

A CRITICAL ANALYSIS OF LAND DISPUTE SETTLEMENT IN UGANDA.

A CASE STUDY OF KITOVU WAKISO DISTRICT.

BY

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DECLARATION

I **Nakachwa Patricia** registration number **1153-01024-02796** declare that except for reference to other people's work which I have only acknowledged, this work is my own and has never been submitted for any academic award in any other institution.

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APPROVAL

I certify that I have supervised and read this study and that in my opinion; it conforms to acceptable standards of scholarly presentation and is fully adequate in scope and quality as dissertation in partial fulfillment for the award of degree of bachelor of laws of Kampala international university.

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DEDICATION

This work is dedicated to my family, my mother Nawegulo Monica, my father Kweri Godfrey, brother Kinani Joel and to my sister Andiru Sharon Lisa for whose love, support, prayers, patience and encouragement has been precious for my studies and stay at Kampala International University.

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LIST OF ACRONYMS

GOU	Government of Uganda
RTA	Registration of Titles Act
NGOS	Non-Governmental Organizations
ART	Article
IDPS	Internally Displaced Persons
LSSP	Land Sector Strategic Plan
L.C.I	Local Council I
L.C.II	Local Council II
L.C.	Local Council III
CSOS	Civil Society Organizations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples.
DRC	Democratic Republic of Congo
ACHPR	The African Charter of Human and Peoples Rights

LIST OF STATUTES

1. The Constitution of Uganda 1995 as Amended
2. The Land Act Cap 227
3. The Registration of Titles Act Cap 230
4. The Acquisition Act Cap 226.
5. The Local Government Act Cap 143
6. The Local Council Courts Act, 2006
7. The Magistrate's Act Cap 16

TABLE OF CONTENT

DECLARATION	i
APPROVAL	ii
DEDICATION	iii
ACKNOWLEDGEMENT	iv
LIST OF ACRONYMS	v
LIST OF STATUTES	vi
TABLE OF CONTENT	vii
 CHAPTER ONE	 1
1.0 INTRODUCTION	1
1.1 Statement problem	2
1.2 Historical Background of the Study	3
1.3 Theoretical Framework on Land Dispute Settlement in Uganda	6
1.3.1 The Conflict Theory	6
1.3.2 Coser's functional approach of conflict.....	7
1.3.3 Dahredorf's Dialectic Approach to Conflict.....	8
1.3.4 Land as Property and Life Support System	9
1.3.5 Marginalization of the Peasantry	10
1.3.6 Land Ownership and Urbanization.....	13
1.3.7 Land ownership	13
1.3.8 Urbanization and urban Development	14
1.3.9 Urbanization and Land Ownership.....	15
1.4 Conflictual relationship between farmers and authorities	15
1.4.1 on the part of farmers.....	16
1.4.2. On the Part of Authorities.....	17
1.5 Combinations of Conflict and Structuration Theories.....	18
1.6 Scope of the Study	19
1.7 Objectives of the study	20
1.7.1 General objective	20

1.7.2 Specific objectives	20
1.8 Research Questions.....	20
1.9 Hypotheses.....	21
1.10 Literature Review	21
1.11 Significance of the study	24
1.12 Justifications	25
1.13 Research methodology.....	25
1.13.1 Study Design.....	25
1.13.2 Study population.....	26
1.13.3 Sampling and procedure	26
1.13.4 Data collection method	26
1.13.5 Data Analysis.....	26
1.13.6 Ethical consideration	26
1.14 Chapterization.....	27
 CHAPTER TWO.....	 28
NATURE OF LAND DISPUTES	28
2.0 Introduction.....	28
2.1 Understanding land disputes.....	28
2.2 Land disputes and the Global land Rush	30
2.3 Land Rights.....	31
 CHAPTER THREE.....	 34
3.0 AN OVERVIEW OF THE LEGAL AND POLICY FRAMEWORK OF LAND DISPUTE SETTLEMENT	34
3.1 The Constitution of the Republic of Uganda.....	34
3.2 The Land Act Cap 227 As Amended.....	36
3.3 The Land Acquisition Act 1965	39
3.4 Registration of Titles Act.....	41
3.5 Local Government Act 1997 (Amended in 2015)	42
3.6 Local Council Courts Act	42

3.7 The Uganda National Land Policy 2013	42
3.8 Land Sector Strategic Plan.....	44
CHAPTER FOUR	46
4.0 LAND DISPUTE AND SETTLEMENT MECHANISMS IN UGANDA	46
4.1 Non judicial mechanism	46
4.1.1 Mediation through the mediator appointed by the minister.....	46
4.1.2 An inquiry	47
4.1.3 Negotiation	48
4.1.4 Conciliation.....	48
4.1.5 Arbitration.....	49
4.2 Judicial mechanism.....	50
4.2.1 The local council is under the ministry of local government, it is responsible to the district. It is empowered to deal with land matters.	50 50
4.2.2 The District Land Tribunal	51
4.2.3 District Land Boards.....	53
4.2.4 Uganda Land Commission	54
4.2.5 The High Court of Uganda	55
4.2.6 Court of Appeal of Uganda.....	57
CHAPTER FIVE	58
5.0 THE FINDINGS AND RECOMMENDATIONS AS A WAY FORWARD FOR THE ISSUE OF LAND DISTRIBUTION DRAWING EXPENSES FROM THE COUNTRIES THAT HAVE HAD TO DEAL WITH DISPUTES OF LAND.....	58
5.1 Core Issues and Best Practice	58
5.1.1 Access to Land.....	58
5.1.2 Tenure Security.....	59
5.1.3 Distribution of Land	60
5.2 Experience in some African Countries	61
5.2.1 Rwanda	61
5.2.2 Burundi	63

5.2.3. Democratic Republic of Congo	65
5.2.4 Zimbabwe	66
5.3 International experience.....	66
5.3.1 Cambodia.....	67
5.3.2. El Salvador.....	68
5.4 Conclusion	69
5.5 Recommendation	70
BIBLIOGRAPHY	71

CHAPTER ONE

1.0 Introduction

This is a research on the topic of “the critical analysis of land dispute settlement in Uganda.” It intends to analyze the issue of land policy in relation to the dispute settlement in Uganda and the reintegration into Kitovu Wakiso district.

Land disputes are widespread in Uganda affecting 33% to 50% land holders. In Uganda, land disputes are the most significant form of conflict with many escalating to violence. Land disputes dropout throughout Uganda, with the greatest number of disputes arising in the central region, northern Uganda districts, some parts of Hoima and Amuru districts where oil has recently been discovered and where the government has given large tracts of land.

Land is the most important assets in most parts of the world that people can own, including in Uganda. In Buganda, land is the way of life as the kingdom’s cultural aspirations are based on land hence titles like “Ssaabataka” for the Kabaka, clan heads and elders in Buganda are known as “Abataka”. How this scenario isn’t only prevalent in Buganda. Land is a major asset across the country. It is the biggest means of production since our economy is agriculture based.

Today the issue of land is often treated with fervent sentimentality and sensitivity and in many ways, considered explosive. Ugandan disputes have been continuous, seasonally heightening into land conflict. Land conflicts have been bloody and often characterized by massive population displacement and extensive destruction of property.

