

# Strengthening traditional approaches to community-level land disputes: An action research project in western Uganda

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## **Abstract**

Since the discovery of oil in Bunyoro sub-region, land-related conflicts have grown rapidly. Traditional conflict resolution capacities, which were already in a state of disrepair, have been side-lined and the court system has been overwhelmed. Given this context, the objective of this research was to enhance the capacity of local peacebuilders to help resolve land conflicts in their communities. The research was based on an action research approach which involved three phases – exploring the issue, planning and implementing an intervention and evaluating the short-term outcomes. In the exploration phase, data was collected using focus group discussions

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with community members and in-depth interviews with key informants. In the intervention phase, an action team was formed to help resolve land-related conflicts in their communities, using traditional conflict resolution approaches. The short-term outcomes show that local peacebuilding capacities were enhanced and that many land-related conflicts were resolved using traditional conflict resolution approaches.

**Keywords:** peacebuilding, land conflicts, traditional conflict resolution, Uganda

## **1. Introduction**

When oil was discovered in western Uganda in 2006, there were high hopes of increases in government revenue, enhanced employment opportunities and a general improvement in the standards of living of the people of Uganda at regional and national levels (Refugee Law Project 2014:206; Olanya 2015:49). The realisation of such hopes, however, has been hindered by a massive increase in land-related conflicts at a number of levels.

Multinational corporations, with government approval, have compulsorily acquired land. Domestically-owned companies and rich individuals have engaged in various forms of land grabbing, for which compensation has typically been delayed or denied. At the community level, perhaps encouraged by government and corporate behaviour and the increased value of land, increasing numbers of individuals have encroached onto their neighbour's land. The court system has been overwhelmed by the number of cases, and the district land tribunals established to oversee compensation for land acquired by government have a poor track record. At the same time, in many areas, traditional conflict resolution practices have fallen into disrepair. The overall result has been increasing conflict, alienation and disharmony in the region (International Alert 2013; Kizito 2015:30–41).

This research project focused on community-level land disputes in the Bunyoro sub-region of western Uganda. The overall aim of the project was

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to enhance local capacities to resolve community-level land disputes before they erupted into violence. The specific objectives were

- To explore the nature, causes and consequences of community-level land disputes in the Bunyoro sub-region of western Uganda.
- To design and implement a programme to support traditional methods of resolving such disputes.
- To undertake a preliminary evaluation of the outcomes of the programme.

## 2. Relevant literature

A number of recent studies have documented traditional African conflict resolution processes with a view to encouraging their use for non-traditional conflicts. Overviews may be found in Issifu and Asante (2016), Kariuki (2015) and Kiyala (2016). These processes include *Mato oput*, as used by the Acholi of northern Uganda, the *Baraza* system operating across central Africa, the *Fambul tok* in Sierra Leone and the *Gacaca* traditional courts of Rwanda. Common features of these traditional approaches are the involvement of all community members with an interest in the conflict to make their experiences and opinions known, the seeking of consensus concerning what actions should be undertaken by the offender, and the imperative of restoring social harmony.

Murithi (2002:292–293) highlights five stages of conflict resolution under *Mato oput* which are paralleled in most traditional African methods of conflict resolution. In the first stage, following the presentation of evidence by witnesses, offenders are encouraged to accept responsibility for the offences committed. The second stage encourages the offender to repent and show remorse. In the third stage, the offender is required to ask for forgiveness from the victim and the victim is expected to be merciful and forgive. Then, depending on the nature of the case, it is expected that the offender will pay compensation to the victim. The last stage is a process of reconciliation between the representatives of the offender and the victim which involves drinking a bitter herb obtained from *oput* tree to signify the efforts made to restore harmony and social trust (Murithi 2002:293–294).

