

**LAND CONFLICT MANAGEMENT IN UGANDA:
A CASE STUDY OF BULIISA DISTRICT**

BY

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DECLARATION A

This research paper is my original work and has not been presented for any academic award in any university or institution of learning.

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Name of candidate



Signature of candidate

25th/10/2014

Date

DECLARATION B

I confirm that this research paper has been written by the candidate under my supervision.

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MR. IGA STEPHEN

Iga

Signature of supervisor

27th Oct 2014

Date

DEDICATION

This work is dedicated to my parents for their wonderful moral encouragement and financial support towards my education and my friends.

ACKNOWLEDGEMENT

I would like to express my heartfelt gratitude to parents for their wonderful moral encouragement and financial support towards my education. I have no regrets because you have always been there for me and may good Lord reward you blessings.

I am very grateful to acknowledge my considerable thanks to my supervisor Mr. Iga Stephen who is bold, vocal, vibrant, exuberant, and exceptional intelligent with rational thinking. He criticizes you to nothing and raises you to something; his guidance has made this research very easy to be produced. Never will I forget your humble encouragement and credible advice.

My regards and special thanks go to all interview respondents who gave me information.

LIST OF STATUTES

The Constitution of the Republic of Uganda, 1995 as (amended)

The Land Act, Cap 227

The Land Acquisition Act, Cap 226.

The Mining Act, 2003.

The Petroleum (Exploration, Development and Production) Act, 2013.

The Magistrates Court Act, Cap 16

LIST OF CASES

Kampala district land board and Anor Vs National Housing and Construction Corporation Supreme Court Civil Appeal; No. 2 of 2004.

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CHAPTER ONE:

INTRODUCTION

1.0 Introduction:

This chapter presents the introduction of the study, statement of the problem, objectives, research questions, relevance of the study, scope, research method, data collection techniques, ethical considerations and limitations.

1.1 Background of the study.

Buliisa district formerly a county was carved out of Masindi district in 2006 and borders Lake Albert an area that has been found to be rich in oil deposits. The district comprises six sub-counties and a town council which is the main urban center. Agriculture and livestock production are the main economic activities. Fishing is another major economic activity, particularly in the areas bordering Lake Albert.

In Uganda, every Citizen is guaranteed the right to own property **under Article 26 of the Constitution the republic of Uganda 1995**¹. However prior to the enactment of the 1995 Constitution, in 1975 land was nationalized in Uganda and vested in the Uganda Land Commission and it was only held in form of leases by people but this was later overturned, and now people own land according to four tenure systems which are:

leasehold, mailo, freehold and customary as provided for **under Article 237 (3) of the Constitution of the republic of Uganda 1995**. Land in Uganda belongs to the people according to **article 237(1) and section 2 of the land Act** reiterates that provision as seen in the case of **KAMPALA DISTRICT LAND BOARD &ANOR VS. NATIONAL HOUSING AND CONSTRUCTION CORPORATION.**

Buliisa is a cosmopolitan district due to either civil wars like in the North, North Eastern and Western Uganda under Lord's Resistance Army and

¹ The Constitution of the republic of Uganda, 1995 (as amended)

Allied Democratic Force respectively, like Congolese and Banyarwanda, or just people who migrated to Buliisa because of their livelihoods for instance Balalo who came to Buliisa as cattle keepers all of whom hold land fifty-fifty percent with the indigenous of Buliisa district. Now there is another trend of land conflict which has come in as a result of oil and gas discovery in the region since Buliisa falls within exploration block two that was licensed to Hardman Resources and Energy Africa (now called Tullow Oil) in 2002. This is basically the urban rich who are now rushing to buy or grab land from the village poor who are non-suspecting with the aim of reaping big from the oil exploration.

Land conflicts in Buliisa are of different types for example, trespass, clan disputes, unclear boundaries, breach of contracts especially in the after sale or leases, land grabbing and encroachments. All these forms of land problems come from individual neighbors, different clans, families or even government since section 42 of the land act² allows government or local government s to acquire land for public interest. **In BHATT & ANOR VS. HABIB VERSI RAJANI**, public interest was defined to mean the same purpose or objective in which the general interest of the community as opposed to the popular interest of individuals is directly and virtually concerned.

1.2 Statement of the Research Problem

Most of the residents are not indigenous of that community and therefore did not appreciate the tenure system there which was communal since the indigenous cultivate crops as well as keep animals. This has fuelled the disposal of land easily since most of them are foreigners; therefore have little attachments in Buliisa. This came with its challenges of poor households being lured to dispose off their pieces of land cheaply to the rich who hope to reap big.

In as much as there is a framework handling land conflicts in Buliisa it has not been adequate enough to address the rising land conflicts. There is

² The land act cap227, (1998).

rampant land grabbing and conflict now more than before in the cosmopolitan rural Bulisa District.