This research intends to look at the impending issue of land dispute settlement and how the government of Uganda (GoU) intends to deal with issue of land distribution; the government of Uganda has embarked on an ambitious plan that intends to disputes in Uganda especially the central region. The plan is designed to bolster police forces and local administration, open emergency access roads and Juvenile judicial services. This forms the basis of the research.

1.1 Statement problem

Where there is land, there will be conflicts over who owns it, who can use it and who will inherit it. The height of conflict over land varies from place to place but the risk of these conflicts becoming violent is higher in spite of the various policy, legal and institutional mechanisms in Uganda such as national land policy, the land act and institutions charged with proper administration of land, conflicts over land are increasing due to the central question, why land disputes appear to be on the increase, despite many initiatives by the government of Uganda and other stakeholders to address them.

Uganda as a state party to most international treaties is obliged to protect and promote the enjoyment of rights including the right to property. The universal declaration of Human Rights (UDHR) has a whole article for the right of everyone to own property alone as well as in association with others. In addition this study will consider the link between the conflicts and legal, policy and institutional frameworks.

Currently Kitovu is faced with a lot of problems hindering its development basically stemming from land tenure systems. There is scarcity of land for agriculture due to infrastructural developments by the investors and this problem affects largely the poor who rent land from the land owners and are required to pay heavily for the use of the land. During the colonial and early post-colonial periods, some land was reserved as public land and this was accessed by all, including the poor. The introduction of land registration and individual land ownership has driven poor people from the land they used to access without limitations.

The administration of justice in courts has been marred by procedural irregularity, misconduct, gender insensitivity, abuse of office and corruption. Explicitly the law requires proper composition of the court with qualified members who are knowledgeable and skilled, the courts have been affected by political antagonism, poverty, lack of funding and the people are ignorant about their rights and the law.

The problem this study seeks to address is to determine whether the legal and institutional frameworks set out by the government are accessible to the people.

1.2 Historical Background of the Study

From ancient Greek myths we know that in the beginning people lived happily together in simple harmony. This golden age of peaceful co-existence did not last, however with the onset of the current Iron Age people divided the land among themselves and rendered it into private property, for which they have continued to fight one another to this day.

Land conflicts are indeed a widespread phenomenon, and can occur at any time or place both need and greed can equally lead to them, and scarcity and increases in land value can make things worse. Land conflicts occur especially when there is a chance to obtain land for free no matter if this land is state, common or someone's private property. Inheritance conflicts and disputes between neighbours are most often about land. Before the colonialism 1900 the prevalent mode of land tenure in Uganda was a customary tenure. This meant that customary rules of about 140 major ethnic groupings governed access to, utilization of and parting with land in a given ethnic area.

Land relations in the pre-colonial Uganda can be looked at in these ways;

Feudalism; where access to land was controlled by the oligarchy in which political power in society was exclusively vested. Security of land for users was based on continuous loyalty to the oligarchy. The payment of tribute in the form of produce and gifts was norm and a requirement as evidence of that loyalty, mainly in the kingdoms of Buganda, Bunyoro, Busoga and Tooro.

A complex network of reciprocal bonds within families, lineages and larger social units to protect governed territorial control in which access to land resources and guarantee individual and community as prescribed by custom. As long as such bonds remained, any individual or group of individuals could secure access to the resources of that community. This system of land relation continues in operation in some communities in Uganda.

Land relations were defined not only by the network of social relations prevalent in each community but by the specific uses to which parcels of land occupied by

individual families, clans, or lineages were put. In this system there was recognition of individual rights as well as community obligation by virtue of access to such rights.

In the period of 1900-1975, a number of private estates called "Mailo" in Buganda and native freeholds in Tooro and Ankole, that were broadly equivalent to the English freehold were granted to traditional rulers and their functionaries, through agreement by the British authorities. This legitimizes the feudal system of land tenure in existence, and firmly conferred upon landlords absolute control of land to which they never had under customary law.

For the rest of Uganda, all land was expressly declared to be crown land, and all land users became at the stroke of the pen, tenants of the British crown. The colonial government proceeded to grant a limited number of freehold estates to selected individuals and corporations.

In the period of 1975-1995, decrees on land were established when the government of president Iddi Amin issued decree called the "land reform decree." The decree abolished all freehold interests in land except where these were vested in the state in which case these were transferred to the land commission. It also abolished the mailo system of land tenure and converted them leasehold of 99 years where these were vested in the public bodies.

However in the period of 1995 to date the 1995 constitution abolished the land reform decree and restored the systems of land tenure that was in existence at independence, it declared that land in Uganda would henceforth belong to the citizens of Uganda and vest in them. It should be noted that the feudal system of land tenure remarked a features remained unregulated and completely outside the statutory framework of land Law of the country and system of land administration was in no way integrated into the land tenure framework of the country.

The 1995 constitution and a new law passed in 1998 did not entirely deal with the fundamental issues underlying these characteristics. The primary reason for this was not simply that the constitution had set the parameters for the new land laws. It was also because no clear policy principles existed to inform legislators in the enactment of the law.

Where land disputes have gone on for a long time resettlement will be constrained by complexities and social frictions especially in circumstances where the elderly people have died and young or vulnerable claimants cannot adequately defend their rights in their places of origin the rights of vulnerable groups such as widows, children, persons living with HIV/AIDs and persons with disability, are under threat by the powerful especially in the circumstances of governance or clan systems. Long periods of disputes will inevitably affect people's property rights, causing clashes and conflicts.

It is also a fact that formal institutions for control and management of resources are ill-equipped and incapable of using or recognizing intricate needs of particular grassroots communities. On the other hand for procedures are too involving and require literacy to be accessed and effectively used by the rights seeking public. A number of threats to indigenous customary interests are evident for example illegal occupation, investors and government schemes more so for the weak groups. Risk of loss of land under customary tenure is high because of lack of documentation and distress sales due to poverty, Land is a critical element in peace building and economic reconstruction in post conflict situations, relevant issues must be understood and given appropriate priority of stabilization. In re-building functioning land administration systems, one of the main challenges to create institutions that meet claims for property restitution (from returning people and those that lost land), and the establishment of certainty of such claims. Insecurity arises when there are competing claims over the same piece of land (uncertainties inequalities and disputes often arise), these are recognized as grievances. Disputes also arise when other individuals occupy properties of returning populations in post conflict land policy three factors are importance; tenure security, access and unequal distribution, tenure insecurity is often addressed through classifications, titling and registration initiatives, some initiatives to demarcate and record tenure rights without granting title can improve security of tenure for customary and indigenous rights holders. The nature of mediation and dispute resolution mechanisms are important experience has shown that many types of land disputes are best managed outside courts since court's capacity to process claims efficiently and transparently is often constrained. Lack of knowledge on law and options available for redress creates tensions. Activities that focus primarily on strengthening the justice system and rule of law are relevant.

1.3 Theoretical Framework on Land Dispute Settlement in Uganda

In general terms, discussion of the issues confronting land owners, and especially land-lost farmers, in the extant literature can be categorized as follows:

Consideration of the relationship between land and farmers, which examines the significance of land for farmers; (2) Consideration of land ownership in the process of urbanization, which examines the difficulties with institutional arrangement; and (3) Consideration of conflict between farmers and the authorities. The following discussion seeks as it's principal aim to, develop the factual and conceptual bases for the empirical analysis presented in later chapters. From reading the theoretical framework one can begin to understand why and how land owners and farmers have become caught up in a struggle with the Ugandan local authorities. The existing theory on land-lost farmers and owners emphasizes conflict and resistance; hence it uses conflict and resistance theories.