It is well known that a modified version of the traditional court system *Gacaca* was used to handle tens of thousands of cases resulting from Rwanda's 1994 genocide. Under the traditional system, conflicting parties were required to air their grievances at a public hearing which had more elements of a court than *Mato oput* (Brehm, Uggen and Gasanabo 2014:336–337) but which retains the five stages listed above. During this hearing, offenders were expected to confess their crimes, express remorse and ask for forgiveness from the victims. The court sessions were presided over by a panel of judges called *Inyangamugayo* ('those who detest dishonesty') who acquired this status as a result of their perceived wisdom and integrity. Ingelaere (2008:33–35) notes that the judges were responsible for determining guilt, deciding on the nature and levels of compensation and supervising the reconciliation process. The overarching aim of traditional *Gacaca* was to restore social harmony in the communities (Rettig 2008:27; Kariuki 2015:33–34). It is worth noting that all family/clan members collectively shared the blame for a crime committed by their son/daughter and were responsible for ensuring that payment of compensation was carried out (Ingelaere 2008:44).

An important issue is the capacity of traditional conflict resolution processes to handle non-traditional conflicts. The use of a modified *Gacaca* to tackle the huge numbers of prisoners awaiting trial for genocide-related crimes in Rwanda has been widely studied (e.g. Ingelaere 2008; Wielenga and Harris 2015; Doughty 2015; Towner 2015). Another study examined the capacity of the *Baraza* to deal with the reintegration of former child soldiers in the Democratic Republic of the Congo (Kiyala 2015; 2016; 2018). The procedures follow the broad steps described for *Mato oput* and proved able, despite the decline and disarray of *Baraza* as a result of civil war, to provide justice to the satisfaction of victims and so facilitate reintegration.

Given this background, we now explore the current processes of dealing with land-related disputes in the Bunyoro sub-region of western Uganda and assess their effectiveness. The research was based on a participatory action research approach.

### **3. Current methods of handling land disputes in Bunyoro**

There are a number of players involved in land-related conflicts in Bunyoro. Many politicians, business people, multinational corporations and government officials have been involved in bribery, corruption and intimidation committed in the process of land grabbing. Much of this has been documented by the land enquiry chaired by Justice Bamugemereire (Daily Monitor 2017). As noted, our focus is on community-level land disputes.

Community-level land disputes in Bunyoro were traditionally mediated by clan heads, whose role covered all forms of interpersonal, inter-group and inter-clan disputes as well as domestic disputes between men, women and children. Three common examples of land disputes are those between neighbours about boundaries, those after the death of a family head who died without a will (in which case relatives often took the land from the widow[s] and orphans), and intra-family disagreements about whether or not to sell land.

Local magistrate's courts deal with land disputes, and courts may refer cases to civil society organisations (CSOs) which are accredited to carry out mediations. CSOs may also receive complaints from individuals, in which case they may notify clan leaders to take over the mediation process. However, for a number of reasons, traditional mediation has reached a relatively weak state in Bunyoro. First, there has been a dramatic increase in the number of disputes following the discovery of oil. Second, the Bunyoro kingdom has no steady source of income to run various kingdom activities, which is a major reason why the Bunyoro kingdom is perceived to lack energy and initiative, unlike other kingdoms like Buganda, Acholi and Tooro. Third, people have lost trust in kingdom administration because of its involvement in bribery and corruption related to land grabbing and their alignment with the national ruling party. As a result, the trust and perceived impartiality which is the foundation of mediation has been badly damaged. Fourth, Bunyoro traditional leaders have not been effective in

resolving these emerging challenges in the region because they are not familiar with modern law and lack confidence in applying it.

#### **4. Research methods**

A central feature of action research is that participants themselves find solutions to problems rather than have these imposed on them by outsiders (Koshy 2010; Herr and Anderson 2015; Kaye and Harris 2017). An action research approach typically has three phases – exploring the problem, planning and implementing an intervention, and evaluating the outcomes.

In the exploration phase, data was collected using focus group discussions with local people in positions of authority (five traditional chiefs, five clan leaders, five local council/village leaders) and in-depth interviews with key informants (two each from civil society organisations, oil companies, the judiciary and the police). In both cases, the groups were purposively chosen. The fieldwork data was supplemented by an examination of documents, ranging from academic papers through to various levels of grey literature, and structured and non-structured observation. In carrying out this data collection, the research ethics protocols of Durban University of Technology were strictly adhered to. The resulting data was analysed thematically. Creswell (2014:194–201) summarises the process of analysis as ‘organizing data, conducting a preliminary read-through of the database, coding and organizing themes, representing the data, and forming an interpretation of them’. The purpose was to draw research findings from dominant and significant themes which emerged from the raw data. Several methods were used, particularly member checking and triangulation, to test the trustworthiness of the collected data and the researchers’ interpretation of it.