In line with the above situation, studying the factors which have contributed to the prevailing land conflicts in Buliisa, how land conflicts are being handled by the legal mechanism, gaps or challenges faced in the land dispute resolution process is very vital at this point in time when many people have conflicts over land yet it is the main resource which people derive their livelihood from.

1.3 General objective

Establishing and assessing the conflict resolution mechanisms, tenure systems and property rights in Buliisa.

1.3.1 Specific Objectives of the Study

1. To analyze how legal institutions are resolving the land conflicts by reflecting on the land conflicts resolution mechanisms set up by the state and the challenges posed.
2. To examine the land tenure systems in Buliisa district.
3. To establish the land rights system in Buliisa District
4. To establish the relationship between land dispute resolution processes and practice in the future.

1.3.2 The Research questions:

1. What factors have contributed to land conflicts in Buliisa district?
2. What are the land tenure systems in Buliisa district?
3. What are the land rights systems in Buliisa District?
4. How can the relationship between land dispute resolution processes and practice be improved in future?

1.4 Relevance of the study

This study was important because land conflicts remain a major challenge that prevents people from farming their lands and securing livelihoods. In Uganda food security is a commonly preached principle which is now under

threat due to land wrangles and fragmentations unlike in the past where access to land for either crop growing or animal keeping was done communally. The existing land conflicts render some people in Buliisa very vulnerable especially those without titles successful negotiation with the prospective buyers hence warranting a study on how the land conflicts are being handled with a view of understanding the challenges and formulating recommendations.

Little literature on land conflicts in Buliisa has been written on how they are being resolved or handled by the legal institutions at the local level, irregularities and challenges faced. I strongly believe that studying these aspects is very critical at this moment of oil discovery and exploration in this region that has brought about high expectations of people as regards to the importance of land in society.

This research also intended to inform the government of Uganda, land policy makers and implementers, NGO' s, judicial officers and various stakeholders on how land dispute are being handled by the existing mechanisms, its effectiveness, irregularities and challenges. And the recommendations which were based on the findings were raised important view on what needs to be done to ensure expeditious and effective resolution of land conflicts, access to justice by the poor and vulnerable people among many others in Buliisa District which was enhance the protection and promotion of land rights.

The study was done to help the researcher to fulfill the requirement for the award and in academic development; and was also helped by other researchers to make reference in line with the study.

This study informed various stakeholders on the practical reality of factors which have contributed to existing land conflicts in Buliisa district, how they are handled by the legal institutions in place and challenges faced in the land dispute resolution processes.

1.5 Area and Scope of the Study

The study was done in Uganda within Buliisa District, which was separated from Masindi District in North Western Uganda, and created by an Act of Parliament in Financial Year 2006/2007.

The researcher intended to use focus group discussion and key informant interviews which were done at District level and grass root level.

The researcher chose to focus on Buliisa District because of the view that land conflicts are rampant in Buliisa District especially with the discovery of oil in the albertine region.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction:

This chapter discusses the concepts of legal institution, land tenure systems and land rights. In Buliisa district different legal orders with regard to land tenure systems and frameworks for resolution of land conflicts exist. These legal orders have developed overtime and they are all aimed at protecting the rights of the people to obtain, own and use land, and ensuring access to justice in the resolution of land conflicts. Amidst the rampant land conflicts in Buliisa district the different legal orders should be strengthened to enhance security of tenure, land rights and access to justice.

2.1 Legal institutions

Legal institutions are those structural bodies in the administration and guidance of justice and are both formal and informal. This study intends to understand legal orders in the Ugandan context as a combination of statutory and customary systems, which can conflict with or support each other. In the case of land conflicts relating to customary land, customary law is unavoidable, even when the legal system used for resolution is formal.

It is important to note that legal pluralism is more than the merging or joining of traditional European forms of law and other forms, because colonized third world countries were not only influenced by European laws; their indigenous law was also shaped by centuries of conquest and migration (Merry 1988:870). The French and British imposed their law in Africa onto indigenous law and they incorporated customary law which was not 'repugnant to natural justice, equity, and good conscience,' or 'inconsistent with any written law.' Unacceptable African customs were outlawed by colonizers through the so-called 'repugnancy principle'. As Popisil states: "every functioning subgroup in a society has its own legal systems which is necessarily different in some respects from those of other groups."

In the Western Ugandan context the social science view of legal pluralism is much more practical in that the traditional and legal system of resolving