1.3.1 The Conflict Theory

The concept of land dispute worldwide is not new. It is linked with conflict theory propagated by Karl Marx, a German scholar and revolutionist by 1818 to 1885 who among other things, came with an assumption that economic organization especially the ownership of property, determines the organization of the rest of the society. He was of the view that struggle for ownership of the scarce resources through class struggle inherent in the economic organization is likely to create revolutionary class conflicts. It is from the above assumptions that through bipolar of the exploited class awareness of their true interests is gained thus forming an organization to overturn the dominant class property holding class. That is to say, the cornerstone of the conflict theory is all about distribution of the scarce resources including property ownership and power. Social conflict has been a central subject of social research ever since Marx and Weber. From the perspective of the ownership of means of production, Marx established the theory of class on the basis of historical materialism. Those who follow the line of Marx, such as the Frankfurt school analysis, describe conflict as economic, where different classes have incompatible interests, thus they take criticism of existing social arrangements as their obligation. Marx defined social class as the class which sets the scene and moves things forward. He sometimes talked about there are only two classes: bourgeoisie and proletariat, the

class-in-itself and the class-for-itself, sometimes talked about there are many numbers of classes such as capitalist working class and owner.

Conflict theorists view conflict as an engine of change, since conflict produces contradictions which are sometimes resolved, creating new conflicts and contradictions in an ongoing dialectic in the classic example of historical materialism, Karl Marx and Friedrich Engels argued that all of human history is the result of conflict between classes, which evolved overtime in accordance with changes in society's means of meeting its material needs ie changes in a society's mode of production.

German sociologist Max Weber agreed with Marx but also believed that in addition to economic inequalities of political power and social structure cause conflict. Weber noted that different groups were affected differently based on education, race, and gender, and that people's reactions to inequality were moderated by class differences and rates of social mobility, as well as by perceptions about the legitimacy of those in power to be more precise in Ugandan jurisprudence, the term property includes land and having such conflicts in any community, there must be legally binding instruments to resolve the said disputes by declaring the rights of each party to the controversy, either on ownership or any related interests to the property.

Coser's functional approach and Dahredorf's dialectical approach I see as offering to my own analysis of the relationship between land lost framers and the local government.

1.3.2 Coser's functional approach of conflict

First of all, Coser's inherits Simmel's emphasis on social forms, such that the society itself is a unified entity that accommodates contradictions of cooperation and conflict, inclusion and exclusion, and so on. According to Coser 1956 to 1965 advances the basic hypothesis that conflict does not bring down but reinforces the adaption and adjustment of particular social relations or social groups. To Coser, the course of conflict can be categorized into material and non material relations. The material causes of conflict refer to distributional unevenness of power, status and resources, and the non material causes refer to inconsistency of value conceptions and beliefs, Coser thinks that the degree of seriousness of conflict depends on different degree of interrelationship between social structure and emotions, values and beliefs.

In Coser's point of view, conflict may cause the strengthening of social control. On the other hand, conflict can stimulate social reformation and cause social changes and it promotes the establishment and maintenance of distinctive groups, thus in his opinion there is external conflict and internal conflict. This approach can be seen as providing one perspective from which to evaluate the causes and possible functions of conflict happening between and-lot farmers and local government.

1.3.3 Dahredorf's Dialectic Approach to Conflict

From Dahredorf's (1968) point of view conflict is generated from social status structure, thus he uses social structure to explain conflict phenomena. He focuses on conflict between groups arising from the authority.

Structure of social association. Dahredorf thinks that the study of the social structure elements that bring about the conflict between groups should start with the concept of authority/domination, for which he draws upon Weber's definition which treats domination as a 'special case of power'. In Weber's opinion domination by virtue of a constellation of interests which confers influence over others who may still be motivated by their own interests. Based on this, Dahredorf thinks that the basic analyzing unit of social structure is social status, which manifests as of two different types in most social associations. One is of dominant status, and the other is subordinate status, and the other is subordinate status.

The association of these two types of statuses is the most prevalent structural element and contains a structural cause of social conflict. Dahredorf refers to the kind of association-in his terms, imperatively coordinate association- between dominant status and subordinate status as authority structure.

Dahredorf explicates the concept of interests or in other terms, role expectation, which he regards as a kind of social status related expectation of the action inclination of status holders. Since there are two basic types of authority status in every imperatively coordinated association, there are accordingly two types of basic interests. The interests of the dominant role is to maintain the original authority structure and authority distribution conversely, since no one is willing to be always situated in a subordinate role status, the interest of the subordinate role is to change the

status quo that restricts their access to authority. The authority structure is the legitimate relationship between different authority status, meanwhile, its legitimacy is subject to potential threat. So the legitimacy of the authority relationship is unstable and variable.

Based on these concepts, he analyses the transformation from quasi-groups to interest groups in theory, this will happen of necessity but it is not always true in practice. Thus, he goes on to identify the conditions that affect the formation of interest groups. He also analyses the conditions that influence the form that conflict takes to do this, he distinguishes two dimensions to conflict, the level of violence and intensity. These evaluate the energy consumed in conflict, the level of involvement in its various aspects, and the various means taken to express anger. The interrelationship between authority structure and other structures of social status has implications for conflict form. Such conditions that influence conflict form would simultaneously influence structural change. Dahredorf's dialectical conflict approach provides away to evaluate the cause and structure of conflict.

1.3.4 Land as Property and Life Support System

Social scientists have long understood that all economic objects whether land; machinery or finished goods- have what are known as 'use values.'

According to Marx use values in the use is the utility of consuming a good; the want-satisfying power of a good or service. Use values reflect a mix of social needs and requirements, cultural habits and lifestyle. At their most basic, use values are basically formed with respect to what might be called the 'life support system' of the individual. Land has been the focus of policy debates among scholars, politicians and policy makers, partly because it is a peculiar good and partly because there is increasing scarcity of land due to rapid population growth and urbanization. This is particularly because Uganda is one of the developing countries. Max Weber recognizes that urban land, housing and other forms of real estate could be more than just items of consumption. Not only is land considered essential to the life support system of farmers in particular, but it is also a principal source of wealth and power.

Land has a fixed location. It cannot be moved around and this differentiates it from other commodities such as wheat, automobiles etc. absolute location confers monopoly privileges upon the person who has the right to determine use at that location.

Moreover, land is something permanent. Land and the rights of use attached to it, therefore provide opportunity to store wealth. Many capital goods have this quality to them, but land and structures have historically been the single most important repository of stored assets.

Combining the above two aspects, farmers who are definitely associated with land have fixed lifestyles. The traditional property-holding unit has been the family that either owned the land or occupied it as tenant (for the state), with family ownership in capitalist societies, and on behalf of the state on socialist societies where property rights remain, unclear, problems, especially those concerning distribution tend to arise. Despite all attempts to maintain a relatively equitable type of agricultural organization the major systems of holdings- equal allotments and so forth- usually breakdown because of poorly applied policies of centralized administrations and rapacity of officials who want to extend their properties and privileges and the thus not eager to enforce laws limiting their prerogatives.