#### **5. Themes from the exploratory stage**

Five main themes were identified from the interviews and focus group discussions. Some themes relate to the health of traditional conflict

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resolution mechanisms while others emanated from the new challenges caused by the discovery of oil in the Bunyoro region.

### **Theme one: Traditional peace infrastructures are inactive**

Traditional infrastructures for peace, from the family level up to the highest level in the Bunyoro kingdom, exist but are basically inactive. It is possible to attribute this to the modern lives to which people aspire and the view held by many that traditional ways are archaic and outdated. Apart from a few clan leaders who have been involved in mediating cases within their communities, traditional peace infrastructures have not been functioning to any extent. This explains why there are a myriad of unresolved conflicts in the region and a massive increase in the backlog in the magistrates' courts. A Police Community Liaison Officer noted:

If other structures responsible for resolving community conflicts were active in Bunyoro, we wouldn't be having many cases of violence here at the police. But because they are not doing what they are supposed to do, that's why you see the police yard is full of people coming to lodge in their complaints to us ... We should be sending back some of the cases which are not criminal in nature to be resolved by, let us say, the community courts, but they are not functional at all (Interview, 9 September 2017).

### **Theme two: Local councils, the police and civil society organisations have overshadowed traditional peacebuilding work**

Whenever there is a conflict or dispute, most people turn to local council leaders, the police or a CSO such as Healthy Communities Uganda or Navigators of Development Association (NAVODA). What has caused people to bypass traditional peacebuilding approaches?

First, it is evident that the kingdom leadership has been largely passive. When kingdoms were abolished in 1967, the national government took over kingdom assets. Following the resurgence of kingdoms which dates from the 1990s, other kingdoms made strenuous efforts to reclaim their former

assets but the Bunyoro kingdom has done little in this regard. An official from a CSO operating in Bunyoro commented as follows:

I think that traditional systems have been killed off by the new local council system ... I am very sure people would listen more to the local council chairperson than to the elder in the village. It does not mean that traditional systems have been wiped out but when we hope they would be active, they are more passive ... (Interview, 17 September 2017).

By contrast, CSOs have been active and most of the peacebuilding work is being done by CSOs and local council leaders. As a result, the conflicts which were once handled by traditional authorities are taken to the local council. Second, as noted, some kingdom officials have been involved in land grabbing, leading to a lack of trust in their ability to handle land disputes.

### **Theme three: Traditional leaders are ignorant of the law**

During the implementation stage with the action team, it emerged that those clan leaders who have been resolving conflicts are not aware of civil laws, especially as these relate to land. It was common for people who had relied on clan leaders following the death of the household head to find that the decisions had violated the law and so ended up in the courts. One clan leader confessed as follows during the training of the kingdom officials:

I have been involved in mediating land conflict and disputes between families, but I have not been aware that in a situation where the head of the family dies without a written will, the law requires that an official widow is supposed to have 15 per cent of the entire family land and to share the remaining 85 per cent with the rest, such as the children of the deceased. I have just learned this from these facilitators of today's training (Interview, 12 June 2017).

A number of informants pointed to the need for civic education about the laws governing the country. Several suggested that the 1995 Constitution and some important Acts be translated into local languages so that ordinary people can know the basic stipulations and so that government could

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commission CSOs to educate people in rural communities on issues such as land rights, land tenure systems, land transactions, the protection of land rights and succession and inheritance rights. Spreading such knowledge, it was argued, would build transparency, trust and justice.

