and land governance. The establishment of various decentralized administrative structures from LCs 1–5 and formal courts created a parallel structure for the governance of land and the resolution of conflict next to customary chiefs. This invites confusion, further conflict and corruption in land conflict resolution. The Kigwe case shows that the initiation of local politics, decentralization and competition between representatives from these institutions contribute to the politicization of land disputes and the process of land dispute resolution.

Customary institutions basically employ mediation as the major form of land conflict resolution and try to sell their way of dealing with land disputes. For example customary leader opened mediation session by stating that; “we have not come as judges but as customary leaders, when children fight in the house the father takes control that is why this land conflict is going to be finished at the Acholi level”.[9] Customary leaders believe that they are best suited to deal with land disputes under customary tenure. However, the resolutions from mediations made by customary institutions are not binding legally because they do not have a legal status: it is up to the conflicting parties to choose to accept the

resolutions or not. Customary institutions are relevant where there is dialogue but when it comes to litigation they become irrelevant. Customary institutions make decisions but they do not have the authority to enforce their decisions. For example a cultural leader noted that "people who have money do not respect our rulings on land and our poverty contributes to people not honouring our decisions".[10] However, it is also important to note that mediation teams are not always neutral, there is preferential treatment given to conflicting parties because of the relations that these conflicting parties have with institutions or people acting on behalf of the institutions. The fact that people do not believe that mediation teams are independent contributes to persistence of land disputes and land dispute going to many forums. The issue of legitimacy of both institutions is important not only based on what people think but also political alliances and relations. Both the customary and state institutions use these relations to become legitimate before one party and lose legitimacy before the other. But this also influences conflict resolution. The lack of impartiality undercuts the legitimacy of these institutions.

Competition between customary and statutory land institutions is displayed as representatives of one institution try to sell their mediation to the litigants while tarnishing the other institution. The land dispute mediation was used as a strategy to tell people that in case of a land dispute they should seek the services of traditional chiefs. Therefore, as well as on the one hand people want their land disputes resolved or land rights recognized by institutions, the institutions use land dispute resolution to legitimize their power and authority on the other hand. The multiplicity of land institutions gives an opportunity to their representatives to prove their relevancy and market themselves in land governance. Important to emphasize is that institutional competition and ambiguity explored in the previous section is not only a single case study but a condition that is prevalent in all post-conflict settings. This is shown by other interviews not specifically related to the Kigwe case that were conducted throughout the Acholi sub-region.

The impact of war on land institutions

Some Acholi people still believe that clan leaders have authority and control over land governance. They still envisage the pre-war picture of land governance, where people adhered to what traditional chiefs said in relation to land, where cultural norms, traditional practices and customs applied to land and where the population was smaller with less land disputes. However, land governance in Acholi has changed due to the 20 years' war and in reality customary institutions no longer have the authority to manage land. This is also attributed to the deliberate effort by the state not to respect or recognize the authority of customary chiefs to govern land. Statutory institutions claimed a greater role in managing land under customary tenure through the issuance of CCOs on customary land which makes them competitors for power over land under customary tenure.

The war created a vacuum in land governance, for both customary and statutory institutions that deal with land governance, because there was a power vacuum. People were displaced and land institutions became non-operational since people were not in position to demand for their services. War devastates the authority of cultural leaders that would have checked land disputes. Before the war the cultural institutions had a lot of authority over land but now it has reduced.[11] All the land disputes were solved by traditional leaders but now some people bypass traditional institutions and go to judicial courts. Clan leaders

were wealthy and commanded a lot of respect and authority and did not need to be corrupted.[12] However, during the war the customary chiefs of Acholi lived in the same IDP camps with their subjects, struggled for basic necessities of life like food, clothing, shelter like their subjects and this had a detrimental effect on the authority that the chiefs commended. The consequences of this, is that decisions that are made by chiefs about land governance are no longer respected. "After war we even need to be facilitated to go to locus to mediate conflicts. Yes we speak but there is nothing to make our ruling firm".[13] Thus, in such circumstances when the traditional chiefs who are the custodians of customary tenure no longer have the authority to determine land claims then space is created for land disputes to linger on without proper resolutions.