When it comes to Uganda specifically, farmers as tenants cannot prevent the state if it wants to take the land from them. Given that land represents not just a major source of income but also a way of life full of cultural and symbolic value, land lost farmers find it difficult, even impossible to contemplate life without land. Furthermore, in a society with undeveloped pension schemes and insurance provisions like Uganda, land provides security when getting old and can be used by dependents in their turn.

1.3.5 Marginalization of the Peasantry

According to Dahredorf, farmers' interests are interdependent with their status. The nature of small holding land also represents chronic barrier to the release of productive forces. Such is the state of under development that degrades people working on land and gradually erodes away their productive potential, and fixes their lowly status in society.

Under development excludes, and therefore marginalize those men and women directly affected by it. First of all, in political terms as Karl Marx states;

Each individual peasant family is almost self-sufficient it itself directly produces the major part of its consumption.....in so far as millions of families live under economic conditions of existence that separate their mode of life, their interests and their culture from those of the other classes, and put them in hostiles opposition to the latter, they form a class, in among these small-holding peasants, and the identity of their interest begers no community no national bond and no political organization among them, they do not form class. They are consequently incapable of enforcing their class interests in their own name...they cannot represent themselves, they must be represented their representative must at the same time appear as their master, as an authority over them, as an unlimited power that protects them against the other class and sends them rain and sunshine from above. The political influence of the small-holding peasants therefore finds its final expression in the executive power subordinating society to itself.

Second, farming has undergone considerable socio-economic disintegration the introduction of science and technology and the beginning of economic development in Uganda for example have benefited only a fraction of the total population, and those who benefit are urban populations for by virtue of their role as 'axes of development' they are deemed suitable for providing dynamic growth in the economy of the country. In addition, associated cultural marginalization thwarts social progress. The marginalized segments of the population, unable to gain access to the technical progress of the country and capable of satisfying their wants only at a basic level; find themselves excluded from the benefit of cultural progress too.

Take Ugandan farmers as an example, until relatively, recently, Uganda's economy was based fir the most part around agriculture, the expansion of agriculture during colonialisaton centered on peasant villages, constituted the main vehicle for development. From then on, the situation of farmers in Uganda has been largely ignored by the state, especially under the circumstances of urban-rural administrative distinctions, they possess nothing but the land they work, and even basis. Working in the fields day after day and year on year has been the reality for Ugandan farmers

Developing into the contemporary fast urbanizing era, the needs to address social issues, such as equity and justice, and the question of who benefits exactly, is urgent and critical. When

development is led by the state as is after the case in developing countries, it is instructive to examine the effects created, when analyzing the social, economic and political implications of land acquisition in Zimbabwean in 1990s for example Moyo claimed that the Zimbabwean case has been cast as an attempt to pursue a radical state led approach to land redistribution through compulsory land acquisition in contrast Moyo observed, the south African experience can be held up as a more democratic transparent, community driven and less costly 'market assisted' approach. From Mukherji's (1976) analysis too, we can see various laws were enacted by Bangladesh in order to reform the agrarian sector in the country and the actual implementation of these reform did make some progress. Other studies of state orchestrated development in the developing world show the whole it is through the course of counter balancing effects caused by state direction and market direction that the state puts rural community on its path towards further development.

Institutional changes have introduced greater flexibility at the household and local government levels, with many investment decisions taken by individual producers.

This has enabled a shift of labor out of agriculture, diversification of rural production and an improvement in rural incomes. Never the less, the policies have also led on the other hand to a decline in investments in agricultural production. According to Watson the state not only has to find ways of sustaining infrastructural investment in regions focused on agriculture, but also find ways to counteract the negative economic and social consequences of wide variations in regional development and growing income disparities and of ensuring that the farmers who remain within agriculture are able to maintain and improve their living standards. At the same time, the state has to play a role on promoting and improving technical skills and educational levels in the countryside.

Within the existing development process farmers' dependence on the land has led to their marginalized status; and in turn such marginalization aggravates dependence on land, this a vicious cycle is presented.

1.3.6 Land Ownership and Urbanization

According to Coser's^s and Danrendorf's^s accounts, the uneven arrangement of land ownership and the associated distribution of resources and interests during urbanization can be seen to constitute material causes of conflict.

1.3.7 Land ownership

'Land ownership' is a key idea which plays a fundamental role in explaining the gap among various ideologies and also the legitimization of modernization. The right to property is always a right against other people.¹ Ownership confers rights; rights of exclusion, rights to decide who should not have access, rights to revenue and to capital accumulation, according to Elliot and McCrone 1982-1998. Furthermore there was and is more to the ownerships of property than material interest. Acquiring property, even on the most modest scale, represents an avenue of social mobility. It represents a stake in the wider system of property ownership and serves in the context of local status systems as an indicator of moral and social worth. Marshall (1963) identifies its sociological relevance when he writes;

The significance of property in determining social attitudes is enormous, not because of the income it yields, but because it is a guarantee of the right to enjoy the blessings of civilization.....it shows that we are solid and to be trusted to fulfill our obligation.

Real estate property, especially the notion of land ownership is the core concept differentiating the socialist state from capitalist state. For centuries a centralized bureaucracy, acting on behalf of powerful elite, exercised control over the production and flow of resources in Uganda but that control was mediated more or less successfully through its local representatives within a hierarchy of layers of government.

According to Demsetz (1967) describes notion of property as a bundle of rights. It is more appropriate to talk about ownership as an absolute and supreme right, but of the state and not the individual, as set out below;

¹ Some of the most acute observation on the institution of private property are found in the work of Macpherson (1975). *Art 26 of the 1995 Constitution of Uganda*

Ownership is the supreme rights, there can be no rights which would not be contained in ownership. Ownership is abstract; its content cannot be described by enumerating single powers, and none of these powers needs to be legitimated specially or related to an acceptable social purpose. Ownership is absolute; a part from what the law expressly forbids the owner may do whatever he likes, he can exclude everybody else from influencing the goods, everybody else is obliged to abstain from breaching his ownership rights, the owner is the supreme ruler over his goods (van den Bergh 1996).

Even under the state in transition, the fundamental principle of land rights in Uganda is based on an individual as the absolute owner. All other rights derive from this basic legal principle. More over the ownership of collective land can be changed into state ownership of the proper legal procedures for land expropriations are followed.

It is unclear which collective level (natural village, administrative village or town) actually holds the titles to land leaders at collective levels are appointed and paid by the local government and so they are not really independent and behave more in the interests of local government than farmers. Thus in the course of shifts in land ownership there is a real danger that the collective ownership rights of villagers may be ignored to a large to a large extent. In addition, owing to low legal awareness, villagers are unclear about the rights they enjoy to land property which further complicates the issue.

1.3.8 Urbanization and urban Development

The study of cities was a subject that had already appeared in the second part of the 19th century in early classical sociology with its celebrated dichotomies between the nature of the countryside and the nature of cities, such as Maine's distinction between states and contract (1983), Durkheim (1893-1984) who distinguished between mechanical and organic solidarity and Tonnies (1887-1957) who contrasted 'Gemeinschaft' (traditional community with strong bonds) and 'Gesellschaft' (a society of individuals with weak bonds). Tonnies and Durkheim stressed the uniqueness of each of their described social forms and the difficulties individuals face when moving from and one form to the other, especially going from a rural to urban dweller.

