

## Chapter 3

# Conflicts

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### **Navigating Legal Pluralism**

I know everybody here has mentioned that they prefer to use the *Rwot Kweri* because they know the land boundaries and resolve the cases faster and more cheaply . . . but for me I would prefer to consult the resolution bodies according to the help they can offer. If local leaders are the ones who say that women have no rights, then I would rather go to people who respect and understand me . . .

Sylvia caught Irene's attention when she disagreed with other participants during a focus group discussion on land conflicts organized in Amuru sub-county. By coincidence, on the way to the market the same day, Irene had met Lanyuru, who is Sylvia's brother-in-law and the person with whom Sylvia was having the land conflict. Lanyuru had just been elected as a member of the Area Land Committee for Amuru sub-county and was about to undertake training in the roles of 'Protecting the Rights of the Vulnerable' (including widows, orphans and people with a disability), provided by the NGO that Irene was working for.

A bit careful and reluctant at first, Lanyuru later opened up to Irene and started giving his point of view on the conflict. According to him, Sylvia married Acaye Peter (Lanyuru's brother) in 1979 and had six children with him (two sons and four daughters). Acaye was a police officer; he worked in towns outside of his home area most of the time. In 1990, while they were living in Gulu town, Acaye became sick and violent, and Sylvia's family withdrew her from Acaye. Sylvia

was taken to her natal home, which is only about 4 kilometres from her marital home, together with all six children. She continued to receive financial support from Acaye and returned for his burial when he committed suicide in 1992. She also processed Acaye's gratuity as his widow, which she used to look after the children and herself from her natal home. In about 1996, as everyone moved to Internally Displaced Persons (IDP) Camps, Sylvia moved into a camp near her natal home. The impression Irene had was that Lanyuru, Acaye's eldest surviving brother, who used to live with Acaye while studying in Gulu (Acaye was paying for his school fees), resented the fact that Sylvia had taken his late brother's property after abandoning him.

When Irene asked Lanyuru about the dispute with Sylvia, he declared that the issue had already been settled in early 2014 with the help of a Non-Governmental Organization, which had also promised to provide further assistance in planting boundary trees between him and Sylvia. When Irene prompted Lanyuru on whether this was necessary, since they were in-laws, Lanyuru explained that Sylvia is never satisfied. 'It is her who wanted this,' he said. Lanyuru has accepted this idea of planting trees to avoid further problems with Sylvia, whom he described as a very ambitious woman. At this point, Lanyuru informed Irene that Sylvia had wrongly accused him twice before of destroying her huts, but the police had found no merit in the case and simply requested them to settle the matter from home as a family.

Three weeks after talking to Lanyuru, Irene scheduled an interview with Sylvia. Sylvia first told the story of her marriage, which confirmed Lanyuru's account. She then explained that in her land dispute with Lanyuru she had asked the help of almost all the leaders including the *Rwot Kweri*, clan elders, the Local Council chairperson and the Non-Governmental Organisation. Sylvia noted that the dispute with Lanyuru started way back in 2007. She said that when most people in IDP camps started returning to their pre-displacement homes, she informed Lanyuru that she would be returning to her late husband's home and not her own father's home, where she had lived prior to displacement after having left her husband. Sylvia observed that she faced a lot of resistance from both Lanyuru and his mother, who were hesitant to allocate her space for her hut and a garden to dig. Sylvia decided to involve some clan elders and the Local Council 1 in 2008. Both of these advised Lanyuru to provide space to Sylvia.

In 2009, when Sylvia finally returned with the hope of resettling on her late husband's portion of land, Lanyuru was loath to allow her into the family home. Lanyuru had already put up his home on a piece of land where Sylvia and her late husband had had a hut in the late 1980s, which they used whenever they came for holidays in the village. Lanyuru used to live with them in Gulu and would also come back and stay with them during holidays, in the same compound that he was now claiming to be his. Despite Lanyuru's resistance, Sylvia started to put up a hut about 80 meters from Lanyuru's compound without his consent, on a

piece of land that she claimed belonged to and was used by her late husband. While she was putting up the hut, Lanyuru verbally insulted her, accusing her of bringing back the same witchcraft that she had used to kill his brother Acaye (Sylvia's husband). A week later, before she thatched the hut, she found her hut broken, an issue she reported to the police, accusing Lanyuru. Sylvia rebuilt the hut and followed up this case with the police until 2010.