Simultaneously, the government put in place new administrative structures to better administer and control Achol land when it took over power. Despite the fact that many of these institutions were not fully operational it led to the creation of parallel structures. As we observe this leads to confusion and strategic manoeuvring by people having conflicts. This leads to the exclusion of the poor or vulnerable groups in land matters because they may not have the money to shop from one institution to another in the pursuit of justice to land disputes. Both customary and statutory institutions have problems while dealing with land disputes. Customary leaders may settle the vast majority of disputes but their decisions cannot be legally enforced, so they are dependent on their moral authority, which is jeopardized by the war. The formal justice system is marred with corruption, time wastage and it is expensive but its rulings can be executed. Like one respondent noted that the "magistrate court favours people with money this makes me fear to take my land dispute to the courts of law".[14] Local people indicated that they prefer reporting land disputes to customary leaders or authorities like chiefs and structures closer to them because they are cost effective, time saving and they employ friendly means of dealing with land disputes like mediation. "We should go back to the traditional means of solving land disputes, the Rwodi Kweri know where boundaries pass and the size of land people own."[15] The government should take away land management from the LCs and leave it to the chiefs because LCs are minting money from land cases, for a land case to be heard one has to part with over 80,000shs which is equivalent to US$32.[16] The people who can afford to pay that money win the cases. This has contributed to land disputes not being solved but also people who do not have money accept to die on their land. The real poor owners of the land may lose their land rights because they do not have money to pay to LCs or make appeals in the higher courts.

LC2 chairpersons disputed the bribery allegations and claimed that even if a poor person wins a land dispute, the party that loses always says that the person who won the case gave the LC committee a bribe. LC2 chairpersons interviewed continued to emphasize that the problem is that the first person who takes the case to the LC even if they are wrong or the offenders; they expect sympathy and the LC to rule in their favour. "And if the LC is not careful he might make mistakes and people will say that the LC was bribed".[17]

However, as we have seen, traditional leaders also have personal interests in mediating land disputes; some of them do not handle land disputes in the right manner because of poverty and power relations. The moral values of traditional institutions have been infected by corruption and harsh economic conditions.[18] Some traditional leaders are not neutral while dealing with land disputes they tend to ally with the state and combine land

matters with politics at the expense of the local people's land rights. During elections chiefs become politicians, chiefs are not neutral, chiefs make decisions without consultation.[19]

The case of Kigwe also shows that when confusion about land conflict management and the multiplicity of land institutions soar, the use of violence in land disputes escalates. People resort to violence because they do not know where to report their land dispute or approached multiple land institutions that fail to resolve land disputes. For example, during an interview with the family of Akena, they expounded that "we use violence because it brings quicker solutions than following the law and other structures".[20] When we cross checked with the records of one police post, in a month more than 10 cases had been received and recorded by police about malicious damage, assault, threatening violence which were all related to land disputes.[21] From the Kigwe case we can infer that the use of violence in land conflict resolution is connected to loss of confidence in land institutions. When people lose trust in land administration institutions that handle land disputes, they use violence to solve their land dispute cases and protect their interests or rights to land.

However, on the other hand the multiplicity of land institutions might create opportunities for land conflict resolution because people have options to choose from. The result of people not knowing where to report their land disputes is forum shopping, where people go to as many institutions until their interests in land are served even if they are the perpetuators of the land dispute. For such individuals it is not about having the right claims to land but being able to validate those claims through the various land institutions. Based on field observations, competition among land governance institutions may contribute to land conflict resolution. As a result of competition some land institutions become strengthened and better equipped to manage land disputes. When people choose a particular institution or forum to take their land disputes, those that are not chosen improve their services to have more clients. Or those institutions might close down because they do not have clients and they leave the stronger better institutions to deal with land matters. In northern Uganda customary structures are becoming stronger, for example a traditional leader noted that the cases that are referred back to the chiefs from the magistrate courts bring back honour and authority to the chiefs.[22] In the process of confusion in land conflict resolution, customary institutions have become a preference for the people because they are regarded to be cheaper, accessible, employ more friendly means of land conflict resolution like mediation. Therefore, if customary chiefs manage to organize themselves better and improve their reputation by judging in an impartial way in land disputes they might become an attractive option for the people. On the contrary statutory structures that are charged with land conflict resolution like LC and magistrate courts are regarded expensive, time wasting, easily corruptible and for the rich.

Conclusion

Decentralization in northern Uganda pushes aside or takes over roles of customary institutions by creating parallel structures. Customary institutions are made less relevant when decentralized land structures such as area land committee are introduced or created and the relationship between the state and customary tenure becomes more antagonistic. By introducing CCOs the state undermines customary authority over land. At the most, one can say that the "state effectively bypasses customary institutions" in order to govern

customary land directly. The relationship between state and land is shaped by both statutory and customary institutions. However, customary institutions can operate within the boundaries set by statutory institutions. The state significantly impacts on the way customary land institutions operate either by legitimizing their authority over land governance or by coercing them to forcefully evolve and become more like statutory institutions. The politics that is played by both customary and statutory land institutions during land governance contributes to the process of state formation by "gathering authority over persons and resources" (Lund and Boone 2013, 2).