In economic terms, the policies of post-colonial governments attempted to stimulate urban growth by further an ranching the attractiveness of towns at the expense of the countryside and

agriculture and it is usually accomplished in three ways one way is through the exaggerated bias of government expenditures on infrastructure and services in favor of urban areas.

Another is improved working conditions, higher wage rates and better employment protection that exist in urban areas for example urban workers are organized in trade unions and which attract rural workers to urban centres to share the perceived benefits

A third way is not declined in the demand for locally produced traditional staples as urban consumers develop a taste for seemingly more cosmopolitan imported food items. As a result, a highly ambivalent attitude toward urbanization is found on the one hand appreciation of all the power, wealth and on the other hand fear of its corrupting influence contrasting with the supposedly simple virtue of the village.

1.3.9 Urbanization and Land Ownership

According to the constitution only individual has a right to own property (land) unless state ownership has been established.² There are also differences of administration between urban and rural land. Rapid urbanization and the frenzy for development have led to a boom in the value of land. Practices within the real estate sector mean that land improvements are frequently valued at their highest price rather than by reference to this for the determination of land values as well as the rewards involved, local government welcomes the legitimization of its own practices through the state's frame work; removing ownership from the village collective at a low cost to feed demand for land at high returns, where the risks are passed on to developers and ultimately, the state owned banks who lend to developer in order to finance development projects, institutional ambiguities over land ownership often allow local government the space for maneuver it requires within the development process.

1.4 Conflictual relationship between farmers and authorities

Such institutional and cultural short comings have given rise to increasing social tensions between local governments and farmers. From a conflict perspective, the relationship between land lost farmers and local government should begin with Dahrendorf's concept of authority structure, where there is a super coordination, subordination antithesis within the imperatively

² Art 26 of the 1995 Constitution of Uganda

coordinate association. Karl max states, ' government officials In the name of one ideology or another one gathering control over people's lives'.

1.4.1 On the part of farmers

On part of farmers, Max Weber's definition of power the overcoming of resistance is a necessary feature of power thus he gives an irreducible role to resistance in the analysis of power in distinguishing power and resistance as qualitatively distinct contributions to power relations, it follows that power and resistance are based on different aspects of social structure of power relations or of the social system. Therefore according to Barbalef (1983) point of views, there an be no adequate understanding of power and power relations without the concept of resistance". Resistance is presented as a function of power.

Early resistance studies employed a classical Marxist conception of power, 'power' for them was something 'held' by one class of people and used to 'repress' or 'deny' the interests of another. Its function in this sense was primarily negative. However it is now well known that even in dictatorship, the seemingly powerless turn out in fact to have a certain amount of power. In this regard, it is used to consider briefly instances of subordinate groups that exert countervailing power, starting in the 1960s, Piven and Cloward elaborated that own distinctive analysis of political change in the United States. They reflect upon the relatively rare occasions when the lower classes and the poor mobilize, agitate, organize and win reforms, they identify a powerful counter force that lies behind the successful reform movements in modern us history, namely; Interdependent power, when popular movements break the rules and disrupt the statusquo Thus in their point of view, the only fruitful strategy for the emancipation of the lower classes entails escalating disruptive protest when possible by pushing turbulence to its outer limits.

The fact that Uganda's land lost farmers lack institutional interdependent power to involve this type of protest may not necessarily mean that they cannot squeeze away out to exert counter force.

Drawing on the perspective developed by Oberschall (1973 and Caamson (1975) analyze the political process centred on farm worker insurgencies.

They argue that the important variables to account for either the rise or outcome of insurgency pertain to social resources in their case, sponsorship by established organization; farm workers

themselves are powerless, as an excluded group, their demand tend to the systematically ignored. But powerlessness may be overridden 28 the official response is neutral and political enters sponsor insurgent challenges by contributing resources.

Jenkins' (1977) later studying in 1982 concludes that research on the sources of 20th century peasant rebellions have centered on two basic theories a structural theory of class relations that points to the greater political volatility of small holder tenancy and a historical theory pointing to the strength of traditional village institutions in the midst of the increasing economic insecurity of the peasantry. After analysis, he corroborates the basic propositions of the historical theory: peasants rebel because of threats to their access to economic subsistence, not because of the particular form of class relations in which they are enmeshed. Given the fact that the state has never at any point tolerated organized confrontation, any action that challenges the state must remain unorganized if it is to be effective. This acts to limit formal Institutions of countervailing power.

1.4.2. On the Part of Authorities

The response of authorities needs to be considered hierarchically. According to Marx 'the state' with its legal authority, bureaucracies, law enforcement agents and armed forces provides stability, under which government officials may be seen as a separate group with independent interests not merely as part of the ruling class.

In Uganda, the roles respectively played out by central and local authorities manifest in an even more complicated manner. Theoretically, the central state, which is the seat of the law, and is the source of the legitimate use of force to ensure the effectiveness of law, holds the highest position, since the inception of the reform and openness policy, there has been large scale movement of people to be urban areas prompted by increased economic development, outside direct central state control, which has greatly changed the social fabric of Ugandan society, which originally had its basis in the imposition of political identities, tied to pre-specified positions and state functions. In consequence, the established methods of mobilizing the people by means of mass movement and ideology are no longer viable. Now the party proposes to rule the country by law as it must resort to new methods in order to secure legitimacy and exercise political authority.

The system of the government has a crucial impact on the present functioning of the socialist legal system. Contributing to what has been termed politicized law or less bluntly as policy law. Many problems that should be dealt with in the courts are not, which further adds to conflict within society.

It is currently arranged that local judicial power belongs to the locality, thus the operation of law follows the operation of the party and government's power at the local level. The separation of national judicature from local political power might be able to more effectively balance the uniformity of central policies and specificity of local politics.

1.5 Combinations of Conflict and Structuration Theories

Given the specific context of the present society, it is clear that conflict is inherent in the relationships between lands lost farmers and local government due to the subordinate position of land farmers structuration contributes to examining the habitual action (structural constrain) at the chances provided by structural facilitation (the ability of exercise of power). By adopting structuration theory, the emphasis will be on how the use of particular system elements, as rules and resources, reproduce or transform structural features.

Weberian perspective on conflict, especially the point made by Dahrendorf dialectical approach to conflict that roles situating in different statuses for their particular interests is compatible with structuration theory in that it allows for the possibility of variable or 'two way' power relations.

The perspective on conflict theory admits non material causes, namely, the inconformity of value conceptions and beliefs and of actions as well as their self-interests to situate themselves in a favorable place, which implies that conflict theory from a Weberian perspective acknowledges the importance of actors' knowledge and consciousness in shaping and transforming the structure within which they find themselves.

A central concern here is the conceptualization of 'power' that both distinguishes and connects the two theoretical perspectives. The concept of power and power relations should be by any means involved when discussing the particular kind of relationship which is analyzed in the present study. The key to understanding power relations is to figure out what interests are sought

for by each side, what thoughts and consciousness they respectively have and whether there is any consensus between the two sides as well as whether each side has arrived at some kind of consensus within both conflictual and structuration language to understand the manifestation of interests, consciousness and consensus within the relationship between land lost farmer and local government.