land conflicts coexist and if the customary fails the legal system is used but with reference to customary norms and practices which are not repugnant to natural justice. The two modes belong to two different systems but the legal recognizes the customary and provisions are enacted to that effect and empowering them to handle land conflicts though the decisions of traditional leaders are not legally enforceable. This is made provision for under section 88 of the Land Act which is to the effect that nothing will limit the power of traditional authorities in resolving or mediating land conflicts over customary tenure. In distinguishing between legal pluralism in the 'social science' and 'juristic view', Griffith views the 'social science' perspective on legal pluralism as a situation within society under which different legal orders exist at the same time yet they do not belong to one system. On the other hand legal pluralism is viewed in the 'juristic' view as a particular problem of dual legal systems which was created as a result of European countries establishment of colonies and the act of them imposing their systems on preexisting systems. When the British introduced a new legal order in Uganda, the customary system of resolving land conflicts and tenure was not interfered with in Western Uganda since there was strong and prolonged resistance to British occupation. Even without the war, the dual legal system need not be viewed as a problem, as it tends to be seen from the juristic viewpoint. Rather, it may be an asset for a society to have different legal processes; given that tenure systems are not uniform either and some land conflicts in Western Uganda can only be administered by courts of law. Developments in the realm of hybrid, complex property rights, and the fact that statutory orders can be enforced legally unlike the outcomes of a land dispute resolved by the customary system justifies the importance of the different legal orders.

According to legal anthropologists, many of whom study the different types of law that coexist in society, legal pluralism persists in all societies in some form. And even where it is possible to fit customary law within the ambit of state law, legal anthropologists argue that there will be another form of legal pluralism. Pimentel recognizes that independent countries struggle to preserve their cultures and norms, as reflected in

customary law and institutions, even whilst seeking to function as modern constitutional states. Local authorities which resolve land disputes in rural areas rely on

custom and they use the legal institutions in backing the land rights, other than heavily relying on state apparatus which in most occasions is costly and ineffective in rural areas.

More than one legal system is relevant in most domains of social settings and social life. A legal system which is sound and stable must reflect the rule of law which covers broadly different values which include equity, security, justice and basic human rights protection. Access to justice is a major component of rule of law, however in most countries the statutory courts are in the town centers yet the greatest populations of persons with conflicts are in the rural areas and may not have any means of getting to the town centre and if they get their most of them cannot afford to pay for legal advice or representation, and if the matters cannot be heard in their villages then their claims may never be heard or they resort to traditional institutions.

Land Equity and Management Uganda, an NGO suggests that legal pluralism as it exists in Western Uganda involves the coexistence of two legal orders and forum shopping which involves actors trying out different systems to find something that works for them. People have at their disposal parallel judicial paths which erode power of the customary courts whose source of power is derived from their authority which is derived from the respect they command. It is the respect they command that keeps customary norms and practices alive because their decisions are not binding. Yet research by LEMU also reports that most traditional leaders are powerless old men, and command less authority and respect than judges and court officials - in the statutory bodies. State institutions for the resolution of land conflicts both coexist with and also. Undermine customary forums, which however can-not be replaced entirely by statutory law. In a C113V, a hybrid system 'limps along', and the state lacks capacity to make them function well together.

2.2 Land Tenure Systems

The land tenure systems in Uganda are also legally plural. The discussion here-under examines different tenure systems in Uganda which are modes of owning land and how they have developed overtime.

In most parts of Africa land tenure is depicted as either customary/traditional or statutory. Colonialism introduced different types of land tenure systems which are based on statute law which have very little to do with customary practices and laws of land use and ownership. However in some places the customary systems of land ownership and administration were not replaced with satisfactory legal systems.

One school of thought sees the replacement of customary tenure systems in Africa with private property as enhancing capitalist economic growth, on the grounds that enterprising individuals and families who own land titles will be more likely to invest.

The Constitution of Uganda, under Article 237 vests land in the people of Uganda who hold it according to the four land tenure systems except under circumstances when government or local governments acquire land for public interest. Much has been achieved both at Constitutional and legislative levels in as far as integrating communal ownership of land and statutory tenure system though there are still some challenges in institutional management of land.

Equally the land acquisition act³ makes provision for the procedure and method of compulsory acquisition of land by the government upon compensation but did not make legal requirement to purchase alternative land for the affected people. Once they are “promptly and adequately” compensated, the government’s obligation stops there. There is no legal requirement or provision that the people need to be moved or that

³ The land acquisition act cap 226

alternative land is made available or bought. This creates a problem, brought by the acquisition not yet solved by the government. That is why; this study will be carried out to suggest solutions for such problems.

The different tenure systems in Uganda are discussed here-under:

Mailo tenure is a system of land ownership which originated from the 1900 Buganda agreement where the King of Buganda together with notables and protectorate government were given land in square miles thus describing the name Mailo land. This tenure system is unique to only Buganda Kingdom.

On the other hand Freehold land tenure system was introduced during Toro agreement of 1900, Ankole agreement of 1901 and Bunyoro agreement of 1933 where land was granted due to requests from the religious organizations. This tenure system is common in Western and Eastern regions of Uganda (Ibid). It is further argued that free hold land tenure system is the best and strongest land tenure system which offers secure and hustle free transfer of property rights with assurance and authority from the state.

Leasehold land tenure is a system under which a person gives to another an exclusive right to possess land for a specific period of time, in return for payment which can be periodic or paid in a lump sum called rent.