Despite decentralization, land conflicts are still rampant in northern Uganda. Therefore, decentralization is ineffective in ensuring better treatment of land disputes in post-conflict northern Uganda. The presence of many forums for dispute resolution leads to fierce competition among representatives of these institutions who become entangled in political struggles while trying to authorize land claims. This may lead to the weakening of those land institution because people lose trust in them. Example is the Kigwe land dispute which was taken to six forums/institutions but not resolved. Therefore, it might not be about the number and character of land governance institutions but about their legitimacy and their ability to authorize people's claims to land. Local people prefer a better division of tasks and responsibilities among the institutions that deal with land matters in order to make the institutions relevant. In post-conflict North Uganda a large number of land institutions came into play leading to indecision in the solution of land conflicts therefore harmonizing the activities and normative frameworks of these land institutions to resolve land disputes and protect land rights is critical.

The availability of options or choices in land dispute resolution that is brought in by decentralization further complicates the process of resolving land disputes. Not only do people resort to land governance institutions to have their land disputes resolved, but also these institutions use that opportunity to rebuild their authority in post-conflict setting for example in the case of Kigwe where the customary institution used the mediation to sell itself to local people. In many cases, the result is unresolved land disputes and intensification of conflicts as people leap from one institution to another because of the fierce competition between the statutory and customary land institutions over who has authority. However, confusion in land conflict resolution is one of the avenues through which institutions can achieve their legitimacy and this process of resolving land disputes makes some institutions more powerful and relevant than others. When conflicts emerge, space is created for institutions which can then deal with such conflicts. The state of confusion in land resolution may only be a phase that leads to legitimizing land rights and strengthening land institutions.

Legal pluralism is a reality and a situation which will not go away soon; therefore, there is need to understand how both customary and statutory institutions can work together in order to improve tenure security and land dispute resolution. Local people in Northern Uganda prefer approaching customary institutions while seeking redress to land disputes; however, it is very critical to enhance the authority and legitimacy of customary institutions so that their resolutions on land conflicts can be legally enforced. Critical to mention is customary tenure should be left to evolve gradually since is not static rather than imposing the superiority of statutory systems on customary tenure in the bid to change it like the case of issuing CCOs. This is possible because natural evolution of customary tenure is affected by state and market policies and in certain cases by violent conflict. The state

can create more space for customary institutions to locally determine their rules. Therefore, it does not make sense to replace customary systems with statutory systems or to make adaptations in the two systems as has been argued elsewhere (Migot-Adholla and Bruce 1994) because the very co-existence and ongoing change in a post-conflict situation (and also in normal life) will always give rise to new legal shopping platforms, thus creating new contestations and conflicts. Better coordination between statutory and customary institutions is of critical importance. To reduce the confusion in land conflict resolution, clarifying responsibilities of customary institutions and statutory institutions is essential.

Notes

1. Cap.227 section 4 (1) of 1998 Land Act.
2. Interview with district official Amuru, 7-11-2012, interview with court official, Amuru 22-05-2012 and field observations 2011−2013.
3. This research is part of a PhD project on land governance reform in northern Uganda, which is a component of the larger Grounding Land Governance program that was funded by NWO-WOTRO, Science for Global Development grant number W 01.65.332.00.
4. Article 243 (2a) of the 1995 constitution.
5. Interview with a customary leader, Gulu 14-11-2011.
6. FGD with elders, Pabbo 28-09-2012.
7. Land dispute mediation in Kigwe 01-03-2012.
8. Land dispute mediation in Kigwe 01-03-2012.
9. Land dispute mediation in Kigwe 01-03-2012.
10. Interview with a customary leader, Pabbo 09-11-2012.
11. Interview with customary leader, Appa 06-05-2013.
12. Interview with a cultural leader 14-11-2011.
13. Interview with a cultural leader 20-11-2012.
14. Interview with a 56 year old, Unyama 18-09-2012.
15. Interviews with an elder, Gulu 02-03-2012, 12-11-2012.
16. Focus group discussion Pabbo 22-09-2012.
17. Interviews with LC 2 chairmen 19-09-2012 and 10-11-2012.
18. Informal discussion with a judge 14-11-2011.
19. Interview with cultural leader, 06-11-2012.
20. Interview with a family with a land dispute, 11-03-2013.
21. Interview with police man and records at the police post, 18-11-2012.
22. Interview with cultural leader, 06-11-2012.

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