At the same time, the Catholic church offered to construct a hut for Sylvia (who was an active member of the church) on part of the church land where they build huts for the vulnerable. Sylvia rejected this offer and preferred to stay amidst Lanyuru's disturbances. Sylvia felt that if she accepted the church's offer, then she would never get back her husband's portion of the land. She felt she needed to stand and defend this land for her children. In Sylvia's words, 'If I don't stand strong, where will my sons find land? I am fighting because of them.' Sylvia also brought up this issue during one of the main clan meetings held in late 2012.

At that clan meeting, Lanyuru asked Sylvia to refund the bridewealth because she had abandoned her husband. The elders resolved that she did not have to refund bridewealth and could stay on her late husband's land. Despite this dispute resolution, Lanyuru continued to disturb Sylvia. Lanyuru would farm up to 10 meters from Sylvia's hut and continued to insult and threaten her, claiming that Sylvia had killed her husband and was bringing witchcraft to the family. Lacking farming land around her, Sylvia used land at her natal home, and she also borrowed land from an elder of her husband's clan. According to Sylvia, both judgements made by the clan elders and by the big clan meeting had advised that she should not be chased away, but she was not satisfied with these rulings, because there was no boundary settlement indicating the limits of the land she would be given.

The clan meeting had advised that Sylvia and Lanyuru should work with the *Rwot Kweri* to finalize the details of the land demarcation, but Sylvia said that she had no trust that the *Rwot Kweri* would be fair to her, as he was closely related to Lanyuru. After some preliminary meetings with the *Rwot Kweri*, and sensing that his decision would not be in her favour, Sylvia decided to report the case to an international NGO (Action Aid) with a field office in Amuru as a case of domestic violence. Action Aid referred her to Ugandan Land Alliance, a national NGO in Amuru, which specializes in land dispute resolution. A meeting was organized in which the NGO, the LC1 and some of the elders were present. At the end of the meeting, the land was divided equally among all the brothers in the family, including those who had passed away but had had children. Notably, land was allocated to two daughters of Acaye's late brother in case they ever returned from their maternal home (Sylvia is currently digging on this land). The two daughters were not present during this division; they were still young at the time, between 15 and 17 years of age.

As Irene was walking back late one evening to find a place to eat at a local restaurant, she met Lanyuru and the *Rwot Kweri*. As they chatted casually and

the discussion drifted to Sylvia's case, Lanyuru and the *Rwot Kweri* told Irene that they did respect the rights of women, but that some women, like Sylvia, liked to take advantage of being women and ran everywhere with false accusations to get support. (Having been trained by Irene through the NGO she worked for, Lanyuru may well have wanted to assure her about his commitment to women's rights.)

The following day, Irene visited Lanyuru's compound for the first time. Lanyuru's home is located along the highway about two kilometres from the sub-county headquarters and 10 kilometres from the Town Council. While this place used to be of little significance in the past, the value of land along the highway has skyrocketed since the return phase commenced in 2006 and since Amuru was declared a district in 2007. Lanyuru showed Irene Sylvia's hut and said: 'If I had chased her away, would her hut still be standing there?' Irene's impression was that Lanyuru did not want to disobey the clan elders but also did not want to give Sylvia space beyond the hut. Lanyuru wanted to remain in control of the land. He had planted cassava up to 10 meters from Sylvia's hut and Sylvia only had a hut and no garden. Lanyuru claimed that he had allocated farming land elsewhere to Sylvia but that she had rejected his offer.

Up until this point, both parties had had a very good rapport with Irene. They knew that Irene was talking to both of them. In November of 2015, after almost a year, Irene met with Sylvia again. The demarcation trees had not yet been planted; the NGO was still waiting for funding. Sylvia was still complaining that Lanyuru was insulting and threatening her. However, Sylvia was excited about her daughters' impending marriage. She mentioned that two of her daughters would be married soon, and to Irene's surprise, she said that Lanyuru was helping with the organization and would be standing in as the father to her daughters, since he was her husband's eldest surviving brother. Sylvia's daughters had started to construct a permanent house for her on part of the land that was allocated to her. The house was at the foundation level.

Sylvia was quick to note that she did not in any way hate Lanyuru; it was just Lanyuru who had problems that Sylvia did not understand. She said that Lanyuru did not like her last-born son, a 15-year-old boy called Reagan, and always shouted at him. Noticing Irene's surprise at the age of the boy, she seemed a bit uneasy. She then said that Reagan is the son she had from Ocaya, a clan brother to her late husband, who inherited her after her husband's death.