Customary tenure is a system where land is owned and organized according to customary laws and regulations and sometimes it is referred to as communal land ownership. This tenure system exists in majorly, northern, eastern, western, and southern and parts of central Uganda. Customary land tenure system is more flexible to the extent that it can better address the challenges of land scarcity and enable agricultural commercialization in some communities. Customary tenure system has been seen by some researches as means of enabling weaker groups to access land for use. **Saku vs. Seventh Day Adventist Association (SCCA NO. 8/93)**, case demonstrates the precarious state of Customary Law in Uganda. In a very unprecedented interpretation of the convoluted Land Decree, 1975 by which the military government had by a stroke of the pen nationalized land rights in Uganda, the Supreme Court ignored land rights in existence for centuries

and upheld the Decree provisions which rendered void all customary land rights. The Appellant had acquired a fully recognized customary right to land through a voluntary purchase from a rightful holder of customary tenure, albeit subsumed under the Mailo land tenure which the Decree abolished. Having converted the Mailo Land Tenure to leasehold while preserving all existing customary tenure rights, it is astonishing that the court found that the Appellant was occupying public land. Obviously the leaseholder acquired rights such as were tolerated under the Decree subject to the customary rights of those in occupation. The Appellant bought the land following and fulfilling all the requirements prescribed under customary law and his title was valid, to hold otherwise is a total disregard of customary law which under the Judicature Act is recognized and which courts are bound to apply.

However, one possible problem with customary land tenure system is that it cannot provide absolute rights, some clan chiefs in some countries having turned against their subjects and sold land commercially which belonged to clans and would be considered family land hence need for this research.

In Buliisa district and more generally in North Western Uganda most of the land is held under customary land tenure. This is confirmed by Rugadya who observed that over 90% of the land holding system in western Uganda is still under customary land tenure systems which are governed and administered through customary laws which are implemented by chiefs, including the local and magistrates' courts. However though land is owned under customary tenure research has revealed that land is held as private property by households or families where displacement occurred. Customary land tenure system poses a challenge in that there is no documented evidence of proof of ownership of customary land other than oral evidence and boundary marks if at all they are there.

2.3 Land rights

Land rights are: "inalienable ability of individuals and groups of individuals to obtain, possess and utilize land at their discretion, Mkungu v. Mbui [2000] LLR 4317 (CAK). This was a case of the Court of Appeal of Kenya

dealing with the effect of the Registered Land Act on customary tenure. In an effort to replace traditional land ownership under customary law by registered titles under the Registered Land Act, the colonial Government had embarked on massive registration of land which had disastrous results in rural areas. Traditionally land passes by inheritance from one generation to another under well-established rules whereby the designated "heir in effect acquires mere stewardship over the land for the benefit of the family. With the registration of land, these 'heirs' came forward to register as "owners" resulting in total obliteration of any rights in the land by other family members. The Courts in a stroke of genius constructed the notion of a "trust" to rectify an obvious injustice resulting from the wholesale adoption of a totally alien system of tenure whereby individual land ownership supersedes communal ownership that prevailed for generations. The effort by the Court in this case is in marked contrast with the total disregard of customary land rights by the Supreme Court in Uganda; so long as their activities on land do not violate the inalienable human rights of others as outlined in numerous international human rights agreements such as Universal Declaration of Human Rights, Convention of Elimination of All Forms of Discrimination against Women and the African Charter of Human and People's Rights". Land rights entail the inherent ability of people to own, use, alienate, obtain and possess land without interfering with other people's rights. The right to own property either individually or in association with others is provided for **under Article 26 of the Constitution of the Republic of Uganda.**

Legitimate land rights are different and overlap in different countries and societies). IIED further highlights that in some communities, individuals or groups of people can have a right to cultivate land, build a house or even donate it but have no right to sell or dispose off that same piece of land. According to the principles and practices of Customary land tenure in Acholi which is the major tenure system in Buliisa the universal land rights which accrue to all clan members are is much hinged on utilization land accessibility rights which include right to live on land, graze animals and hunt other than ownership rights.

There are two key elements necessary for the acquisition of secure

rights to land and property by individuals which include: legitimacy of the rights which has to be recognized by the local community; and the state must recognize or endorse the legality of those rights as well. She highlights that large chunks of land under customary ownership may be insecure because sometimes they are not legally recognized by government even when they are lawful and recognized in the local community. It has also been observed that another way of securing tenure and land rights of the people is highly dependent mostly on the reliability and strength of the institutions which intervene in the resolution of land conflicts.

It is very difficult to protect land ownership and user rights without any documentation of ownership or substantial proof of ownership say through boundary markings backed by individuals adducing evidence. Toulmin argues that in West Africa, there is hardly any documentation and most rights are claimed without any written system of tenure, it is only 2% of land that is formally documented. This poses a serious challenge on protection and promotion of land rights and need for this research study.