### **Theme four: Communalism and trust over land are under threat**

In the past, land was freely available to those in need of it. The first person to live in an area was supposed to show where his land stopped and so make land available to the second, and so on. That said, precise boundaries were not defined. People in the past had strong trust in each other, to the extent of signing blood-pact agreements (cutting the body and licking each other's blood). However, the current generation is much less interested in past agreements. The story of one elderly man illustrates the point:

In the past, because wild animals were rampant during those days, whenever someone came looking for land, you could show him where you stay so that you live near each other, so if you were attacked by the wild animals, you would be assured that you have a neighbour ... to come to your rescue with his sons. However, it was hard to know the exact boundaries, since land was so vast and we were treating each other as brothers ... I came here because my sister was married here in Bunyoro in the 1950s, and she invited me to come from Kigezi region ... to occupy free, flat and fertile land here. I never had any complaints with my sister or brothers-in-law. [But] misunderstandings have come recently between her grandchildren and my grandsons after giving them their portions of land (Interview, 18 June 2017).

The discovery of oil has resulted in land being seen much more as an economic asset from which individuals can benefit and which is worth fighting for.

### **Theme five: Land compensation in Bunyoro region is problematic**

The informants considered land to be the single largest driver of family, individual, community and tribal conflicts in most parts of Uganda. In the Bunyoro region, people have been offered varying amounts of compensation, but some are still waiting to be compensated while others have not been offered or given anything at all (Civil Society Budget Advocacy Group 2017). This is one reason why the government decided to introduce the Land Acquisition Act of 2013 so that it can acquire land from individuals and compensate them as soon as it has acquired the land. However, there has been extensive criticism of the Act (e.g. Resty 2015) as a violation of individual property rights in the name of often unspecified development.

The issue of compensation was a common topic in the radio talk shows and community meetings during the period of this research. There was much dissatisfaction and bitterness about the levels of compensation granted to people whose property was acquired for government projects. An elderly man reflected the feelings of many people:

What the common man owns is being taken away by the government. When you look at what the government is doing to the common person it is saddening: instead of pulling us out of biting poverty, they are doing the opposite. Sometimes, we regret that oil was discovered in this region ... Instead of bringing a smile on our faces, we are losing what we worked for over many years. Can two million Uganda shillings help me acquire enough land for my family of eight members? (Interview, 12 May 2017).

Compensation has caused domestic violence in homes which have received compensation money. Rather than planning to buy another plot of land for the family, some men have misused it by marrying more women and resorting to prostitutes, while others are reported to have used it on 'wasteful expenditures'. At the end of the day, when the money is finished, their households are full of anger and conflict. However, in most homes, men are untouchable because Bunyoro is a patriarchal society.

## 6. The intervention phase

Action research, it will be recalled, involves planning and implementing an intervention to bring about desired change. Following a planning workshop, an action team of seven volunteers was set up, known as the Bunyoro Traditional Peacebuilding Action Team (BTPAT). The team comprised one clan leader, one elder, one kingdom official, two CSO members, one local council leader and one community member. The role of the first author was to facilitate their meetings and field activities. The BTPAT interventions focused on building understanding of traditional conflict resolution and encouraging its use in land disputes.

Traditional Bunyoro mediation involves five phases: an initiation stage, a preliminary stage, the actual mediation stage, the agreement drafting stage and, finally, the reconciliation stage. The initiation stage begins when a complainant approaches a chief/elder or clan leader seeking assistance. The chief/elder or clan leader listens carefully in order to see if the case is within his mandate. The complainant gives the names and contact details of the other party (the defendant) and the mediator invites him/her to a preliminary meeting. If the defendant appears (they may refuse), their side of the story is heard as well. With the accumulated information, the mediator tries to understand the conflict and how it can be resolved. The mediator also determines whether the case is civil or criminal, whether it can be mediated or whether it must be referred to the formal courts.

The second phase starts with a briefing on the ground rules, plus any other communication relevant to the parties to the dispute. Once the parties have agreed to mediation, there is work to be done with them with the hope of restoring the good relationship that previously existed. This phase involves a further understanding of the background of the conflict and an agreement on the terms and conditions, such as where and when to begin the real mediation process.

The third stage is mediation. In this stage, the complainant is given a chance to speak first, then the defendant gives his/her version of the case. The elders and clan leader listen carefully to everything which is said.

They are likely to ask two questions – ‘What is the real dispute/conflict?’ and ‘What exactly is the problem?’ – a number of times because the reported conflict may not in fact be the fundamental conflict between the parties.