Madam, I don't like bringing this up, but I think Lanyuru still holds a grudge against me because I refused to be inherited by him. . . . It would have seemed really wrong to be inherited by him because Lanyuru is like a son to me. He used to live with us when my husband was still alive, we paid his school fees, and when he got his wife he stayed in my house . . .

Despite the conflict with Lanyuru, Sylvia seemed to recognize his traditional authority as the legal heir to her late husband's family. Yet, she despised Lanyuru as an irresponsible drunkard who had done nothing with his school education except get wasted. She alleged that Lanyuru did not even look after his wife let alone himself.

A follow up visit in early 2016 revealed that Sylvia now had five new huts in her compound: three for herself and two for her last-born son from her marriage with Acaye. The boundary trees had not yet been planted; she complained that Lanyuru and her mother-in-law continued to be indifferent towards her. Sylvia then started talking about her relationship with Ocaya, the clan brother of her late husband, who had inherited her. In Sylvia's opinion, Lanyuru and his mother thought that Sylvia was taking Acaye's wealth further from the family to transfer it to Ocaya, although she only stayed with Ocaya from 1998 to 2004 and the relationship ended there. (Sylvia was not comfortable talking about the reasons why the relationship ended.)

Sylvia continued to complain of the unfairness in the land division and insisted that the land that was divided was the portion she and her late husband utilized. Sylvia was now calling for another clan meeting to plant trees on the boundary between her and Lanyuru, to make sure that no one would be trespassing boundaries in the future. Prior to Irene's visit in early 2016, Sylvia had reported Lanyuru for trying to bewitch her, and her accusation had been taken up in a clan meeting.

Later, in another interview, Lanyuru openly talked to Irene about his feelings on Sylvia's relationship with Ocaya. He had no kind words for Sylvia: 'She should be ashamed of herself to even want to have a voice here . . . She disappeared with all the wealth my brother left, moved out with so many men, and now comes back after 20 years as a wife in this home.' Lanyuru noted that he was merely respecting the clan's decision that Sylvia be allowed to return because of her sons. However, he thought that Reagan, the son Sylvia had with Ocaya, should be looked after by Ocaya and be allocated land at Ocaya's place. 'I want him to take responsibility; he should give the boy space for digging. It feels like he benefited, and he is now bringing back all the burden to us.' On the other hand, he had no problem allocating land to Sylvia's other sons.

Irene then paid a visit to Ocaya (more than 30 km away from Lanyuru's home) to get his point of view. Ocaya was about three years older than Sylvia and looked in a much better financial position than Lanyuru; he was a retired soldier who had returned home from Kampala around 1997. His land was about three hundred hectares, and he lived there with his two wives. In Ocaya's opinion, Sylvia and Lanyuru were not really disputing land ownership; the matter was that Lanyuru still held a grudge against Sylvia for refusing to be inherited by him. Ocaya also offered Sylvia digging space at his home, but she declined the offer.

He offered the same for his son Reagan, as he had no problem taking full custody of him, but Sylvia was unwilling to let Reagan live with him.

When Irene had a chance to speak to the Local Council 1 chairperson later in the evening at the trading centre, she found out that Lanyuru and Sylvia had long had disagreements from the time when Acaye was very ill and immediately following his death. They also had a dispute over Acaye's gratuity payments. Lanyuru felt that Sylvia had no right to take this gratuity, since she had abandoned her husband while he was sick and gone to stay at her natal home. However, the administrative authorities ordered Lanyuru to leave this gratuity for Sylvia as Acaye's widow. Irene also understood from the Local Council 1 chairman that the family land stretched over 3 to 4 kilometers off the roadside but that only the land along the roadside was divided (Lanyuru and his other brothers continue to farm on the undivided land). The LC1, who took part in dividing the land, thought that both Lanyuru and Sylvia were specifically interested in the land near the roadside because of its speculative value.

### **Of What Is This a Case?**

Post-war northern Uganda is characterized by numerous and serious land conflicts. It is also characterized by many competing institutions involved in conflict resolution. In this chapter, we take as a point of departure the case of Sylvia, a woman who has been involved in a long land conflict with her in-laws, and who has succeeded in gaining what she wanted, against all odds (see also Anying and Gausset 2017 for another discussion of this case). Hers is a specific example of the general practice of forum shopping – that is, selecting from among a variety of conflict management institutions, according to an actor's assessment of convenience, fairness or advantage, and trustworthiness. We discuss some of the weaknesses of the current forum shopping practice (located mainly in the strong focus on mediations, an approach that is cynically manipulated by some to gain undue advantages). Sylvia's case illustrates how those involved in disputes put their trust in some institutions above others. Often this has to do with the social conflicts found at the root of land conflicts – a point which is often overlooked by scholars, who tend to focus primarily on the issue of rights and power. The existence of underlying social conflicts gives traditional authorities a prominent role in conflict resolution.