The best way of securing land rights is by registering the people's interests in land. A study conducted by Toulmin indicates that there are several ways of registering rights to land whereby some are short term certificates of occupancy while others are formal registers and titling processes. She further emphasised that it is the responsibility of the state to manage and facilitate the whole process of acquiring land rights and ensure that land rights are secured at all levels which can only be successful if government partners with local institutions in checking and validating land claims right from the grassroots. However, it is very costly to establish effective property rights and in most cases when resource is in plenty or abundant, there is fewer incentives for the definition of such rights, and yet demands and scarcity of property which is on the increase has created pressure to define rights.

CHAPTER THREE:

METHODOLOGY

3.0 Research Methodology

This chapter presents research design to be used. Population and sample size of the study, data collection instruments.

3.1 Research Design

In writing this research paper the researcher used both qualitative and quantitative design in order to come up with critical findings.

3.2 population of study

These were twenty five (25) respondents consisting of different officials.

3.3 Sampling

The choice of respondents who are to be interviewed were through purposive sampling technique which enabled me to select a number of key respondents (15) who included: the District Land Officer, Judicial officers, Land Board Chairperson, elders. Local Council Court members and NGO's staffs working in fields of land rights and Human Rights in the area. Some parties to land conflicts (5) were also be asked for their views on the dispute resolution process and its outcomes (5). The total number of respondents were twenty five (25).

Respondents	population	Sample size
Parties to land conflict	05	05
Key stake holders	15	15
Dispute resolution	05	05
Total	25	25

3.4 Methods for data collection and analysis

The researcher reviewed existing literature on legal institutions, land tenure systems, land rights and post oil discovery. This enabled the researcher to analyze and appreciate the different concepts surrounding land rights in the

context of in Buliisa which makes this paper relevant to academics and various stakeholders.

Secondly, the researcher conducted a field study in Buliisa district and interviewed various parties to land conflicts, staffs from civil society organization, judicial officers and other government officials from whom I gathered information. The researcher also studied some court records in the Chief Magistrates and Magistrates Court from 2009-2013.

3.4.1 Primary Data collection

The researcher collected primary data by: conducting interviews, reading unpublished reports and studying some court records for a specific period. The interviews were guided by a questionnaire. The researcher conducted formal interviews with some key informants and less formal with parties to land conflicts, a relaxed atmosphere was allowed. This was appropriated because of the different settings in which the interviews took place for example office, court, home, restaurant, and under a tree while in the field. The researcher also intended to use the semi structured style of interviews which involved a well-defined plan of questioning that were adjusted from time to time to follow the flow of conversations to enable the researcher to deviate from the questioning plan when an opportunity arose to pursue interesting targets relevant to the study. The Interviews were one to one.

The researcher examined records of some cases of 2010 and 2013 which are before Chief Magistrate and Magistrate Grade One Courts. The researcher studied the Court records in order to ascertain the nature of land conflicts lodged in the Court, how they were handled and their status.

3.4.2 Secondary data Collection

The researcher collected secondary data through desk review of published text books, reports, journals articles, workshop papers, and international legal instruments, Constitution of the Republic of Uganda 1995, land laws of Uganda and a wide range of publications which were relevant to the study. The researcher accessed some information online and by visiting various libraries.

CHAPTER FOUR

FINDINGS OF THE STUDY

4.1 How legal institutions are resolving the land conflicts by reflecting on the land conflicts resolution mechanisms set up by the state and the challenges posed.

There is no principle of a willing seller-willing buyer as is provided for under sec. 35 of the Land Act Cap 227. Most people are selling off their pieces of land because some speculators are peddling lies that government will not pay them.

As Akin and Katono point out, Section 88 of the Land Act (1998) and the Act 2004 amendment are contradictory because in practice, clan courts do not occur anywhere in the appeal process for a land dispute after it has been heard by the LC II. By mandating land cases to begin at the LC II level, the Act, circumvents the clan and prevents it from exercising its legal authority to determine and mediate these disputes⁴.

In its current form, the “dual system of land administration (the formal/statutory and informal/customary) breeds conflict, confusion and overlaps in institutional mandates.”⁵

As Rugadya, Nsamba-Gayiiya, and Kamusiime submit: “the duplicity in roles, hierarchy and jurisdiction needs systematization, while recognizing the values and incorporating the roles of traditional institutions in defining the functions of statutory institutions.” The Final Draft of the Uganda National Land Policy proposes to relieve pressure for resolution of disputes “by the legal recognition of the dual operation of both customary and statutory systems in land rights administration, land dispute resolution and land management by empowering customary authorities to perform these functions.”

⁴ Jeremy Akin and Isaac Katono, Examining the A-D-R-tistry of Land Dispute Mediators in Northern Uganda, Northern Uganda Land Partners Platform, Hosted by Trocaire, October 2011, p. 15.

⁵ Republic of Uganda, Ministry of Lands, Housing and Urban Development, The Uganda National Land Policy: Final Draft, March 2011, pp.5-7.

There is rampant displacement of families due to discoveries of oil pads, construction of oil camps.

