



Integrating Land Governance into the Post-2015 Agenda
Harnessing Synergies for Implementation and Monitoring Impact

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**STRENGTHENING THE PERFORMANCE OF THE UGANDAN JUSTICE SYSTEM:
A MODEL TO SECURE AND PROTECT WIDOW AND ORPHAN LAND RIGHTS**

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ABSTRACT

Land security is essential to the economic livelihood of most Ugandans. Despite Ugandan laws ensuring gender equality of land and inheritance rights, vulnerable populations are often left unprotected from illegal land grabbing. Most efforts to address the issue of land grabbing have focused on legal rights education and informal justice mechanisms such as alternative dispute resolution (ADR). These strategies, however, have often failed to successfully, scalably and sustainably protect the land rights of women because they fail to address the failings of the formal justice system. To be fully effective, these strategies must be under-girded by a well-functioning formal justice system capable of addressing the criminal aspects of land grabbing and creating an environment where ADR can flourish and legal rights education reflects reality.

This paper presents an innovative model developed from six years of legal case work with widows and orphans, implemented in collaboration with the Ugandan justice system. The model demonstrates that a key component of a scalable and sustainable response to the challenge of enforcing the land rights of women is investment in strategies that enhance the formal justice system's ability to prevent land grabbing through efficient estate administration and deter land grabbing through consistent criminal prosecution.

Key Words: land grabbing, Uganda, public justice system, vulnerable populations, ADR

Strengthening the Performance of the Ugandan Justice System: A Model to Secure and Protect Widow and Orphan Land Rights

INTRODUCTION

Although the Constitution and laws of Uganda promise equality of land- and inheritance rights between men and women, the government institutions with the duty to enforce those rights consistently fail to deliver on these promises to women facing illegal eviction from their land and homes. As a result, vulnerable populations are left unprotected and susceptible to victimization. “Land grabbing” thrives in Uganda because it is profitable for its perpetrators, and in an environment where there is little social reproach for denying women their land rights, the justice system fails to create penalties that are sufficient to deter potential perpetrators. The lack of efficient mechanisms for estate administration and land documentation in Uganda creates ambiguities that land grabbers can easily exploit, and the lack of effective criminal prosecution creates an environment of impunity that fails to create an appreciable risk of sanctions. Project Empaanyi,¹ a model for securing land rights for women and children through collaborative casework and systemic strengthening of the justice system, focuses on both sides of a perpetrator’s cost-benefit analysis to create an environment that will both prevent and deter land grabbing.

Land Grabbing: Local Practice and Definition

“Land grabbing” is a layman’s phrase used to describe the unlawful and coercive eviction of lawful landowners through the use physical force, forgery, fraud, threats, intimidation, property destruction and/or collective pressures. Among the most vulnerable to land grabbing in Uganda are widows and orphans after the death of a male head of household, as relatives, community members, authority figures and other opportunistic criminals commonly plunder the real and personal property that formerly belonged to the deceased or to the couple jointly. In such situations, widows and orphans lose their homes, land and personal possessions, and often are subjected to homelessness, malnutrition, disease and further exploitation.

While the Ugandan Penal Code and other statutes do not provide for a specific offense called “land grabbing,” the act of stealing land unavoidably violates numerous criminal statutes. For example, evicting a widow or an orphan is made criminal by the Succession Act, intermeddling in the estate of a deceased is made criminal by the Administrator General’s Act, and wrongfully occupying land belonging

¹ The Project – a collaborative effort between local government actors, community groups, and human rights organization International Justice Mission – is named after the Empaanyi plant. The Empaanyi is a leafy plant that has traditionally been used throughout the Buganda Kingdom to mark property boundaries. In the words of the Administrator General of Uganda, the Empaanyi is “a living mark stone” that protects one’s property.

to another is criminalized by the Land Act. Moreover, Uganda's Penal Code contains provisions outlawing the full host of enabling crimes commonly associated with land grabbing (e.g., murder; assault; arson; fraud; threatening violence; bribery; corruption; forgery of a will, grant of probate, certificate of no objection, letter of administration or other judicial/government document; concealing a will or deed; damaging/removing survey and boundary markers; criminal trespass; malicious injury of property; theft, etc.). While many land-grabbing perpetrators cite customary practices of refusing women and children the right to own property, the Constitution and laws of Uganda supersede such traditions, guaranteeing the equality of land and inheritance rights between men and women (Deininger, 2003), as well as the equal protection of the civil and criminal law.

Notwithstanding the state of the law, land grabbing against women remains entrenched in the sociocultural and gender norms of Uganda. Existing social structure and power relations place women in a vulnerable position from which they remain prone to lose their homes and income to land grabbing. An Oxfam study (Burke & Kobusingye, 2012) similarly estimated that the prevalence rate of land grabbing among female widows in Northern Uganda (West Nile, Acholi, Lango, Teso and Karamoja) was 30%. Oxfam's study also found that women reported experiencing almost 30% more land conflict within the household than men, and widows reported experiencing 31% more land conflict than widowers in their clan. In 2013, International Justice Mission (IJM) conducted a study on the prevalence of land grabbing and performance of the justice system in Mukono County in central Uganda (the "study").² IJM's household survey of widows in Mukono County completed as part of this study found that 30.3% of surveyed widows have experienced land grabbing in their lifetime.³

IJM collaborates with the Ugandan public justice system to bring the protection of the law to widows and orphans victimized by land grabbing; between 2008 and 2012, IJM and its justice system partners were able to return over 800 land grabbing victims to their land. These individual cases have confirmed the survey data indicating that perpetrators of land grabbing crimes are more physically, economically and socially powerful than the women they exploit. Gender norms make all women vulnerable to abuse in Uganda, but widows are particularly so, and they often experience land grabbing at a time when they are particularly vulnerable. For example, IJM's household survey found that 31% of victims experienced the land grabbing within one year of the death of her husband. Perpetrators commonly use physical force or

² In 2012-2013, IJM conducted a prevalence study on the scale of land grabbing and a mixed-method study on justice system actor performance in Mukono County, Uganda, including case file reviews, focus group discussions and key informant interviews with community members, LC leaders, police, Administrator General staff, judges, and religious leaders.