Whereas conflict theory tends to see power as negative, structuration theory sees power as positive. Never the less, the present study stitches them together and holds a view of power as not only negative, in that it 'excludes' it 'represses' and 'censors' but also as positive in that it produces domains of objects and reality.

The latter aspect of power means that the relations between super ordinates and subordinates can be complementary, by taking into account how the less powerful manage the resources available to them in a way so as to exert influence over the more powerful within an established power relationship.

All in all land holds exclusive meaning to farmers economically, society, politically, and culturally. In the process of urbanization in Uganda which in itself bears a certain extent of awkwardness, the obscure nature of land ownership especially collective land ownership makes things more complicated, confrontation between farmers and local authorities in Uganda as manifested in different regions is inadequate for a full and detailed understanding of the relationship between the two sides. Thus the theories of structuration and conflict act together as the theoretical framework for the present study.

1.6 Scope of the Study

1.6.1 Content of the study

Since issues of land disputes are broad, the study focused mainly on disputes that involved communities and the state or its agents. This was chosen in view of the state obligation to respect, protect and to fulfill human rights. Attention was also given to those disputes involving private companies or investors and the local communities.

1.6.2 Geographical area

The study restricted to kitovu where land disputes are rampant due to compulsory acquisition of land by the government for the infrastructural development plan for Entebbe express road focus is put on the different legal regimes right from the pre-colonial period to the present era under the 1995 constitutional reforms which led to the enactment of the land act, Cap 227.

The research also covered published Articles, text books, Research papers, journals and newspapers. Besides, internet research was used and other relevant materials concerning the subject.

1.6.3 Time scope

The period of the study is between 2016-2018 due to the government compulsory acquisition of land for public infrastructural development and disputes over the compensation value by the local communities.

1.7 Objectives of the study

1.7.1 General objective

To analyses the land dispute settlement in Uganda

1.7.2 Specific objectives

- i. To analyses the nature of land disputes in Uganda.
- ii. To assess the legal and policy frame work of land dispute settlement in Uganda
- iii. To examine the land dispute and settlement mechanisms in Uganda
- iv. To provide the findings and recommendations to relevant institutions regarding land dispute settlement.

1.8 Research Questions

- i. What is the nature of land disputes in Uganda?
- ii. To what extent do the current legal and policy framework of land dispute settlement protect the people and their rights in Uganda?
- iii. Which land dispute mechanism are applicable in disputes resolution in Uganda

- iv. What are the findings and recommendations for the government and its agents and the individuals affected by land disputes?

1.9 Hypotheses

In writing this research, the following assumptions have been proposed namely that;

- i. There are a number of land disputes in Kitovu
- ii. There are insufficient legal and policy framework in Uganda to promote resolution on disputes.
- iii. The land dispute mechanism have done enough to prevent continuous of land rights of women, widows, children and persons with disability by the state and investors in Uganda.
- iv. There are a number of findings and recommendations for land disputes settlement in Uganda

1.10 Literature Review

Abraham Kiapi (1975) observed that customary tenure was or is associated with insecurity of tenure and because land is collectively owned there is tendency to misuse the land resources via irrational husbandry techniques such as shifting cultivation or grazing, he went on to say that inheritance customs lead to fragmentation that leads to uneconomic pieces of land.

Due to the scale of the problem, the international declarations and action plans have been established which explicitly demand secured access to land especially for disadvantaged groups such as habitat II conference in Istanbul 1996, World Bank land research conferences from 2001 to 2007, Europe union second forum on sustainable Rural Development in Africa 2007. Nevertheless, available literature on land dispute resolution as a whole cannot completely be ignored.

Patrick McAusian, reminds us that “land law has been first and foremost the products of politics, not of ‘objective’ considerations of what is the best for economic or social or sustainable development,” land laws frequently, from a normative or aesthetic point of view, messy incoherent because they are usually the result of intense political organization and tradeoffs and conceal hidden agencies. The unifying theme is the importance of grounding law in reality, a point that seems so obvious that it should not need to be made but in practice is often ignored.

Robert Cohen is of the view that though not legally binding documents. The guiding principles reflect and are consistent with existing international human rights and humanitarian law and that existing norms, they also seek to address grey areas and gaps.³

Within the land sectors, land sector strategic plan 2001-2011 is the operational, institutional and financial framework for the implementation of the sector wide reforms and land management including the implementation of the Land Act. It was intended to guide governments of Uganda, the private sector and civil society in the management and use of Uganda's land resources.

John Kigula and Augustus Nuwagaba assert that the formal procedure concerning the formation in operations of the communal land associations which were under *Section 15 of Land Act* have not been embraced except in isolated cases in Masindi but not for the rest of northern Uganda for the case of internally displaced persons (IDPs).

Uganda is a state party to most international treaties and is obliged to protect and promote the enjoyment of rights including the rights to property. The universal declaration of human rights (UDHR)⁴ has a whole article devoted to property rights and provides for the right of everyone to own property alone as well as in association with others. However neither, the international covenant on civil and political rights (ICCPR)⁵ of the international covenant on economic, social and cultural rights (ICESCR)⁶ have clear cut provisions on land and land rights provisions which relate to the principle of nondiscrimination under provisions relating to land, and the right to an adequate standards of living which includes the right to food, clothing and housing.

Similarly, there are explicit rights to land that have been developed in two key areas of international human rights law. The rights of women under the convention on elimination of all forms of discrimination against women (CEDAW) *Article 14 (2) (g) and (h) of the CEDAW*

³ CSOPNU, December 2004. P1 Land Matters, CSOPNU December 2004. P6. "No Where To Hide" HRW September 2004. P.10

⁴ Article 17 of the Universal Declaration of Human Rights

⁵ International Covenant on Civil And Political Rights Accepted 16 December 1956

⁶ International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1956.

protects women from all forms of discrimination and also protect their rights to an adequate standard of living. In particular it ensures women the right to have access to agricultural credit loans, marketing facilities, equal treatment as well as in land resettlement schemes.

In addition to the international human rights instruments mentioned above, there are also widely accepted soft law instruments such as reports from special rapporteurs, adopted by international organizations. These include the voluntary guidelines on the responsible governance of national security and the general comments of the human rights committee of the United Nations and the United Nations declarations on the rights of indigenous peoples (UNDRIP). The UNDRIP illustrates a number of rights guaranteed to indigenous people including the right not be forcibly removed from their land or territories⁷. It also has provisions relating to right to the cultural practices of the indigenous people. It states;

“measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.”

The UNDRIP further affirms the right of indigenous people to the full enjoyment of the rights guaranteed in the various UN human rights instruments.

The African charter of human and people's rights (ACHPR), particularly under article 14, which provides that:⁸

“the right to property shall be guaranteed ie may only be encroached upon the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

The ACHPR further sets procedures for seeking remedy in case of infringement on the right. *Article 21 (2) of the ACHPR* provides that in case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.⁹

⁷ Article, See Also Article 32 And 20 (2) which guarantees redress to indigenous people deprived of their means of subsistence and development

⁸ African Charter On Human And People's Rights, Adopted June 1981 In Nairobi, Kenya OAU

⁹ Article 21 (2) of the African Charter on Human and People's Rights.