Irregularities in processing of land documents rights from local councils and the district, this is because oil speculators who are rich influence the Area Land committees and land boards and hence ignoring the procedures of acquiring Land.

Limited knowledge on the roles by the rich after acquiring it. This has made the rich take advantage of the civic deficit among community members.

Unclear or totally lack of boundaries on land which has made some sellers do not include the neighbors in the sale agreement to satisfy boundary question. The chairperson LCI and the executive committee are also left out as principle witness since the laws do not provide for them to sign as witness.

The findings are that most people own land customarily though a few members own land privately.

4.2 Land tenure systems in Buliisa district

The land that is moistly owned customarily are not registered through Associations and therefore, community members end up selling with the consent of others hence conflicts.

Most settles have occupied what was vacant land and that is how the history of occupation and use/development of the land stated.

Tenure systems;" and that "The State shall establish a customary land registry for registration of customary tenure in its own form." It then sets forth detailed strategies: "To facilitate the development and evolution of customary tenure in relation to social, economic, political and other factors; facilitate the design and evolution of a legislative framework for customary tenure; and strengthen traditional land management and administration institutions"⁶

⁶ Republic of Uganda, Ministry of Lands, Housing and Urban Development, The Uganda National Land Policy: Final Draft, March 2011, p. 20.

While many studies suggest land disputes inhibit agricultural productivity by reducing cultivation, inhibiting investment, and causing the loss of economic assets;⁷ debates linking the form of tenure to agricultural production and land degradation remain inconclusive.⁸ There are strong arguments that customary land tenure systems are inadequate to cope with the cash economy of a modern society⁹ and it may be anticipated that “as agricultural modernization and commercialization proceeds in Uganda, access to markets and credit are likely to become much more important.”¹⁰ However, the prominent Africa scholar Jeffrey Herbst observes across Africa, “most states have failed to significantly disrupt local tenure arrangement.”¹¹ With the latent power of customary systems and the state’s lack of capacity to implement a sustainable alternative, the situation in Uganda is no exception. Herbst points out that “there is, in fact, a consensus in the literature that states only will succeed in land tenure reform if they move slowly while recognizing traditional practices.”¹²

In a seminal 2008 study to inform the National Land Policy, Rugadya, Nsamba-Gayiiya, and Kamusiime reported that the traditional institutions are in most instances the courts of first instance and supported by the LCs that rely heavily on their structures and services.¹³ They found that before

⁷ Jenny Vaughan and Tim Stewart, *Land Disputes in Acholiland, A Conflict and Market Assessment*, Mercy Corps, June 2011, p.3.

⁸ John Pender, Ephraim Nkonya, Pamela Jagger, Dick Sserunkuuma, and Henry Ssali, “Strategies to Increase Agricultural Productivity and Reduce Land Degradation in Uganda: An Econometric Analysis,” in John Pender, Frank Place, and Simeon Ehui, eds., *Strategies for Sustainable Land Management in the East African Highlands*, Washington DC: International Food Policy Research Institute, International Livestock Research Institute, World Agroforestry Centre, and The International Bank for Reconstruction and Development/The World Bank, 2006, p. 186.

⁹ W. Kisamba-Mugerwa, “Institutional Dimensions of Land Tenure,” in Holger Bernt Land Conflict Resolution in Acholi Hansen and Micheal Twaddle, *Changing Uganda*, Kampala: Fountain Publishers, 2001, p. 311.

¹⁰ John Pender, 120. Ephraim Nkonya, Pamela Jagger, Dick Sserunkuuma, and Henry Ssali, “Strategies to Increase Agricultural Productivity and Reduce Land Degradation in Uganda: An Econometric Analysis,” in John Pender, Frank Place, and Simeon Ehui, eds., *Strategies for Sustainable Land Management in the East African Highlands*, Washington DC: International Food Policy Research Institute, International Livestock Research Institute, World Agroforestry Centre, and The International Bank for Reconstruction and Development/The World Bank, 2006, p. 186.

¹¹ Jeffery Herbst, *States and Power in Africa: Comparative Lessons in Authority and Control*. Princeton: Princeton University Press, 2000, p. 194

¹² Jeffery Herbst, *States and Power in Africa: Comparative Lessons in Authority and Control*. Princeton: Princeton University Press, 2000, p. 184.

¹³ Margaret A. Rugadya, Eddie Nsamba-Gayiiya, Herbert Kamusiime, *Northern Uganda Land Study, Analysis Of Post Conflict Land Policy And Land Administration: A Survey*

displacement, 38% of the population sought assistance from the clan or family in resolving land disputes, 22% went to the LCI, 22% to the LCII, and 11% of to LCIII on appeal with only 3% going to the Magistrates' Courts and negligible number of cases to RDC and CAOs offices for mediation.