³ The prevalence study included an unique method of "village widow listing" with the collaboration of community leaders and women's groups, employed mobile data collection, and captured narratively the 'story maps' of over 1,800 widows in the targeted project area.

the threat thereof to overpower their victims. IJM's case file review of police files in Mukono County⁴ found that 37.8% (82/217) of documented land grabbing cases included a charge of a violent act (assault, murder, threatening violence, grievous harm or rape). Many women's interviewed further described retracted periods of threats by which they lived in constant fear for their life and the lives of their children. Moreover, IJM's household survey recorded that 20% of women who had experienced land grabbing had experienced attempts on their lives or their children's lives from those who grabbed their land.⁵ In those cases where direct physical violence is not used, women experience relentless threats and pervasive fear, commonly lasting for years. Other socially powerful and wealthy perpetrators cheat powerless widows out of their property⁶ or coerce them to give away their property for minimal cost.⁷

Faced with real threats to her safety and livelihood, a widow's gender role often prevents her from obtaining support from traditional or cultural leaders. IJM's casework and surveys commonly captured stories of how clan leaders (i.e., family members given the authority to "protect" the clan's widows, such as the father-in-law, brother-in-law, step-son, or even son) often abused their position of power to rob women of their land. Indeed, while women are reliant upon clan leaders to resolve issues fairly and mitigate the predictable power imbalances between widows and their perpetrators, these leaders often fail to do so or even side with the perpetrators. Often opportunistic thieves themselves, these authority figures regularly use their stature as male leaders in the clan to exploit the women's vulnerability with impunity.⁸

Failures of Uganda's Justice System

Unfortunately, the formal mechanisms designed to prevent and deter land grabbing—estate administration and criminal prosecution—have failed to provide widows and orphans with the protections to which they are entitled in Uganda's Constitution and legal code.

⁴ A Case File Review (CFR) was conducted with 341 cases closed/completed between the years 2010-2012. In total, 217 criminal prosecution of land grabbing-related case files at Mukono Town Council and Nagalama Police Stations were reviewed and then followed through to the Mukono Chief Magistrate's Court; 124 estate administration case files were reviewed, beginning at the Jinja High Court and Mukono Chief Magistrate's Court and followed through, where possible to the Administrator General's Office.

⁵ This widow's story was common: *"I had a plot of land I bought on my own money but I was chased away by the children of my brother and they beat me up seriously and I was forced to leave that land to save my life. I reported the case to Nsangi police station. They took me to Mulago, I spent one week in hospital."*

⁶ One widow explained to IJM: *"my in-laws connived with the villagers and said that land did not belong to me...the villagers who knew about this were bribed by my in-laws and they all turned against me."*

⁷ As this woman related: *"the rich man from Mukono town who is now dead, came and convinced the [Local Chairperson] so that we can sell him our kibanja. It was about six acres. But I refused but I was forced to agree when I was told that I would automatically lose this land without getting anything."*

⁸ As one widow shared: *"So when my husband died my brother-in-law wanted to take it claiming that my husband never completed his money, but I had the purchase agreement."* In this instance, the fact the widow had legal documentation of her ownership enabled her to protect herself from land grabbing.

Estate Administration

Land grabbing can often be prevented with proper documentation of land ownership rights (e.g., land titles, wills, etc.) and proper estate administration (i.e., lawfully dividing and distributing the property of the deceased). For example, IJM's household survey found that if a husband or partner writes a will before his death, there is a significantly lower chance that his widow will experience land grabbing ($p \leq 0.05$). Nonetheless, husbands left wills to protect their widows in less than one-third (26.8%) of surveyed marriages/relationships. In the majority of cases in which the deceased does not leave a will, lawfully married widows are entitled to possession of the matrimonial home and surrounding gardens (often a critical resource for food production), as well as 15% of the remainder of the estate; and children of the deceased are entitled to share possession of the matrimonial home and surrounding gardens, as well as an equal share of 75% of the remainder of the estate.⁹ To benefit from this protection, the widow or estate administrator must follow a series of steps including but not limited to:

- Obtaining documentation of death from her Local Council (LC) Leader;¹⁰
- Obtaining a Certificate of No Objection (CNO) from the Administrator General (AG);¹¹
- Obtaining a Letter of Administration from the Magistrate or High Court;¹²
- Physically distributing the estate property among appropriate family members; and
- Recording any distribution involving titled real property with the Lands Registry.

If an estate is properly administered, all beneficiaries will receive the correct portion of the property and the appropriate paperwork to document their ownership.

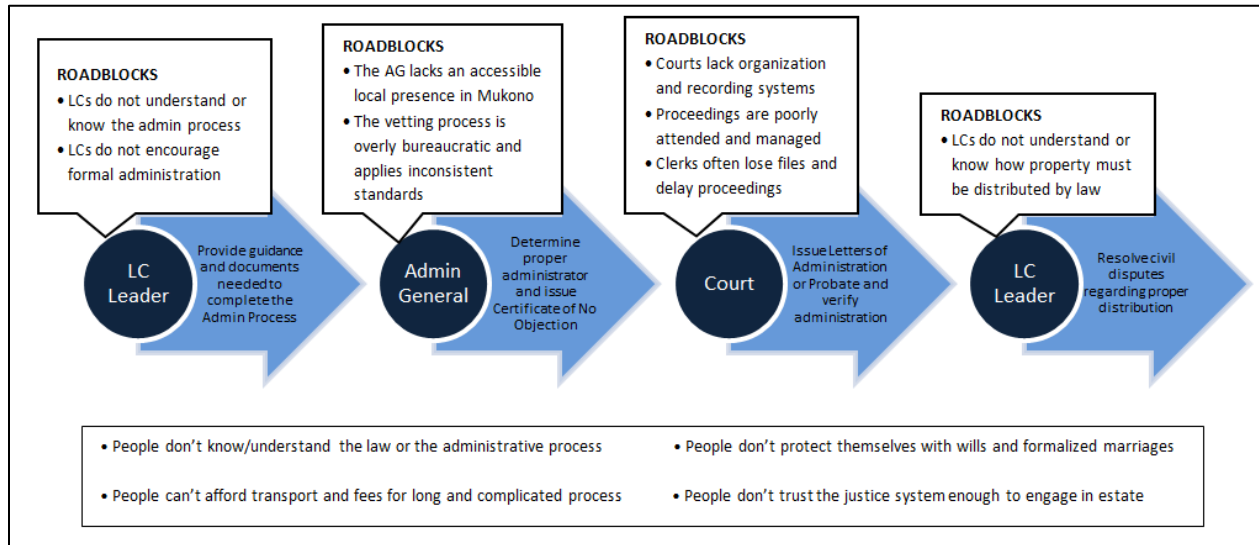
⁹ In 2007, Uganda's Constitutional Court invalidated parts of the Succession Act, including the sections containing the formula for intestate distribution. *See Law & Advocacy for Women in Uganda v. Attorney General*, Nos. 13/05, 05/06, Const Ct. of Uganda (2007). The Court held that the Succession Act discriminated on the basis of sex because it used sex-specific language in its description of the formula. The position of the Administrator General and of IJM is that, notwithstanding the opinion, the formula represents the most reasonable position to take in dividing property, and divisions inconsistent with this formula are in violation of the "notions of justice" under which the remainder of the Succession Act is to be interpreted.

¹⁰ LC Leaders are elected officials at the village ("LC1"), parish ("LC2"), sub-county ("LC3"), and district ("LC5") level. LC1 and LC2 Leaders are influential in their communities, serving as the first point of contact when someone must interact with the justice system, a mediator when a conflict arises in the community and a witness to any real estate is transferred within their jurisdiction.