A report by the office of Prime Minister States Uganda as one of the first few countries in the world to institute a national policy specifically targeted at internally displaced persons. This is an integral tool in efforts to TAKKLE the varied and devastating effects of displacement. It seeks to establish principles which will serve as a guide to government institutions, humanitarian and development agencies while providing assistance and protection to IDPs in Uganda. This will ensure that the various needs of the internally displaced are addressed in a significant and effective manner and that the IDPs shall enjoy the same rights and freedom under the constitution and all other laws as of all that persons in Uganda.¹⁰

According to Miller and Sarah (1981), the starting point of all disputes is the grievance phase, followed by a claim. The claim may be settled through litigating or other alternative dispute resolution mechanism or it could escalate into violent conflict. These disputes are also associated with competing claims to rights over the usage of land as well as to control power and authority associated with land ownership. The competing claims are due to land scarcity attributed to the finite supply of land amidst growing population, barriers to accessing viable land due to high prices and legal barriers among others. However although scarcity is most often used as the leading cause of land disputes some studies have demonstrated that the issue has so do with barriers to access land.¹¹

1.11 Significance of the study

The current available tenure on land administration relates to land disputes mechanisms. The land disputes are increasingly becoming a significant area that requires thorough study especially from the legal perspective.

- To look at what lessons can be drawn by the policy makers, legislators and the law reformers based on some of the recommendation that would emerge out of this study.
- The study findings can be used by Human Rights promoting organizations to try and protect the rights of citizens in as far as land disputes are concerned in Uganda.

¹⁰ Adopted from operationalizing the national policy for IDPs, reported prepared by the office of the Prime Minister department of disaster management and the refugees.

¹¹ Muller and Sarat 1981:5:28

- To provide relevant background information on land disputes. That would benefit other researchers who intend to carry out similar or related research in this area. In the future it will thus provide useful material to the government, Non-Governmental organizations and policy makers, lawyers, students and researchers, many of whom might have an express interest in understanding land dispute settlement mechanisms.

1.12 Justifications

The study is aimed at analyzing the legal frameworks and mechanisms for land disputes settlement. The study intends to help the general public and the GOU to understand the effect of land disputes on the persons affected and the importance of solving such disputes and equitable distribution of land resources.

The study also intends to expose the ineptness of the structures put in place that are expected to help people involved in disputes for example the national land policy 2013 which gives the overall policy direction regarding land administration in Uganda. The study is intended to help the government to help realize the importance of dealing with the situation of landlessness as well as the impact it has on the society.

1.13 Research methodology

1.13.1 Study Design

The study used the human rights perspective in analysing the problem of land disputes and how they impact on the people. Both the intrinsic and instrumental nature of land was taken into account, as a right in itself and as a means of realization of other rights.

Consequently, a mixed method approach, using both qualitative and quantitative data collection techniques was applied.

The research design provided a deeper insight of the various dimensions of land disputes in relation to the nature, magnitude and the role of various actors it helped to generate clear, real, simple and applicable data from the field with the help of interviews and questionnaires for generalization of the findings.

1.13.2 Study population

The respondents were randomly selected and categorized and comprised of both sexes but of different marital statuses and age groups. The study used both simple random sampling and purposive sampling procedures. Purposive sampling was used to select different activities in the area of investigation in order to get firsthand information from the key informants to give respondents equal chances of being selected.

1.13.3 Sampling and procedure

The research used a sample size of 100 respondents, distributed equally in the region identified for the study. The equal distribution was done in order to get equal chances of respondents, thus drawing conclusions from relatively the same number across all the region of Kitovu.

1.13.4 Data collection method

The research combined complementary methods of data collection, namely; interviews, field observations and a review of secondary data.

1.13.5 Data Analysis

The quantitative data collected during the baseline survey. Qualitative data was analysed by coding and grouping of the responses according to the key themes of the research. The data collection techniques were triangulated such that quantitative data was used to measure the extent of the disputes while qualitative data helped researchers gain an understanding of the lived experiences of the parties to the land disputes.

1.13.6 Ethical consideration

Prior to obtaining information, participants were informed of the purpose of the research and their informed consent was obtained. To manage expectations of the respondents, they were informed that the research was aimed at making recommendations that would inform policy

1.14 Chapterization

The dissertation divided into five chapters. Although each chapter is mutually exclusive, nonetheless one will have to supplement the other.

Chapter One. Contains general introduction which will incorporate the historical background, statement of the problem, objectives, literature reviews, research questions, justification and methodology use for the study.

Chapter Two. This chapter discusses the current theoretical and conceptual debates surrounding land disputes. Drawing on literature from previous studies, the conceptualization of land disputes commences, considering the different dimensions.

Chapter Three. Gives an overview of the legal and policy framework of land dispute settlement in Uganda. The chapter explores the existing legal provisions in the 1995 constitution of Uganda and the land act cap 227 on land administration and adjudication, the draft national policy that seeks to ensure protection of land owners.

Chapter Four. Contains the land dispute settlement mechanisms in Uganda. The chapter explores the nature of dispute to determine what mechanism to be employed to resolve the land matters at hand
to ensure the land owners can also have freedoms and rights.

Chapter Five. Highlights the findings and recommendations proposed under each of the studies and as a way forward for the issue of land distribution drawing experiences from other countries that have had to deal with disputes of land. This chapter will contain the conclusions based on the research findings.

CHAPTER TWO

NATURE OF LAND DISPUTES

2.0 Introduction

This chapter discusses the current theoretical and conceptual debates surrounding land disputes. Drawing on literature from previous studies, the conceptualization of land disputes commences, considering the different dimensions. The discussion of large-scale land transactions as one of the key drivers of land disputes. The different contestations regarding the status of property rights in general and land rights in particular, including their implications on people.

2.1 Understanding land disputes

There is a thin line between disputes and conflicts especially when it comes to their duration whereas disputes are short-term in nature and the parties involved can easily come to an agreement. Conflicts on the other hand tend to be longer in duration and the possibility of the two conflicting parties coming to an amicable settle is always slim. According to Miller and Sarat (1981), the starting point of all disputes is the grievance phase, followed by a claim¹². The claim may be settled through litigation or other alternative dispute resolution mechanism or it could escalate into violent conflict. A significant number of conflicts in most sub-Saharan African countries have been a result of disputes over land. These disputes are also associated with competing claims to rights over the usage of land as well as to control of power and authority associated with land ownership. The competing claims are due to land scarcity attributed to the finite supply of land amidst growing population, barriers to accessing viable land due to high prices and legal barriers amongst others¹³. However, although scarcity is most often cited as the leading cause of land disputes, some studies have demonstrated that the issue has more to do with barriers to access. This is the perspective, advanced by environmental security school of thought.

The political ecology perspective on the other hand agrees with the environmental security perspective but goes further to consider how scarcity comes about by analyzing the role of globalization and liberal economic ideologies. The main argument is that land scarcity is socially

¹² Miller and Sarat 1981

¹³ Lombard and Rakodi (2016) 'Urban conflicts in the global south. Towards an analytical framework.'

constructed and is a function of social, political and economic factors¹⁴. Meanwhile the legal anthropological explanation considers land disputes from legal and institutional frameworks and how they perpetrate land disputes.