We suggest that the different fora are more collaborative than competitive in resolving land conflicts. And we conclude by acknowledging the positive role that the plurality of fora and the practice of forum shopping have had in successfully resolving land conflicts and securing more peace in northern Uganda.

Among the fora that were in play in Sylvia's case, some are mandated by the Land Act to handle dispute resolution. Others deal with land conflicts even though they are not mandated to do so. This plurality of fora is thus both norma-

tive and empirical; normative because it is embodied in legislation that recognizes different fora and stipulates how they are accommodated within the state and interact with each other, and empirical because people experiencing conflict have recourse to a variety of institutions, including some that have no normative or official role to play in conflict resolution; these fora might not exist *de jure*, but they exist *de facto*.

## Normative Pluralism

The Land Act cap 227, which regulates land relations in Uganda, recognizes both the Traditional Institutions as well as the land tribunals and mandates the Magistrates' formal courts and the Local Council Courts to manage disputes relating to customary land tenure. (See sections 76 and 88 of the Land Act).

### *Local Council Courts (LCC) System*

The Local Council Courts (LCC) were established under the Local Council Courts Act of 2006, which regulates their jurisdiction and mode of operation. LCCs are the lowest units with administrative, legislative and judicial powers on behalf of the central government. There are three levels of courts: 'sub-county' (LCC3), 'parish' (LCC2) and 'village' (LCC1).<sup>1</sup> Appeals from the LCC3 lie with the Chief Magistrate, and if the appeal involves a substantial question of law or appears to have caused a substantial miscarriage of justice, it goes to the High Court.

In Customary Land Dispute Management, the LCCs are only bound by geographical jurisdiction. They are obliged to handle matters within their geographical limits (village, parish or sub-county). The sitting areas are flexible; the court sessions may be held at any place so long as it is within the designated geographical limit. The procedures are simplified, and hearings are informal, conducted in indigenous languages. The claims are instituted by making an oral complaint to the chairperson of the court, which is committed to writing by the chairperson or any other person appointed to do so. The court is in no way obliged or required to follow any technical rules of evidence or procedure but is guided by principles of natural justice.

At the time of this research, the LCCs had no legal mandate to sit as a court and pass judgment, as per the constitutional court ruling, until fresh elections were held, which occurred in 2019. However, the courts continued to operate at the grassroots, receiving cases, holding hearings and charging fees. They also continued to pass judgments, declaring winners and losers. The LCCs were, however, aware of their legal status, and in most cases if their decisions were not respected they referred cases to NGOs or to the government offices. The LCC of Lamogi specifically claimed they wielded political authority, which is the very reason why the other fora such as the *Rwot Kweri* have to cooperate with the LCC. The

individuals interviewed for the study paid no attention to the legal status of the LCCs. In practice, disputants continued to follow the hierarchy of the LCCs; in the first instance they made calls at the LCC1 and followed through the hierarchy up to the LCC3. During the hearings, the respective LCCs invited members of the Traditional Institutions as witnesses.

### *Formal Court System*

Generally, the state system of conflict management is based on English models introduced during the colonial times (1900 to 1962) and comprises Western-style laws and institutions. Uganda's state judicial system is relatively simple: Uganda has a three-tier judicial system with the Supreme Court as the apex court (Art. 129 Constitution). Below it is the Court of Appeal, which hears appeals from the High Court or special tribunals set up by an act of parliament. Below the Court of Appeal is the High Court of Uganda, which has unlimited original jurisdiction, which means that it can try any case of any value or crime of any magnitude. Appeals from Magistrates' Courts go to the High Court. Below the high court are the subordinate Courts, which include the Magistrates' Courts and the Local Council Courts levels 3–1 (sub-county, parish, and village). The Magistrates' Courts handle the bulk of civil and criminal cases in Uganda. They were legally the first point of contact for customary tenure land cases, since, as mentioned above, the LCCs had been declared illegal until fresh elections. The procedures before the Magistrates' Court takes a minimum of 60 days before a hearing can officially begin. An analysis of Amuru Court Registry made for the purposes of this research in 2015 indicates that cases take on average over 5 years to be resolved (see also Burke and Egaru 2011).