¹¹ The Administrator General's Office is an agency of the Ministry of Justice and Constitutional Affairs established to administrate estates for which no proper administrator can be identified. While the Administrator General's Act provides lawfully married widows with an exemption to this step in the process, the Ugandan Courts have effectively eliminated that exemption in practice, meaning that widows still must obtain a CNO from the AG to administer the estates of their deceased husbands.

¹² The Magistrate Court serves as a court of first instance for the administration of small estates and the prosecution of non-capital offenses. The High Court serves as a court of first instance for the administration of large estates and all offenses, as well as an appellate court charged with reviewing decisions arising from the Magistrate Court.

Figure 1: Estate Administration Process and Chokepoints



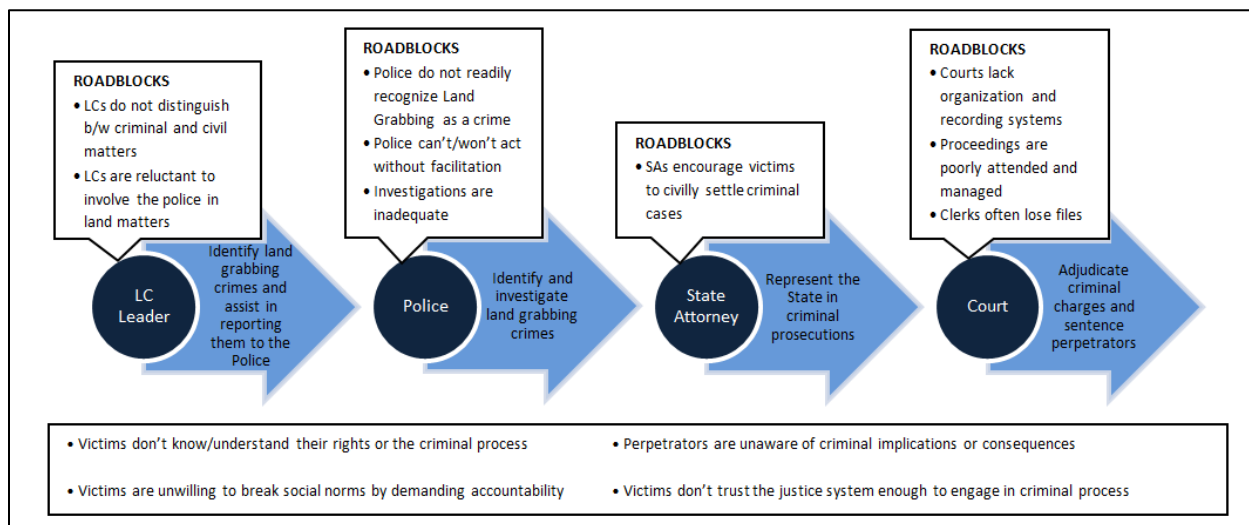
Unfortunately, the estate administration system is nearly impenetrable to the average widow in rural Uganda (*see Figure 1*). Widows are often unaware of their legal rights and the process to perfect them and therefore rarely engage the system. Moreover, even for those who do know their rights, the process is inefficient and cost-prohibitive. Under the best of circumstances, IJM has found that, for a widow in Mukono county, administering a deceased's estate is an arduous process that requires at least 16 (often fruitless) trips to justice system offices in Kampala, and 43 (similarly fruitless) trips to justice system offices in Mukono. The cost of transport is at least \$450, which is more than the average widow in Mukono earns in a year. Moreover, estate administration never runs flawlessly, and widows are often hindered by disinterested or uncoordinated officials. Despite the fact that such processes are a required function of their official role, most LC leaders have no training in estate administration and little understanding of the underlying laws or processes. The AG's vetting system is inconsistent with the law, mired in bureaucracy, and only accessible in Kampala (25 miles from the widow's home district). The courts are notoriously backlogged with magistrates who are rarely present and often apathetic to the plight of widows. At every stage, files are lost in disorganized and archaic filing systems; public servants fail to appear for work; and under-resourced officials with little internal accountability use their discretion to create delays, inconsistent standards and copious demands for facilitation fees and bribes. Opportunistic relatives use the complexity of the system to block/hijack the process, taking advantage of widows who lack the education, resources and guidance to navigate the bureaucratic maze of estate administration.

As a result of these chokepoints, widows don't trust the system or don't understand their rights to own land or the protections afforded by the system¹³ and so, simply do not engage. IJM's household survey revealed that less than 1.3% of widows interviewed reported to have engaged the legal administration process in any capacity, with the majority of those who did engage failing to proceed past the first step in the process. IJM's cases reflect this finding, repeatedly uncovering property that had not been lawfully distributed for multiple generations and widows and orphans with no documentation of ownership. Without formalized ownership rights or legal documentation of those rights, widows and orphans remain perpetually vulnerable to land grabbers who take advantage of their relative power over the widow and the system's ambiguity.

Criminal Prosecution

In addition to preventing land grabbing through estate administration, a properly functioning justice system should restrain perpetrators and deter potential perpetrators through criminal prosecution. As noted above, the Succession Act (2006), Land Act (2010) and AG's Act (2000) criminalize wrongfully evicting a widow or an orphan, intermeddling in estate property without authority and wrongfully occupying the land of another. Moreover, the Penal Code also criminalizes numerous acts that are frequently associated with land grabbing.

Figure 2: Criminal Prosecution Process and Chokepoints



¹³ For example, during IJM's interviews with key informants, the Chief Magistrate in Mukono explained his experience with enforcement of the Act which leads to land grabbing with impunity: "Ordinary people don't follow the Succession Act; they do the distribution of property according their traditions and customs. The girls get less and the boys get more." In IJM's community focus groups, it was clear that women did not understand how to engage the formal justice system. As one widow from Mukono explained: "The majority of them are ignorant of the legal system, they don't know which office to start from or how the legal system works."

Unfortunately, for impoverished widows, the criminal prosecution system is nearly as impenetrable as the estate administration system (*see Figure 2*). Most victims of land grabbing don't recognize that the actions taken against them were crimes. IJM's household survey revealed that 54.5% of widows who failed to report their victimization to local authorities did so because they didn't realize that the actions were criminal. Inaccurate beliefs are typically reinforced by LC Leaders who, because of the common "intrafamilial" nature of land grabbing, treat these crimes as wholly private matters, pressuring victims to forgo criminal prosecution in favor of mediated settlements that fail to fully compensate victims or protect the interests of the State.¹⁴ The police are similarly unfamiliar with the crimes of wrongful eviction, intermeddling and fraudulent disposal of trust property, as these crimes are outside the Penal Code and therefore outside of the current police training curriculum. As a result, police officers often consider land disputes—particularly if the parties are related to one another—to be outside of their jurisdiction. In fact, many officers with whom IJM has engaged in its collaborative casework reported a belief that the existence of an underlying land dispute absolved perpetrators of criminal responsibility for enabling crimes such as assault, arson or fraud.¹⁵ When police investigations do occur, they often require "facilitation" (i.e., a bribe) from the victim to reach completion (Arinaitwe, 2012). Moreover, the quality of the investigations reflects the under-resourced and under-trained condition of the police force in Mukono. If a case moves past a police investigation, state attorneys typically conflate the civil and criminal aspects of the law, abdicating their responsibility to represent the State and encouraging victims to accept a payment in exchange for withdrawing the case. This practice, while contrary to both the spirit and letter of Uganda's criminal law, is publicly supported by Uganda's Justice Law and Order Sector (JLOS),¹⁶ which posts signs in state attorney offices encouraging victims to "reduce the backlog" by accepting civil settlements to drop criminal prosecutions.