The next stage is agreement drafting. Assuming a mutually acceptable agreement is reached, it is then documented. In cases of land boundary conflicts, visiting the specific locality follows in order to establish the proper boundaries.

The final stage is reconciliation. The conflicting parties are invited by the chief mediator to hug and shake hands. Local beer is provided and members of the community drink in celebration, and a consent note detailing all points agreed upon is signed by all parties and witnesses. These steps follow a pattern common in African traditional conflict resolution procedures where much effort is put into reconciling the conflicting parties and repairing any damage between them and their communities.

### **Activity one: Promoting traditional mediation via radio**

The first BTPAT intervention was the promotion of traditional mediation via a local radio station. The messages focused on the advantages of traditional mediation compared with formal courts, and people with land disputes were encouraged to file them with either traditional leaders for mediation or with the BTPAT.

Listeners were encouraged to phone in to comment on the presentation and to seek clarification on particular points. Many recognised the costs dealing with conflicts in courts and the benefits of reviving traditional mediation. One caller said:

As a result of the oil discovery, many conflicts have sprung up. We used to have empty bush areas unclaimed and no one was bothered, but today, even one yard can cause mayhem in the entire village over who has the rights to use it ... The courts are just not handling this ... we need people like you to help out (Anonymous caller, 30 May 2017).

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Another commented:

People are spending much of their time in courts instead of working in their gardens ... As a result, people have become poorer and poorer ... Men spend all the money in court while their wives are left home to look for food and school fees and other requirements at home. Where are we heading? I think we need initiatives [like yours] or else the rich people will finish us (Anonymous caller, 14 June 2017).

### **Activity two: Promoting traditional mediation via community meetings**

The BTPAT ran meetings in seven communities between 6 October 2017 and 23 February 2018, with almost 400 people attending. During these sensitisation meetings, the team emphasised peaceful co-existence amongst tribes living in Bunyoro. The message was clear: all tribes need to tolerate each other for the betterment of the region and the team encouraged people to forward their grievances to the BTPAT for mediation instead of going to the police or formal courts.

The meetings were also an opportunity for communities to reflect on the role of the Bunyoro kingdom in peacebuilding and to hold it accountable. This particular topic was handled by the elders and clan leaders who were members of the action team, who had more local authority than other members of the team.

### **Activity three: Training traditional leaders in contemporary conflict resolution and mediation skills**

Two workshops were conducted for the traditional leaders and officials of Bunyoro kingdom to strengthen their capacity to resolve conflicts, other than community land issues, which have exploded since the discovery of oil.

Participants identified the challenges and common mistakes they made while mediating disputes and discussed the relative strengths of traditional and modern conflict resolution and mediation approaches. While the two approaches have important similarities, modern approaches may involve arbitration in cases where the parties cannot find a mutually acceptable

outcome. In such cases, traditional leaders may make decisions, possibly including fines and compensation, in the hope of bringing the conflict to an end. An important emphasis was that whichever approach is used, an unsuccessful mediation means that the case will progress to a formal court of law, with high costs and long delays.

#### **Activity four: Supporting kingdom leaders in defending land titles issued by them**

It was discovered that the Hoima Magistrate's Court had been adjudicating cases involving two types of land titles, one issued by the national Ministry of Lands and another by the Bunyoro kingdom. Magistrates have struggled to adjudicate in such cases and frequently called on kingdom officials to explain the circumstances under which particular titles were issued, the measurements used, the demarcations and so on; however, kingdom officials rarely responded.

The BTPAT encouraged kingdom ministers to attend court sessions so as to be able to respond to questions concerning land title issuance and other related matters. In addition to assisting the court to make good decisions, such involvement will show that the kingdom is serving its citizens and contributing to peace and development in the region.

### **7. The evaluation phase**

Evaluation of outcomes, it will be recalled, was the third research objective. This is a short-term, preliminary evaluation of outcomes and obviously it is hoped that any positive outcomes will continue into the years ahead. Despite this research being done by a small, voluntary action team of seven members, the outcomes produced positive results. As noted, the long term impacts of this intervention will become evident in years or decades ahead. Undeniably, strengthening the Bunyoro infrastructures for peace, as initiated by the BTPAT, is a gradual process.