The grade 1 Magistrates' Courts are situated at almost all district headquarters. In northern Uganda-Acholi sub-region, there are two chief magisterial areas with five grade one Magistrates' Courts. One of the greatest challenges that is today facing the Magistrates' Courts is the backlog of cases. The cases take from a minimum of one year up to 5 years or even more. Statistical data obtained from the land registry (2012 to 2014) of Amuru District court in 2015 indicates that out of the 191 land cases filed between 2012 and 2014, only 33 had been finalized. And even then, many of these were dismissed because neither the plaintiff nor the defendant appeared before the court when the suit was called for hearing.

The trial before the Magistrates' Court is characterized by many adjournments and transfers of magistrates. Most of the disputants interviewed for the purpose of this study expressed weariness with following up their cases before the Magistrates' Courts. As a result of this, many litigants lose interest and try other fora that are faster and less expensive. This resonates with the view expressed by most individuals interviewed but also stakeholders, who noted that filing cases before the formal courts is used to compel the other party to cooperate. As one litigant expressed during a focus group discussion: if you are tired and have no



money to spend, then you just have to abandon your case or seek help from somewhere else.

Enforcement of land judgments are particularly challenging. Land issues, especially when it comes to evictions, are very sensitive in post-war northern Uganda. For an eviction to take place, more than one stakeholder must get involved in the execution of the judgment. This includes both those who are legally mandated and those who are not.

### *Traditional Authorities*

The role of traditional institutions is officially recognized under the Land Act. Although there is no uniform composition of the traditional power structure in Acholi sub-region, it can be broadly sketched as hierarchical, ranging from household level to the level of the chiefdom. The region is composed of chiefdoms, which are made up of various clans. The clans are subdivided into hamlets and further into households. The chiefdoms are headed by the *Rwot* (clan chief), and clans are headed by *Ladit Kaka* (clan heads). At the hamlet level, one finds heads of households (*Won Ot*), followed by heads of families (*Won Paco*). The land dispute resolution structure within the traditional institutions emanates within its socio-political structure. At the hamlet level, we have the head of household followed by the head of family and then the 'Chief of the Hoe' (*Rwot Kweri*, formally elected), a position created during the colonial administration. At the clan level, one finds the representative of the chief (*Lawang Rwot*) and the clan head (*Ladit Kaka*), and finally the clan chief (*Rwot Moo*), who is a member of the 'royal clan' dominating the region. Despite the hierarchy of traditional leaders/authority, there is no appeal structure within the traditional institutions. Cases are transferred back and forth among the leaders. Disputants therefore have the possibility to begin at the lowest level and gradually go higher up in the hierarchy if they are not satisfied with the outcome, or they can begin directly at the top of the hierarchy, or even go to more than one of the leaders simultaneously.

Choosing which traditional leader to approach is determined by several factors, including physical accessibility of leaders in terms of distance as well as fairness and comfort (Anying 2012). The other factors also include the nature of the conflict and the parties involved. The Chief of the Hoe (*Rwot Kweri*) is the most consulted traditional leader in land dispute resolution, but as emerged in Sylvia's case, he may not be trusted if he is on close terms with the opposing party.

The procedure before the traditional institutions is very informal, like that before the LCC. It is initiated through a verbal complaint to any of the traditional leaders within the hierarchy. In most cases, when a complaint is lodged, a letter is written to the person against whom the complaint is made, with a scheduled date for the mediation meeting. The 'respondent' in this case does not have to reply to the letter; he or she only has to make a physical appearance if he or she wishes.

Generally, the procedure before the Chief of the Hoe is very similar to that of the LCC. This is attributed to training that has been provided to them mainly by the NGOs on concepts such as natural justice and the rights of women and persons with disability. Traditional leaders try to work in close coordination with the other fora, namely the NGOs, the formal court system, and the LCCs. They must adapt to the procedures of other fora and to borrow from their concepts to remain relevant in the game of conflict resolution.

Instead of judging who is right and who is wrong, traditional leaders rely mainly on mediation and persuasion to try to find a peaceful solution. A mediation is a negotiation in which the third party (the mediator) facilitates the finding of a consensus among conflicting parties but has no right to decide or settle the issue (Nicolas 2020). In mediations that Irene attended while collecting data for this book chapter, the opening statements made by the traditional leaders reveal their approach. In the words of one of them: ‘we want *ber bedo* [loosely translated as harmonious living]. We are not a court and are not looking for a winner, in the past we lived in harmony, blood is thicker than water, and this is what we should look forward to.’ Consequently, the parties are often asked to compromise by letting go of some portions of the land for the sake of harmonious living. In instances where one of the parties is adamant, the practice varies from one Chief of the Hoe to another. Whereas some of them nonetheless go ahead and make a decision based on the majority views, others prefer to make no decision. It is important to point out that they do not just look at the question of ownership or land boundaries. Their decisions go well beyond legal questions, and they dig deep into local history and social relationships, including witchcraft allegations. This gives the traditional institutions an edge over the other fora such as the LCC or even the formal court system, which are more restricted. One officer of an NGO explained to Irene that the advantage with the traditional leaders is their ability to look at land rights from a social perspective. In his opinion, it is one of the reasons why some disputants insist on dealing with the traditional leaders as opposed to the courts or the LCC.