¹⁴ Focus Group Discussions (FGDs) and Key Informant Interviews (KIIs) were conducted by IJM as part of the 2012-2013 study with women and men from the targeted villages in Mukono County, as well as lawyers, police, LCs and court clerks. In total, 13 FGDs were conducted, attracting a total of 118 respondents. KIIs were conducted with 13 individuals holding either positions of authority in the government and or exhibited roles in the criminal justice or estate administration process warranting an opinion insightful to the study. In a focus group with women from Mukono County, a woman from Seeta explained: "*Most files get lost at the police if you don't give them money. The biggest barrier is the policeman whom you find on the reception, when you reach there, he or she tell you, "sinalya break" meaning that I have not taken breakfast. And if you don't produce the money for the breakfast, you will not be assisted; you cannot go beyond the reception without giving a policeman some money.*"

¹⁵ In a focus group hosted by IJM during its baseline study, one woman in an FDG in Mukono explained: "*The majority of [LC Leaders] are ignorant of the legal system, they don't know which office to start from or how the legal system works.*" Another LC voiced a popular unwillingness by LCs to engage in land grabbing offences: "*To me it is a family matter.*"

¹⁶ JLOS is an arm of the Ugandan Government supported financially by a number of international development partners with the mandate of improving the service delivery of the Ugandan justice system through greater cooperation of the various justice system actors.

Once a case reaches the court, victims often face apathy, inefficiency and corruption. Court clerks, magistrates, and state attorneys misplace and lose files; defendants frequently fail to appear for hearings; prosecutors or presiding magistrates frivolously cause hearings to be adjourned; and judicial transfers cause cases to be discontinued. Given that there is no stenographic record of proceedings (only the magistrate's often incomplete or indecipherable hand-written notes), these delays greatly compromise the quality of decisions in criminal prosecutions. Another hindrance has been the justice system officials' (both magistrates and state attorneys) lack of interest and appreciation for the texture and devastating consequences of land grabbing.¹⁷ This apathy translates to a judicial resistance to sentencing convicted land grabbing perpetrators to prison in accordance with the criminal sanctions authorized by law.¹⁸

As a result of these chokepoints, most victims (and agents of the State) forgo pursuing criminal prosecution for land grabbing altogether.¹⁹ IJM's study revealed that, in all cases of land grabbing, the widow reported to have attempted to pursue prosecution of the perpetrator in only 9.1% of all land grabbing cases. Indeed, in only 3.1% of cases did these widows report their victimization to the police, which is the preferred intake point of the criminal justice system. Those who did seek a response from the criminal justice system confronted a long road and low odds of success. IJM's case file review of police files, revealed that the average number of scheduled appearances in court for a single successful hearing was 9.5, and only 4.7% (7/149 cases) of these files resulted in a conviction. The sentences associated with these convictions ranged from 24 hours of community service (for a conviction of stealing) to the maximum of a 12 month jail/detention (for a conviction of manslaughter after the court found the perpetrator killed the victims). In sum, the overwhelming majority of land-grabbing perpetrators were not held accountable by the formal justice system, creating an environment of impunity for those who would engage in this highly lucrative crime.

Current Responses to Land Grabbing

Due in part to a recognition of the failure of Uganda's justice system to consistently deliver on the promises of Uganda's land, inheritance and criminal laws to Uganda's women, most efforts of non-governmental or community-based organizations to address land grabbing have focused on legal rights education and strengthening alternative dispute resolution (ADR) mechanisms that allow parties to work

¹⁷ One lawyer in a key informant interview explained of the judiciary and Court staff: "*in the process there is failure to concentrate.*"

¹⁸ As a Jinja Court Clerk observed in a focus group: "*There is need to introduce harsh punishment for grabbers so that the rest of society can fear, the punishment that can send signal to the rest who were planning to grab, so, there should be introduction of harsher sentences when the grabbers are convicted in Court.*"

¹⁹ Only 6.3% (114/1806) of widows express confidence in the justice system to pursue criminal prosecution of land grabbing perpetrators. The survey found that the more accurate knowledge the widow has about the formal justice system, the greater the chance a widow will report land grabbing crimes to the authorities ($p \leq 0.01$).

around the failed justice system. Indeed, IJM's collaborative casework invested four years in a strategy centered around educating the public as to their legal rights and utilizing ADR mechanisms to restore widows and orphans to their land. This experience led IJM to the conclusion that, while investments in legal rights education and ADR have an important role to play in conflict resolution and the effective rule of law, these approaches must be undergirded by a well-functioning justice system to be fully effective and sustainable.

Legal rights education, for example, is necessary to inform the public of the law's protection against land grabbing and to generate demand for the law's enforcement. At the same time, however, legal rights education is only fully effective if there is a real world expectation that those rights can be asserted against perpetrators and that those rights will be enforced by the State. In an environment like Uganda's where legal rights are explicit but not operational, where the State fails to take action to enforce those rights and where violators of those rights can act with relative impunity, legal rights education devolves into a discussion of how things ought to be. Such discussions may serve to raise public consciousness and create political will that may guide change in State action in the long run, but they provide little immediate or real world protection for those who need it most. Thus, legal rights education requires corresponding investment in predictable enforcement of the laws to increase real world access to justice and to strengthen the rule of law.

ADR programs similarly need to be supported by a properly functioning justice system to be fully effective. One reason for this is that ADR, by its nature, is an inadequate and improper vehicle for resolving criminal matters. According to John Locke's social contract theory, by making certain behaviors—such as murder, rape and wrongful eviction—criminal, the State is declaring that these behaviors have such significant societal consequences that they are not only civil wrongs committed against an individual but also criminal wrongs committed against the State or the public itself (Locke, 1687). While informal justice mechanisms such as ADR may serve as an effective means of resolving the civil wrong committed against the individual, it cannot address the criminal wrong committed against the State or the public. Even after the victim is compensated and satisfied with the result, the State has a responsibility to protect its broader citizenry by using criminal accountability to restrain offenders and deter other potential offenders. Because ADR does not engage the State—as a party or otherwise—these important functions of criminal law are ignored, and, more critically, the State fails to impose adequate accountability and consequences to restrain current criminal actors from harming other citizens or to deter potential future offenders from attempting land grabbing crimes in the first place. Moreover, because ADR relies entirely on the victim for momentum, pursuing criminal matters through private ADR unfairly shifts the burden from the State to the victim to protect not only her rights and interests, but also the rights

and interests of society as a whole. This co-mingling of private and public interests, and the perverse incentives it creates, is why many justice systems wisely outlaw the use or threat of potential criminal sanctions to gain leverage in a private resolution of a civil dispute. Indeed, even Uganda's Penal Code (1950) makes it a crime to co-mingle criminal prosecution and civil negotiation (i.e., to use criminal prosecution or the threat of criminal prosecution to extort money or anything of value from another). Accordingly, ADR cannot act effectively in a vacuum, but rather needs a separate formal State-driven legal mechanism to respond to crimes committed against the State if society's interests in restraining criminals and deterring criminal behavior are to be realized.