4.3 Relationship between land dispute resolution processes and practice in the future.

¹⁴Following the return process, they reported a decline in the number of disputes resolved by clan and family with a drop from 38% to 23% which they, probably correctly, surmised was a result of changes in community compositions and the dispersal of clan and family heads beyond the immediate vicinity.¹⁵ They also reported that LCI decreased to 21% while LC II increased to 27% as they began functioning with appeals to LC III increasing to 13%.¹²⁶ While this study found perceptions across the Bulisa region on whether the government or traditional leaders solve the greatest number of general disputes within the community to be comparable; considerable variations exist by sub-county mostly due to the particular statutory and customary leaders involved. Respondents expressed an overwhelming desire to resolve disputes locally with a distinct preference to first take disputes to the LCI and LCII at 36% and 26% respectively. The elders accounted for 19% with others comprised most of clan heads at 20%. These groups are on the ground, closer to the issue, trusted and believed to be better positioned to assess and mediate disputes. There was no mention of religious leaders and very few reports of other government officials

Of IDP Return And Resettlement Issues And Lesson, Acholi And Lango Regions, For the World Bank, to input into Northern Uganda Peace, Recovery and Development Plan (PRDP) and the Draft National Land Policy, February, 2008, p. iv.

¹⁴ Margaret A. Rugadya, Eddie Nsamba-Gayiiya, Herbert Kamusiime, Northern Uganda Land Study, Analysis Of Post Conflict Land Policy And Land Administration: A Survey Of IDP Return And Resettlement Issues And Lesson, Acholi And Lango Regions, For the World Bank, to input into Northern Uganda Peace, Recovery and Development Plan (PRDP) and the Draft National Land Policy, February, 2008, p. 13

¹⁵ Margaret A. Rugadya, Eddie Nsamba-Gayiiya, Herbert Kamusiime, Northern Uganda Land Study, Analysis Of Post Conflict Land Policy And Land Administration: A Survey Of IDP Return And Resettlement Issues And Lesson, Acholi And Lango Regions, For the World Bank, to input into Northern Uganda Peace, Recovery and Development Plan (PRDP) and the Draft National Land Policy, February, 2008, p. 13.

These findings varied considerably with the reported findings of Pham and Vinck who reported 62% of their respondents had contacted a religious leader at least once a month in the six months prior to the survey, 49% an LCI, 21% a higher level local council member, 18% a government official and only 14% a traditional leader¹⁶.

Interestingly, 82% of their respondents who had experienced land disputes had approached a third party and the categories of people they first approached were more in line with the results of this study: LCII 43%, LCI 33%, traditional leaders 20% and elders 12 %¹⁷.

The final draft of the Uganda National Land Policy currently before cabinet details explicit challenges and misperceptions associated with customary land tenure. The document proposes: "The State shall recognize customary tenure to be at par with other

The intensity of land disputes and the number of disputes resulting in violence across the Bulisa is comparatively low considering the social, political and economic turmoil the region has experienced in recent decades. This may largely attributed to the pervasive nature and strength and of Bulisa customary systems governing land use, and relatively progressive government policies that have thus far respected local systems of tenure.

However, land related conflict has the potential to escalate substantially in the absence of more effective measures to resolve them.¹⁸

The study suggests the efficacy of existing community level mechanisms in resolving land disputes. While neither statutory nor customary mechanisms are without gaps and weaknesses, they continue to function and resolve the majority of land disputes to the satisfaction of all parties involved. Where this fails, they are also well placed to document existing boundaries and the

¹⁶ Phuong Pham and Patrick Vinck, *Transitioning to Peace: A Population-Based Survey on Attitudes about Social Reconstruction in Northern Uganda*, Human RightsCenter, School of Law, University of California, Berkeley, December 2010. p. 32.

¹⁷ Phuong Pham and Patrick Vinck, *Transitioning to Peace: A Population-Based Survey on Attitudes about Social Reconstruction in Northern Uganda*, Human RightsCenter, School of Law, University of California, Berkeley, December 2010. p. 29.

¹⁸ Margaret A. Rugadya, *Escalating Land Conflicts in Uganda, A review of evidence from recent studies and surveys*, International Republican Institute (IRI) for the Uganda Round Table Foundation, June, 2009.

relationship between the parties to the dispute that can be used in evidence in statutory courts.

There is a clear need to resolve the legal status of the local councils; strengthen their knowledge of the relevant laws and procedures of arbitration; provide them with more detailed evidence compiled by the traditional leaders; and formalize their interaction with superior courts to make them more effective and possibly address issues of corruption.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

This research has given a description of the Uganda land issue. It has shown what the most important aspects of the issue are, and how these are interlinked. On top of that, it has taken a look towards the future. By combining the issue of ownership of land with the aspects conflict potential, ecological effects and economic development, while also including the long-term trends of climate change, population growth and regime survival, it has provided stakeholders of the Uganda land issue with a unique and truly comprehensive description of the issue.