There is no provision in the law that stipulates how the decisions of the traditional institution are to be enforced. Accordingly, the outcome is not in any way legally binding on any of the parties. The parties are merely under a moral obligation to respect the decisions (Anying 2012). In Chapter 1 on Multiplicity, we saw how the clan meeting in 2015 attempted to deal with the conflicts on Stephen’s ancestral land (Land 6). But the decisions were not implemented, and the disputes on the southern and northern boundaries remained unresolved.

Generally, however, whenever the decisions of the traditional leaders do not build on consensus and are not respected, the party who does not accept the decision files a case with either the Local Council Court, an NGO or even with the Magistrates’ Court (Anying 2012). In such a scenario, the case is taken as a fresh suit, and the mediation results may be used as evidence in proceedings before the

court, but it is not in any way mandatory, and the court can come out with a completely different judgment.

## **Empirical/De facto Pluralism**

In addition to the fora expressly mandated under the Land Act, there are a number of institutions that play a de facto (non-official) role in conflict resolutions, including elected and appointed government officials and NGOs.

### *Elected and Appointed Government Officials*

The appointed government officials that are most consulted for help in solving land conflicts are the Parish Chief at the Parish level, the Sub-county Chief and Community Development Officer at the Sub-county Level, and the office of the Resident District Commissioner at the District level.

Among the elected leaders, one also finds the head of the Local Council 5, who is the political head of the district. Save for the Resident District Commissioner, the other offices are legally mandated to play a role in land administration management, but none of them have any judicial function as far as the resolution of land disputes is concerned. The disputants, however, perceive them as having power, since they are government agencies. Consequently, when a letter is issued by these offices to either the LCC or even the traditional institution leaders such as the Chief of the Hoe (*Rwot Kweri*) they always act upon it.<sup>2</sup> The consultation and or consideration of the non-judicial government offices in the resolution of land matters is attributed to a reduction in power and penetration of the formal state courts, which continued immediately after the conflict.<sup>3</sup> Consequently, disputants view government officials as an alternative to traditional institutions.

The Resident District Commissioner (RDC) often plays a key role in land dispute management, as we saw in Case I, 'A Disputed Land Sale'. Although not mandated per se by the laws regulating land dispute management, the role of the RDC has become more prominent. This is because of their position within the districts but also because of the sensitivity of land disputes in post-war northern Uganda. The RDCs are mandated as substantive chairs to the district security committee. Since land disputes have become rampant following the declaration of return from the IDP camps, and since this is being viewed as a source of potential insecurity in the recovery of the region, the RDCs of northern Uganda have focused a lot of their attention on land issues and have intervened in land dispute management through organizing mediation meetings between and among the disputing parties. In this way, mediations have provided access to justice while at the same time relieving ordinary courts of law from heavy caseloads and backlogs (see also Bognitz 2020). These are either conducted at the invitation of one of the parties or at the initiative of the RDC when he or she feels that a particular dispute may lead to insecurity or turn into a violent situation. Although it is

not within the law, it has become a common practice that the Resident District Commissioner sanctions a legal judgment before it is enforced.

### *Non-Governmental Organizations*

In addition to the existing avenues for land conflict management, Non-Governmental Organizations (NGOs), community-based organizations (CBOs) and faith-based organizations (FBOs) also play a role in land dispute management. In post-war northern Uganda, the increase in number of land disputes set the stage for pronounced emphasis on land issues by civil society organizations and NGOs as they transitioned from war-related interventions to post-conflict and development activities (Hopwood and Atkinson 2013).

The NGOs provide legal aid including court representation for those who cannot afford legal fees, as well as legal advice and mediation between and among parties in a dispute. In addition, a number of NGOs also conduct community awareness sessions, targeting not only the community but also the local council leaders and the traditional institutions. The sensitizations focus on several issues including rights of women to property, general land rights as embodied in the Land Act, and general human rights issues as embodied in national and international instruments. They also offer training targeting specific groups such as LCC members, traditional leaders, Area Land Committees and women's groups, among others. They seek to empower the vulnerable groups but also the traditional institutions with knowledge on national and international human rights law through sensitization (Hopwood and Atkinson 2013). Specific procedures vary from NGO to NGO, but generally they require that any litigant asking for their help must have had the dispute attended to by a local leader, which includes either a traditional leader at any level within the locality or the LCC (preferably LCC1 or 2).