Even in resolving the civil aspects of land disputes, ADR cannot be fully effective in the absence of a properly functioning justice system. Because participation in ADR is voluntary, parties to ADR negotiate in the shadow of the result that would be reached if the negotiations break down and the parties walk away. In a society where the justice system is operating effectively, this incentivizes the parties to reach voluntary resolutions that are informed by, and are largely consistent with, the intent of the underlying legal regime. For example, if two parties are engaging in ADR over a car crash and both parties know that the underlying law would fault the first party and that the court would consistently reach that conclusion, the shadow created by that knowledge will lead the parties to reach a resolution in which the first party pays the second party for his damages. In a society where the justice system is non-existent, inoperative or corrupt, however, the parties operate in the shadow of the comparative strength and stature of the parties. For example, imagine that a man, who is physically strong, relatively wealthy, and considered socially superior simply by being male, disputes the land ownership rights of a widow with little physical strength, no economic resources beyond the disputed property and little social standing as a woman. Imagine further that these parties know that the State cannot or will not step in to balance the scales of power. The shadow of the man's ability to physically harm the widow, to hire thugs to remove her from her land or to drive her off with societal pressure will lead the parties to reach a mediated resolution that ultimately favors the man. As such, informal justice mechanisms that are not undergirded by a properly functioning justice system can actually serve to exacerbate the disparity between a widow's bargaining position and that of her more powerful perpetrator.

Moreover, even assuming the man and the widow in our previous example reach a reasonable agreement through ADR, the parties must be able to rely on a properly functioning justice system to enforce their negotiated results. According to the United Nations (Burke & Egaru, 2011) in the absence of a justice system that properly wields the coercive power of the State, the parties rely entirely on the good faith of their counterparts for the protection of their rights. In the vast majority of land grabbing cases, however, the perpetrator has already demonstrated bad faith with a willingness to violate numerous criminal and

civil laws to coercively evict the widow from her land. In such cases, assertions of good faith fail to form an adequate foundation for a widow's protection.

In IJM's six years of land grabbing casework, IJM participated in hundreds of ADR mediations to resolve issues of land ownership between parties with asymmetric power relationships. IJM observed Uganda's State attorneys consistently abdicating their responsibility to represent the State by convincing the victims of violent land grabbing to accept nominal sums of money to forego criminal prosecution. IJM witnessed the perpetrators in those cases walking away and offending again, and the victims walking away with the knowledge that the State would not come to their aid. IJM determined a prevailing pattern among perpetrators of stealing a widow's land with the intention of manipulating the ADR process to reach a "compromise" with the widow under which the perpetrator would share in portions of her land to which he had no right in the first place. And IJM consistently observed perpetrators who agreed to mediated terms in front of local authorities with absolutely no intention of honoring the agreement. For example, in an emblematic case involving a widow who was dissuaded by the police—in the name of peace and harmony—from pursuing criminal prosecution in favor of a mediated settlement, the parties negotiated their rights to the widow's land in a local police post. In the late stages of that mediation, the perpetrator waited for the mediator to leave to describe in graphic detail how he was going to "cut [the widow] to pieces as soon as this NGO was gone," all within moments of his tearful admission to wrongdoing, statement of contrition and commitment to respect the land rights of the woman he had wronged. IJM did not go away as the perpetrator predicted. Instead it pressed for terms that reflected the reality of the law, saw to it that the agreement was witnessed by appropriate authorities and monitored the perpetrator's ongoing compliance with the terms of the agreement, tipping the balance of power in favor of the widow.

From hundreds of experiences like these, IJM learned valuable and fundamental lessons. First, ADR could and did yield actual restoration of land and other remedies for victims of land grabbing in cases, but such results depended on the substantial resources IJM brought to bear. In point of fact, IJM was filling the power vacuum left by the ineffective criminal justice agencies of the State, casting a shadow over the negotiations to ensure that the results were in line with the intent of the underlying law, and casting a shadow over the settlement to ensure the sustained enforcement of the mediated agreements. Second, the positive impact of IJM's ADR work rarely extended beyond the scope of the parties themselves. While IJM's significant investment in high quality legal aid did mean that the individual victim was restored to her home and the individual criminal was restrained from inflicting further harm on the individual victim, it did little to prevent him from preying upon someone else and almost nothing to deter other potential perpetrators from engaging in similar behavior, allowing the crime to continue to flourish. In fact, given that mediated compromises most often result in both parties giving up part of what they wanted in the

mediation, most land grabbing perpetrators emerged from the mediated result with more in the way of property than they had before violating the widows' rights. At IJM, we call this the "steal two, give back one" incentive. Mobilizing private resources to bring these types of mediated results for individual victims is neither scalable nor sustainable. What is needed instead is to bring public resources to bear in order to make theoretical legal rights a reality, to exercise appropriate State coercive power to restrain and deter perpetrators, to create a foundation upon which parties may bargain, and to enforce negotiated agreements. What is needed, more than anything else, is a properly functioning justice system.

Thus, after four years of educating the public on their legal rights and utilizing informal justice mechanisms to restore widows and orphans to their land, IJM enhanced its model by supplementing those strategies with strategies designed to improve the performance of the formal justice system in Uganda. As such, IJM invested greater time and resources in improving the performance of the formal justice system institutions that have the mandate to operationalize Uganda's inheritance and land rights through estate administration. IJM also invested greater time and resources in improving the performance of the formal justice system institutions that have the mandate to pursue criminal prosecutions and create the incentive structures that will deter land grabbing altogether. The result was Project Empaanyi, which is herein submitted as an innovative, scalable and replicable model for reducing the prevalence of land grabbing by sustainably strengthening the performance of the formal justice system.

PROJECT EMPAANYI, A MODEL FOR SECURING LAND RIGHTS

Core Objectives of the Model

Project Empaanyi's aim is to reduce the victimization from and vulnerability to land grabbing among widows and orphans in Mukono County, Uganda, through effective prevention and deterrence strategies. A collaborative project with local and national government authorities designed and implemented by IJM, Project Empaanyi was designed to: 1) prevent land grabbing by building the capacity of the justice system to provide vulnerable groups, including widows and orphans, with secure and documented land ownership rights through efficient estate administration and 2) deter land grabbing through effective investigation and prosecution of land grabbing crimes committed against widows and orphans (both within the project area).