At the end of five months of interventions, the team conducted an evaluation of the outcomes of the activities agreed on at the beginning to strengthen

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the Bunyoro peacebuilding infrastructures. BTPAT members had pledged that every month, there should be a minimum of four cases mediated, four radio talk shows and at least one community sensitisation/awareness meeting. In addition, it agreed to support kingdom officials to respond to court summons and to train kingdom leaders in contemporary conflict resolution skills. Every last Saturday of the month, the team met to reflect on what was accomplished and what failed, and on the way forward.

A very high proportion of cases were mediated successfully. Over the five-month period, the team mediated 23 cases, most of which related to land grabbing and land boundary disputes between family members and between neighbours. Resolution was achieved in 18 cases and not achieved in three; while two other cases were still pending.

Parties to these conflicts identified specific benefits. First, it saved huge amounts of money that would have been spent on lawyers. It is estimated that the cheapest lawyer in Hoima costs around US\$55 (approximately 200 000 Uganda shillings) every time there is a court session, whether or not the case is heard. Second, money was saved on transport to and from the Hoima Magistrate's Court, which can be considerable in the case of long running disputes. An elderly man expressed his appreciation to BTPAT for helping him put down the baggage which he had carried for 36 years and was going to pass on to his children and grandchildren:

The God who sent you to mediate this land conflict is an awesome God. I sold my land in Masindi in order to follow up this case since 1982. I sold my plot of land in Totema trading centre, I sold my goats, I have slept on an empty stomach, I have foregone school fees for my children all in the name of rescuing this land, but I have not been successful. And now you have done it! I think you are God-sent because I have been left with nothing to sell apart from this piece of land I am [in conflict over] (Interview, 9 September 2017).

The presence of kingdom leaders in the project team helped to encourage trust in the approaches used to mediate the conflicts. The passion of the team members to create positive change and their 'never-give-up' attitude

were instrumental to the success of the project's initial phase. These were supported by a careful plan of activities and targets which the team pledged themselves to meet.

## 8. Conclusion

It is important to be cautious about generalising the results reported here but they clearly add to other studies which show that traditional conflict resolution practices and infrastructures can be successfully applied to non-traditional conflicts. Such practices need the encouragement and support of government at all levels.

The BTPAT team employed traditional methods of conflict resolution and the involvement of individual team members was motivated by their desire for peace and harmony in their communities. In addition to the direct benefits to those embroiled in disputes over land, there was a personal benefit to the action team members in the form of recognition as peace actors. A clan leader in the team intimated that as a result of the research, the kingdom authorities are now planning to rejuvenate their conflict resolving activities by greater collaboration with clan leadership.

In addition to sustainability, there is the possibility of the BTPAT approach being scaled up. The team, which operated with no budget at all, has been able to produce positive outcomes. With external financial support, their work would be strengthened. There is, however, a danger that the energy which comes from committed volunteers could be lost if monetary incentives are given centre stage. Writing about the broader issue of local versus external actors, Carolyn Hayman (2012:20–22; 2013:19–20) has identified three ways in which outside organisations can work with local ones. Locally-led work '... is where the local partner sets priorities as well as formulates the approach, and the outside agency provides resources and connections' while locally-owned projects result from an outside approach with a determined plan to hand over ownership to a 'legitimate' local organisation which can, over time, mean that it becomes locally-led. (Legitimacy can be measured by a non-monetary motivation on the part

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of the initiators, and the extent of local voluntary involvement which have operated effectively over time). These two contrast with the common approach of locally-delivered projects, which are devised from the outside with implementation contracted to a local organisation without any change in ownership.

Hayman (2012:13) identifies a ‘Local First’ approach – ‘... a development approach that looks first for the capacity ... before bringing in external expertise and resources, and which recognises that much of this capacity is found outside central government’. The Local First approach has another distinctive concern – to act in ways which maintain the legitimacy of effective local organisations, for example, by not paying market-related salaries to employed staff and continuing to encourage volunteer input.

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