### **The Possibilities in Pluralism**

As can be seen, the plural terrain presents possibilities for disputants to approach any of the institutions. The choice that people must make is not just between formality or informality but between five different types of institutions (Magistrates' Courts, Local Council Courts, traditional leaders, government officials and civil society organizations) and between different embedded or independent actors within each of the five types described. Forum shopping can be successive (when litigants try one institution after another) but is most commonly simultaneous (several institutions are involved at the same time). Forum shopping can also be horizontal (involving different kinds of institutions), or they can be vertical (involving hierarchical actors within one kind of institution). Disputants can thus file a case before many different institutions – before the case is resolved and even after the case has been resolved, a situation that would otherwise be considered

res judicata (Helfer 1999; Unruh 2003). These possibilities are not restricted to the plaintiff; they also extend to the defendant. Since forum shopping is unregulated and the different institutions do not complement each other, all institutions may indeed make decisions over the same case. The only thing that extinguishes the thirst for new fora is the satisfaction of both parties in a conflict – that is, the consensual resolution of the conflict.

A few general observations can be made at this level. First, even though it is not the case in Sylvia's dispute, there is room for resolutions and mediations to go in opposing directions and contradict each other. In local communities, many people have links to local leaders, and this can affect the independence and objectivity of the solutions proposed. As we saw in Sylvia's case, she did not trust the *Rwot Kweri* because of his friendship with her opponent Lanyuru. Forum shopping can here appear as a kind of security against arbitrary judgements. But it can also be a source of insecurity when two resolutions provided by two different fora are in opposition. For example, some disputants can prevent the resolution of a conflict by refusing any settlement and by constantly involving new institutions until they are granted what they want. This renegotiation of authority and legitimacy in situations of institutional multiplicity is explored in several works (Francis and James 2003; Vandekerckhove 2011; Kobusingye, Van Leeuwen and Van Dijk 2016; Van Leeuwen 2017).

The general focus on finding a consensus rather than judging who is right and who is wrong or who is telling the truth (see Schlee 2020) can also be cynically exploited by an actor in bad faith, in that they can grab the land of someone else until mediation persuades that person to give up part of his land, as a conciliatory gesture and for the sake of social peace. In these cases, forum shopping and legal pluralism appear to be sources of insecurity.

Second, another key element is that many conflicts about land appear to be by-products of social conflicts. Personal relations and history play a big role in such conflicts: love, betrayal, jealousy, births, deaths, inheritance, and witchcraft accusations are often found under the surface of land conflicts. The authority of a family head in allocating land, or the land rights of a family member, can become challenged at the same time as the inheritance of power, the legitimacy of marriage or children, or the morality of a person is questioned. Land conflicts are at the centre of complex strategies to weave or sever social ties.

While Sylvia does recognize Lanyuru's authority as head of the family whenever it suits her needs (she asks his help to organize the marriage of her daughters and to solve the problems of her sons), she refuses Lanyuru's authority when it goes against her own interest, because she wants to establish her own independence. The fact that Sylvia succeeded in her endeavour, despite all odds, shows that women are not always powerless and marginalized, and that they can use forum shopping strategically to further their advantages (Anying and Gausset

2017). But the main point here is that this gives customary authorities a prominent role to play, since they remain the forum that deals primarily with social and family conflicts.

The entanglement of land conflicts with other social conflicts follows from the embeddedness of land entitlements, as we saw in Chapter 1 on Multiplicity. Land is not 'free' of social relations, and therefore conflicts such as that between Sylvia and Lanyuru are expressed as land conflicts. Attempting to deal with such land conflicts may exacerbate or defuse other conflicts.