Evidence Basis for the Model

The evidentiary basis for Project Empaanyi was laid between 2008 and 2012, during which time IJM engaged the Ugandan justice system in collaborative casework, returning over 800 land grabbing victims

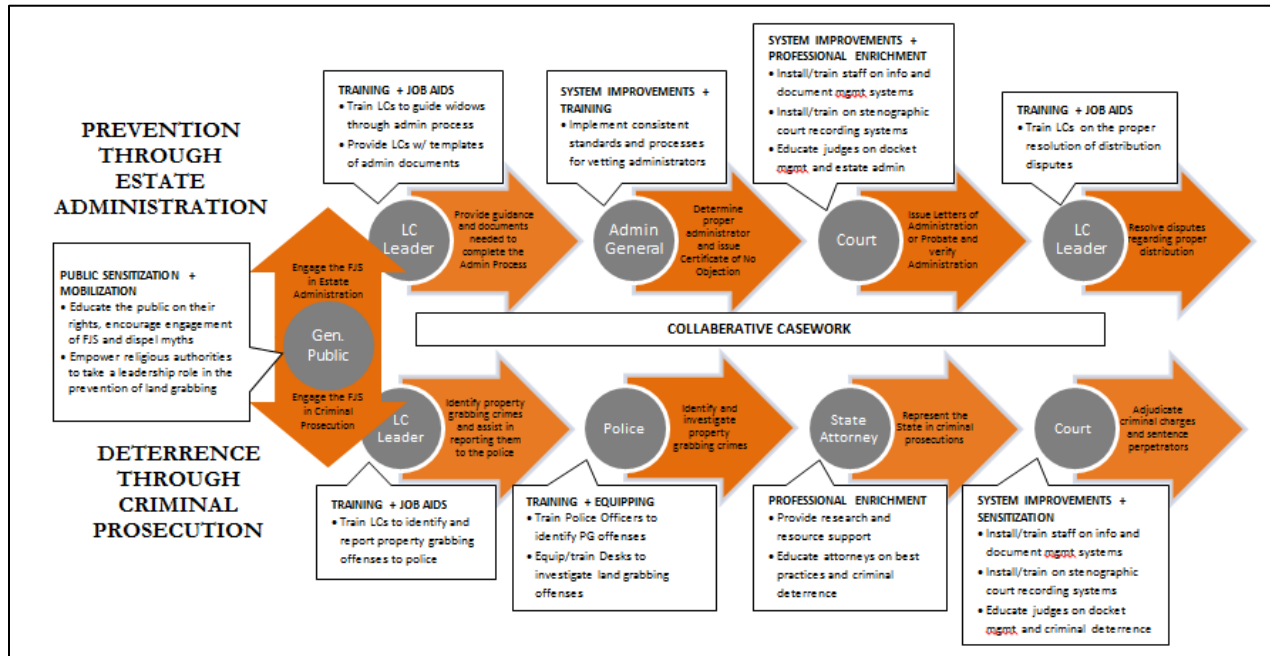
to their land through both formal and informal justice mechanisms. IJM continues this collaborative casework today, as it continues to function as a diagnostic tool, enabling IJM to analyze the nature and causes of land grabbing and to evaluate the performance of the various actors within the justice system in intimate detail. It also serves as a prognostic tool, enabling IJM to design a systemic model for reform that recognizes the current capacity gaps of the formal justice system, while acknowledging and responding to the need for a property functioning public justice system in any scalable and sustainable response to land grabbing.

Key Strategies of the Model

In mid- 2012, Project Empaanyi began complementing its collaborative casework with strategies to improve the formal justice system's ability to prevent land grabbing through efficient estate administration and deter land grabbing through effective criminal prosecution (*see Figure 3*). To prevent land grabbing through estate administration, Project Empaanyi engages: **LC Leaders** through training on how to support their constituents in writing wills, administering estates and documenting land ownership; and the **AG** through innovations designed to simplify and streamline the estate administration process. To deter land grabbing through criminal prosecution, the Project engages: **LC Leaders** through training on how to support their constituents in identifying and reporting land grabbing crimes; the **Police** through strategic training modules designed to improve the identification and investigation of land grabbing related crimes and equipping specialized units to respond to these crimes; and **State Attorneys** by partnering on prosecutions of model cases and providing professional enrichment opportunities that allow the State to successfully prosecute land related criminal cases.

To achieve both objectives, the Project engages: the **Judiciary** by partnering to develop model courthouses with the technology, training and administrative infrastructure to process estate administration cases and adjudicate criminal prosecutions with transparency efficiency and accuracy; and the **General Public** through legal rights education that will encourage vulnerable populations to take steps to prevent land grabbing by engaging the formal justice system and encourage victims to report land grabbing offenses to the Police for prosecution.

Figure 3: Project Empaanyi Strategies



Critical Interventions of the Model

LC Leader Capacity Building

Role: LC Leaders are central to enforcement of the law on a widow’s behalf. LC Leaders serve as guides in the estate administration process, as well as arbiters of disputes that arise throughout the process. They also often serve as the first point of contact with the formal justice system when land grabbing occurs within their jurisdiction. Finally, LC Leaders are influential opinion leaders who can shape the general public’s experience with and perception of the formal justice system.

Intervention Strategy: To address knowledge and attitude gaps, Project Empaanyi provides LC Leaders with training and informational resources. IJM provides LC Leaders with the first significant training on land administration they are likely to have ever received, giving them an overview of the law, as well as tools to help constituents administer estates, write wills, document land ownership, mediate distribution disputes and report land grabbing crimes to the police. LC Leaders receive a detailed manual, as well as guides and templates to distribute to constituents who wish to administer estates or write wills. As of the end of 2013, IJM has directly trained 2,000 LC Leaders, representing over 90% of the LC1 and LC2 Leaders in the project area. In 2014-2015, IJM will provide each of these LC Leaders with a one day refresher course designed to reinforce central principles and fill gaps discovered in follow up evaluation of trainee behavior changes.

To make IJM's LC Leader strategy sustainable, IJM will rely on a team of 120 intensively trained LC Leaders to continue to provide one-day refresher trainings to their colleagues. IJM will provide materials and support where needed for these LC-Trainer led trainings. In 2015-17, IJM's LC Trainers will provide refresher trainings to 1,500 LC1 and LC2 Leaders per year. To further enhance sustainability, IJM will train the Community Development Officer and Sub-County Chief in each sub-county in Mukono to serve as a mentor to LCs in his/her sub-county. IJM will provide these mentors with extensive training, as well as written materials for distribution and on-going technical support.

Court and Prosecution Capacity Building and Equipping

Role: The courts are central to effective estate administration and criminal prosecution of land grabbing related crimes.