The study has made clear that, without any major policy changes and goal-oriented actions by stakeholders at all levels of society; the future of land issues in Uganda is fairly grave and pessimistic. It is therefore of the utmost importance that the issue is now picked up by these stakeholders to come up with solutions to the identified problems, to tackle the challenges and to embrace on the opportunities. The current system of land ownership has important consequences for the identified aspects. Throughout the report, it has been shown that conflicts are rampant already, and will only increase as time goes by. Furthermore, the current system of land ownership has largely negative consequences for economic development and the ecology at large.

A comprehensive assessment of the current situation and the influence of long-term trends on its future. That is overused and hardly profitable. It also leads to small-scale subsistent farming without real opportunities for the future.

In the long run, the exogenous trends climate change, population growth and the regime's desire to assure its survival will have a large impact on the issue of land ownership in Uganda. Population growth will result in smaller plot sizes and more competition for land, resulting in less economic development, more poverty and more conflicts. Furthermore, climate change will have large effects, although the specific outcomes are still to be seen.

The same applies to regime survival. As a concluding remark, it has to be said that the future of Uganda's land issue does not look very bright. Although there are some positive developments, the overall view is rather negative.

5.2 Recommendations

This chapter proposes the recommendations which I think if innervations is affected, the level of conflicts in Bulisa will reduce or die totally.

Creation of awareness among community members on the property rights so that they can demand for adequate fair and prompt compensation by the government.

capacity building of the land institutions members that is the Area land committees, land boards and also taking into consideration the relevancy of the community elders in resolving conflicts using the customary norms.

Government and nongovernmental organizations and community based organizations should help the community members to demarcate the land boundaries so that the habit of some members seloing what does not belong to them dies off.

Government should put a provision of not only compensating land owners of ther land acquires compulsorily in the public interest but also on an alternative of settling them after taking the land. However, this does not leave out the proposal that there should be a provision that local council 1 chairpersons be included as the principle witness in the land transaction.

The district should develop land policy regarding their customary norms so that it gives a basis of judgment to the judicial courts of law since ownership and use of land vary from one place to another due to difference in social and cultural norms.

Government and local government should acquire land as early as possible interest to avoid displacement and settlement of the people in future.

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APPENDICES

APPENDIX I: QUESTIONNAIRES

INTERVIEW GUIDE FOR PARTIES TO LAND DISPUTES

The questionnaire aims at examining the nature of land conflicts and the legal frame work in solving the vice.

The information attained will only be used for the purpose of this research and will be confidential.

The decisions of whether or not to participate in this interview depend on you entirely and if you accept you can proceed to answer the following questions.

1. Age: Gender:
2. Educational level: primary secondary university others (specify).....
3. How many children and dependants do you have living in your household?
- 4 Where were you born?.....
- 5 What is your main occupation? What other activities do you do?
.....
- 6 When did you come to live in this area?.....
7. How did you acquire this land?.....
9. Have you ever had any problem with your land?.....
8. Who did you report the matter to, and when?
.....
9. Did your neighbours face the same problems as you? Did they report them?
.....

10. Can you identify your own type of land dispute?

.....

a. Land grabbing case

b. Inheritance dispute

c. Boundary issues with neighbours

d. Marital status issue

e. It's a mix of several factors describeor

f. Something else (specify)

11. Has the matter been resolved and how?

12. Are you satisfied with the outcome?

13. Which staff handled your dispute?

14. How efficient was these staff in handling your dispute?

.....

Very good average poor (Why?)

14 What difficulties did you have in getting your case heard?.....

15. What are your suggestions for improving the system of handling land disputes?

16. Do you have anything else to tell me regarding your experience or that of your neighbours?.....

APPENDIX 2: INTERVIEW GUIDE
FOR JUDICIAL OFFICERS, DISTRICT OFFICIALS, ELDERS AND NON
GOVERNMENTAL ORGANIZATIONS

The questionnaire aims at examining the nature of land conflicts and the legal frame work in solving the vice.

The information attained will only be used for the purpose of this research and will be confidential.

The decisions of whether or not to participate in this interview depend on you entirely and if you accept you can proceed to answer the following questions.

1. Age: or Occupation:
2. What organisation(s) do you work with?
3. When did the resettlement process start in this area?
4. How long have you worked in this area, and what jobs have you had?
.....
 - a). 1-5 years b). 5-10 years c). More than 10
5. What kinds of land disputes are there now in this area?
 - a. Land grabbing case
 - b. Inheritance dispute
 - c. Boundary issues with neighbours
 - d. Marital status issue
 - e. It's a mix of several factors describeor
 - f. Something else (specify)

6. (For those more than 10 years in post) How do land disputes today compare with 10/more years ago?
7. Are you directly involved in handling land disputes?
8. If so, How long is it taking you (on average) to resolve land disputes?.....
- 9 If you are not involved directly in handling land disputes:
Who/which organisations are handling such disputes in Buliisa District?
.....
10. What challenges are there for you/those in resolving such disputes?
.....
- 11 What do you think could help make land dispute resolution faster?
.....
12. What do you think could make land dispute resolution fairer?
.....
- 13 Is there any other relevant thing you would like to discuss?.....