Third, while most of the classical literature supports the popular thesis that legal pluralism is characterized by competition between and among the multiple fora for power and authority (Berry 2002; Unruh 2003; Tamanaha 2008; Sikor and Lund 2009; Mwangi 2010; Van Leeuwen 2014, 2017; Kobusingye, Van Leeuwen and Van Dijk 2016), our case and our understanding of the situation in northern Uganda points towards cooperation rather than competition. The competition described by scholars ranges from what norms, rules and procedures should apply in conflict resolution, to which organizations/institutions should be authorized to take charge under what particular circumstances (Van Leeuwen 2014). The competition is also presented as a venue for establishing and consolidating authority for the actors and institutions involved (Berry 2002; Boege 2006; Lund 2006; Sikor and Lund 2009; Huber 2010; Lund and Boone 2013). According to our cases and research, however, it appears that no forum in northern Uganda can succeed in resolving land conflicts alone. The weakness and slowness of the Magistrates' Court necessitates other fora. The local courts rely on the help and advice of customary chiefs. NGOs had recourse to the Magistrates' Court as a threat to push for mediation agreements. And customary authorities need the back-up of official institutions to have legitimacy. The different fora are interdependent, and even though their collaboration may at times be seen as a necessary evil, our research documents a genuine collaboration and a remarkable convergence and homogeneity in the advocated resolutions of a variety of cases. The widespread collaboration that is witnessed in practice between all fora can be interpreted both as a sign of weakness of each institution taken separately, and as a sign that each of them gains strength when joining forces with others. The multiplicity of fora can also be interpreted as the result of a grassroots demand for justice rather than as the result of resource capture by the different institutions involved.

## **Conclusion**

Post-conflict northern Uganda is characterized by extreme confusion in land matters (Branch 2007, 2008; Rugadya, Nsamba-Gayiiya and Kamusiime 2008; Dolan 2009; Vaughan and Stewart 2011; Whyte et al. 2013). After 10 to 20 years

being interned in camps, people were asked to ‘go back to where the war found them’. For people who were displaced several times during the conflict, determining where the war had found them was anything but an easy matter. The conflict has also created a lot of family problems, such as children born out of wedlock, sometimes as the result of rape by belligerents, often because of a lack of cattle to pay bridewealth. As a result, many children do not have a proper or clear clan membership and thereby lack the right to access customary land. Some families have been split by brothers fighting in opposite camps, which makes it difficult for them to cohabit on the same land. Adding to this the fact that the new Land Act was passed during war time when people lived in camps, that huge land speculation and commodification developed during the 20 years of conflicts, and that field boundaries (and many elders who knew about them) had disappeared during all the years in the camps, one can understand easily how land conflicts have become one of the most serious and most pressing problems in the region.

Despite this explosive situation, the level of violence in land conflicts has generally remained relatively low, and the institutions involved in conflict resolution have played an important role in creating order within an initially chaotic situation – even though there is still room for instrumentalizing legal pluralism to gain illegitimate advantages, as described above. All in all, we must recognize that the plurality of fora, despite some inconveniences and weaknesses, has been successful in resolving complex land disputes, and thus in furthering peace in an extremely difficult and pressing context, while at the same time securing the rights of vulnerable citizens.

The marginal role (not to say the failure) of Magistrates’ Courts in solving land disputes at a reasonable speed and cost has been compensated by a diversity of institutions that although competing in theory have been mainly collaborating to find reasonable settlements to the many conflicts that erupted after the return from the camps. More remarkably, this diversity of fora has also made it possible to address the social conflicts that are often found at the root of many land conflicts. Whereas modern institutions such as Magistrates’ Courts, government officials or NGOs tend to focus almost exclusively on rights and tenure when it comes to land conflict, traditional institutions have had much less difficulty in seeing land conflicts as symptoms or proxies of social conflicts and have been much better at addressing witchcraft accusations, problems of marriage and of clan membership (and thereby issues of land inheritance), and other social conflicts that are fuelling land conflicts. In other words, they address intimate governance, the theme of this book’s next section.

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## Notes

1. The LCC1 and LCC2 are composed of members of the executive committee, implying that the local councilors, who hold an elective position, play two roles: as executive officers of the local council and at the same time as (quasi) judicial officers of the LCC. LCC3, situated at the sub-county level, consists of five members appointed by the Town Council, division council or sub-county council on the recommendation of the respective executive committee. Hence unlike LCC1 and LCC2 members, LCC3 members only execute judicial functions.
2. In one of our focus group discussions, the Parish Chief of Amuru pointed to instances where people have been denied a letter of referral from a lower LCC to a higher LCC or even the Magistrates' Courts. When they do write referrals or even letters to such adamant leaders, they act upon instruction and refer the parties as required. This view was confirmed by a former sub-county chief of Amuru, who has himself participated in a number of mediations in his capacity as a sub-county chief.
3. In Amuru, for example, where most of this field data was collected, there was no district court until 2012. Even when the court was formally instituted in 2009, it was about 120 kilometers away from the district headquarters.

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