Intervention Strategy: IJM will address the shortcomings of the Judiciary by implementing systems designed to improve the court's accuracy, efficiency and accountability in the two courthouses with jurisdiction over the project area. To this end, through Project Empaanyi, IJM and judiciary authorities have (i) installed a new hard copy document management system; (ii) expanded the electronic case and information management system, linking the two pilot courts to the existent Judiciary case management system; (iii) installed a stenographic recording system, extending the Judiciary's push for stenographic recording to the Mukono court; and (iv) provided ongoing training and mentoring of court clerks in courthouse administration, record-keeping and docket management. These systems will be designed to shorten the length of time a court needs to complete a case, improve the accuracy of the record of proceedings and replace ambiguity with accountability to decrease the opportunities for corruption.

To ensure buy-in of both the courts and the state attorneys at all levels, IJM will also host a series of judicial symposia targeted at the country's judicial and prosecutorial leadership, as well as the specific state attorneys, magistrates and judges with jurisdiction over Mukono. IJM will further provide state attorneys in the project area with ongoing mentorship, partnership and professional enrichment opportunities that will enhance their ability to properly distinguish between the civil and criminal aspects of land grabbing cases, and increase the effectiveness in prosecuting land-grabbing related offenses to conviction. These programs will be sustainable as they largely represent realizations of programs already envisioned and budgeted for by the Judiciary and have, to date, received much support from both the Judiciary.

Police Capacity Building and Equipping

Role: Proper police investigation and charging provide the essential foundation for effective criminal prosecution and deterrence of land grabbing perpetrators.

Intervention Strategy: To address knowledge gaps, Project Empaanyi has already provided basic training to over 230 police officers with a project target of 600 police officers, teaching them how to identify, investigate and charge land grabbing-related offenses, and to appreciate their unique role in land grabbing deterrence. After receiving training, one Mpatta police officer said: *“Since I was trained, now we can talk to the public and tell them what has to be done when land grabbing happens. People now know that they can come to the police with these cases. IJM has opened our brains.”* Assuming a reasonable transfer rate, the targeted numbers will ensure that 80% of police officers in Mukono County will have received this first-level training by the end of 2014, and that this percentage will be maintained through 2017. To enhance the sustainability of the Project’s training efforts, IJM will partner with the Police Commissioner to incorporate the training materials into the National Police Academy’s general induction training in 2017. Edward Ochom, assistant Inspector General of Police endorsed this strategy, stating, *“If everything is implemented from the training these police have received, when we arrest and charge land grabbing offenders, it will have a multiplying effect, restraining other perpetrators from these crimes.”*

To address resourcing and capacity gaps, Project Empaanyi is establishing land grabbing investigation (LGI) desks at 11 sub-county police posts in Mukono County. IJM has already established six of the LGI desks. To identify officers to fill the LGI desks, IJM selected 12 officers from the advanced technical training IJM has provided for Criminal Investigations and Intelligence Department (CIID) officers (all selected from the police officers who have already received basic training). The advanced training provided the CIID officers with technical instruction on investigative techniques, witness statement collection, evidence management and charge drafting. IJM will ultimately provide advanced training to a total of 150 CIID officers. Assuming a reasonable transfer rate, the targeted numbers will ensure that 80% of CIID officers receive this technical instruction by the end of 2017. The remaining five LGI desks will be established in 2014 with an additional 10 specially trained CIID officers selected to staff these desks. To enhance sustainability of the LGI desk program and ensure the transfer of new skills to the workplace, IJM will provide the LGI Officers with annual refresher trainings, monthly site visits and ongoing mentorship through 2017.

AG Standardization

Role: The AG’s office was created to vet potential administrators and ensure that estate administration moves swiftly, transparently and in accordance with the law.

Intervention Strategy: Project Empaanyi will work with the AG to develop standardized practices and procedures for administrator vetting that will make the process more streamlined, efficient and transparent. IJM will further assist the AG’s Office in publishing the new standards to correctly set expectations of those who participate in the administration process and encourage potential administrators to engage the official procedure.

Public Awareness Raising and Empowerment

Role: In order for any of the formal justice system improvements described above to lead to a reduction in the prevalence of land grabbing, Project Empaanyi must ensure that the public is able to understand and willing to engage the justice system for purposes of estate administration and criminal prosecution.

Intervention Strategy: To educate and engage the public, Project Empaanyi is implementing a public awareness and empowerment campaign focusing on messages such as:

- Widows and orphans are entitled to inherit estate property, regardless of custom.
- Will writing and marriage formalization help protect people from land grabbing.
- Lawful estate administration is necessary to protect people from land grabbing.
- LC Leaders can provide guidance on will writing or estate administration.
- Evicting and/or excluding widows or orphans from their property is a criminal offense.
- Significant penalties for land grabbing exist and will be pursued by the justice system.
- Reporting land grabbing to the police protects everyone from land grabbing.
- LGI desk officers are available to provide assistance to victims of land grabbing.

To communicate these messages, IJM will continue to offer full-day legal education programs for the general public, as well as specialized programs for various community leaders (e.g., religious leaders,²⁰ clan heads, etc.). Attendees will receive personal instruction on all of the above topics, as well as local language manuals with simplified information on estate administration and criminal prosecution. Project

²⁰ Because of the significant role of Christian religious leaders in influencing social norms and behavior in Mukono, Project Empaanyi works to equip Christian church leaders in Mukono to combat property grabbing , by providing them with theological training on the Bible’s instructions to churches and people of faith to protect widows and orphans , as well as with resources to actively engage through marriages, funerals and other points where they can advocate for the rights of the vulnerable members of their communities that they see in their communities.

Empaanyi is also reinforcing the legal education programs with a media campaign that will partner with the Police, the Administrator General and the Ministry of Lands to use radio programming, newspaper articles and storefront messaging to promote justice system engagement and to provide examples of successful formal justice system intervention. These various mediums will reinforce messages that debunk property-related myths, inform potential victims of their property rights, notify potential perpetrators of criminal consequences of land grabbing, and educate citizens on how to engage the formal justice system.

Continuing Collaborative Casework

IJM also continues to engage the Ugandan justice system in collaborative casework, securing legal and physical land ownership for individual victims through formal and informal justice system mechanisms, restraining and deterring land grabbing offenders through the formal criminal justice system and overcoming the effects of land grabbing on individuals, families and communities through quality aftercare. In addition to the benefits to individual victims of the crime, continued collaborative casework allows IJM to identify and challenge practices and precedents that expose widows to further abuse, recognize and reinforce behaviors of public justice officials that encourage estate administration and result in successful prosecution of property grabbers, and create feedback loops informed by real-world situations that will help to test and refine the Project's more-systemic strategies.

KEY MESSAGES AND BROADER RECOMMENDATIONS FOR CONSIDERATION

Land grabbing is a crime committed against Uganda's widows. Armed with superior physical strength, economic power and social stature, property grabbing perpetrators use violence, coercion and deception to strip the most vulnerable members of their communities of their homes, their lands and their livelihood. While many traditional inheritance practices reinforce and tacitly support land grabbing from disfavored women and children, the law of Uganda (constitutional, civil and criminal) clearly forbids it and enshrines the land and inheritance rights of these vulnerable individuals. Faced with the reality that the Ugandan justice system has largely failed to protect those rights, the greater land rights community has focused its attention on land rights education and legal aid through informal dispute resolution mechanisms that allow parties to work around the failed formal justice system.

This paper acknowledges the value of legal rights education and informal dispute resolution, but submits that these strategies are insufficient unless undergirded with strategies designed to strengthen the formal justice system. IJM's President, Gary Haugen, explains: "*[I]t would seem that criminal justice reform efforts in the developing world would do well to focus on all the possible strategies, programs, and*

approaches (whatever they may be) that seem most effective in 1) actually preventing violent crime in poor communities, and 2) increasing the trust and confidence of those who must depend on the system—two outcomes that are likely to be mutually reinforcing” (Haugen, 2014). Accordingly, this paper suggests that, rather than developing programs that treat informal justice mechanisms and the formal justice system as mutually exclusive, the development community should look to develop programming that supports both, in recognition of their interconnected and complimentary roles.

Project Empaanyi is a proven intervention model that enhances the effectiveness of legal rights education and informal dispute resolution mechanisms by investing in building the capacity of the formal justice system to prevent land grabbing through efficient estate administration and to deter land grabbing through consistent criminal prosecution of land rights violators. Unlike ADR-based legal aid models that bring positive results for individual victims but fail to impact the larger community or otherwise protect the interests of the estate, Project Empaanyi offers a scalable and sustainable alternative to the traditional response to land grabbing. IJM encourages other members of the land rights community to make similar systemic investments to protect the land and inheritance rights of women in Uganda, across Africa and around the world.

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Tables and Figures

Figure 1: Estate Administration Process and Chokepoints (p. 4)

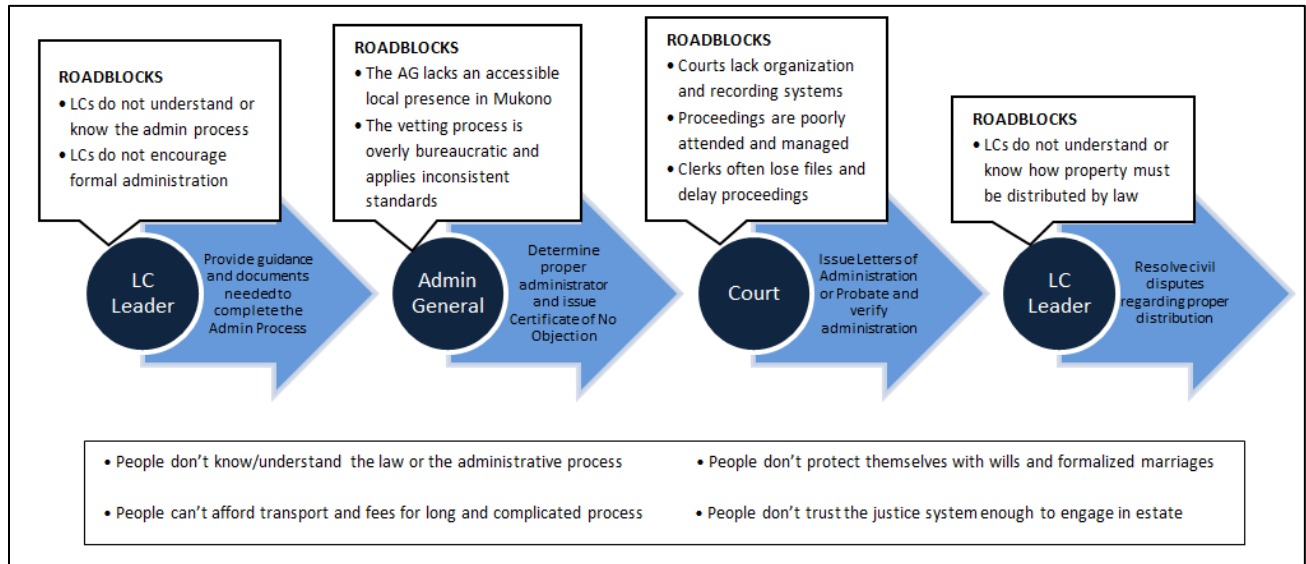


Figure 2: Criminal Prosecution Process and Chokepoints (p. 6)

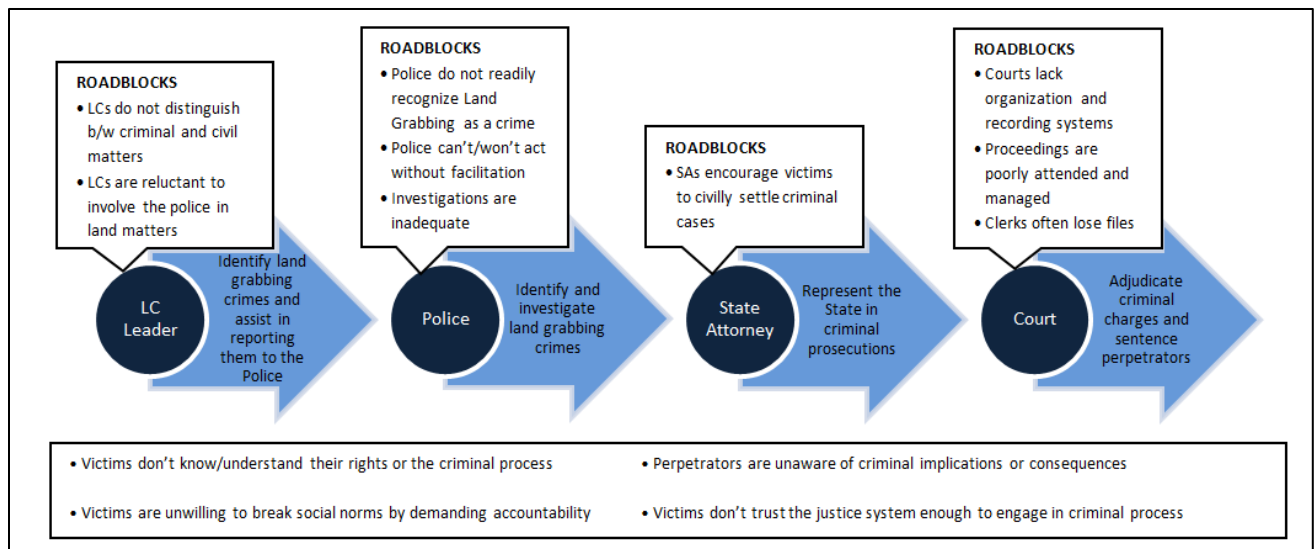


Figure 3: Project Empaanyi Strategies (p. 13)