The overriding factor in all these is tenure insecurity, a situation where the rights accruing to the land owner to “use, exchange, transfer, bequeath and inherit land or property is not guaranteed. The failure of the conventional interventions such as tilting, which has instead escalated is also one of the contributing factors. This arises from the inability of the existing land tenure system to respond to new economic challenges leading to conflicts.

A 2009 study by the World Bank in Northern Uganda for example, revealed that at least 85 percent of the study population had experienced threats to their tenure security and felt that those threats were bound to cause insecurity and conflicts. The study established a link between tenure security and disputes. Most conflicts in Northern Uganda involve land abandoned during displacement. The study also revealed that the locals had little faith in the state institutions, those instituting land reforms and those charged with addressing land disputes. It was noted that there were misgivings on tenure reform, especially proposals aimed at replacing customary tenure with freehold or leasehold titles which was seen as a ploy to dispose the rural poor of their land. Inadequate capacity of both formal and informal land dispute resolution institutions was given as one of the reasons for the failure of these tenure reform initiatives. Furthermore, the nature of formal dispute resolution mechanisms, viewed as too adversarial, escalated most disputes.

In terms of their nature, land disputes are manifested in various ways, some such disputes are associated with large-scale land transactions while others involve single parties such as between an individual and a neighbour, as well as those involving private citizens and the state or its agents. Meanwhile, another often neglected dimension to land conflicts in Uganda is ethnicity. It is important to note that these conflicts are not peculiar to Uganda, but have been a common trend elsewhere in Africa and in some cases, have escalated to fully fledged civil strife.

¹⁴ Lombard and Rákodi (2016) ‘Urban conflicts in the global south. Towards an analytical framework.’

The causes of manifestations notwithstanding, it is important to note that the effects of conflicts over land go beyond the economic aspects as they may lead to the violation of human rights and freedoms. Land conflicts have been linked to social exclusion, most disputes are often considered in isolation and efforts to address them begin with disputes as the starting point, yet consideration of its origin and major drivers would go along way in addressing them, disputes can be transformed through focusing on the culture, structures and the key actors behind them.

2.2 Land disputes and the Global land Rush

One of the key drivers of land disputes and the resultant conflicts, as highlighted in the previous section is the phenomenon of large scale land transactions, also referred to as land grabbing or large-scale land acquisitions. Worldwide, it is estimated that large-scale land acquisition increased 10 times since the 2007 food and oil crisis. The global food crisis is said to have created the need to ensure food security. While large-scale land transactions are a common occurrence in most parts of the world, sub-Saharan Africa has witnessed more land grabs compared to the rest of the world.

There has been widespread, rapid increase of commercial land transactions that involve the acquisition or long term lease of large areas of land by investors, particularly when these are disproportionate to the average size of other land holdings in the area under scrutiny. Specifically, the term land grabs is often used when such transactions lead to human rights violations, discriminate against vulnerable groups, and are done with less transparency and without informed consent of the bona fide land owners¹⁵.

A common feature in land transactions is the direct and sometimes indirect role of the state. Whereas the state is mandated to respect and protect the property rights of all people, this is not always the case when it comes to land matters. Moreover, in Uganda, in their effort to attract foreign investments tend to favour foreign companies at the expense of the local land owners. The land deals exploit the weak security of tenure, especially among the poor and illiterate, who end up being dispossessed of their land. This is more so in this era of globalization where some

¹⁵ Centre for basic research working paper

NO: 109/2015 The legal and policy framework and emerging trend of large scale land acquisition in Uganda.

Particular they note that such deals only benefit a few elites at the expense of the majority poor. This is because majority of the land transactions alienate the poor from land and mainstream economy instead of improving their livelihoods since the focus is on large-scale production for export.

Whereas the land disputes in Uganda may not easily fit within the meaning of large-scale land transactions the small multinational corporations and states especially in developing countries makes them culpable of rights violations.

Sections of policy makers have justified these land deals arguing that they involve land that is not currently in use. This is amidst claims that large swathes of arable land, essentially in the global south are lying idle and could be put to use to curb the world food crisis. Another justification for large-scale land transactions is the need for land for large infrastructural projects such as roads, oil wells and power dams. It is thus seen as a way of opening up rural lands to development.

Although these arguments appear valid on the surface, in real practice, it works to the detriment of some sections of the community, especially those who are poor and illiterate. This is more so where land is under customary systems of ownership and is communally used. In addition, critics have also argued that large scale land transaction affects the general subsistence of the poor and minority groups. In scale but multiple cases of land disputes and the resultant evictions could have far reaching consequences on rights and freedom of people. Moreover, these transactions take place within a still developing land governance structure characterized by the imposition of formal systems of land administration in communities where customary systems abound. However, the extent to which such deals escalate land disputes and resultant human rights violations in a country such as Uganda is not yet clear.

2.3 Land Rights

In a number of Uganda regions, land ownership and land use rights are often in dispute resulting into land disputes. These land disputes have far reaching negative effects on the certainty of land markets, tenure and food security. Land rights are most often characterized by fragmented or

overlapping legislation or legal pluralism. This results in unclear property rights and consequently conflicts over land ownership. Land administration authorities dealing with land registration, land information systems, land use planning and land development often lack trained staff; technical infrastructure and financial resources. As a result, the little available and mostly incomplete or isolated data on land ownership and land use is gathered by a variety of non-cooperating institutions, making it difficult or even impossible to use properly. Endless procedures and low levels of implementations are the result.

Legal security is furthermore limited by insufficient implementation of rule of law principles, while mechanisms for sustainable land development suffer from the fact that ethnical principles are not broadly acknowledged.

However, the right to land has traditionally been framed in terms of individual private property rights¹⁶. Debates on land rights have thus centered on its status both as a legal right and a human right. One perspective has been in favour of protecting the legal right to land. A central feature of this perspective is that securing the legal right to land is only possible through formalization of land tenure systems by issuing of titles. The key requirements for ensuring such a right is said to be making clear the system within which such rights are recognized, putting in place governance structures, efficient market policy environment. Accordingly, a legal right to land is seen as a sure way of protecting the security of tenure of the rural poor, as well as empowering them economically. By guaranteeing security of tenure, it's argued that the rural poor can have access to credit facilities since they can use their land titles as collateral. In this regard, Uganda has a plurality in land tenure systems especially due to different forms of land tenure thus such individual rights are challenged, furthermore individualization of land ownership through issuing titles granting individuals exclusive rights over ownership or usage of land protects the poor people from land grabbing is not entirely true. This is because majority of the poor are not well-versed with the processes of land registration, which in most cases are too bureaucratic and require money. These reforms therefore end up benefitting the elites who take advantage of their knowledge of the laws and procedure to dispossess the poor of their land.¹⁷

¹⁶ Howard- Hassman. R.E. (2013) 'Reconsidering the Right to own property'.

¹⁷ Howard- Hassman (2013)

The most difficult type of land dispute to resolve involves a powerful person against one or more poor people. "Powerful" is shorthand for a group of categories of people that include high-ranking politicians, civil servants, the military, the police and other rich and influential groups or individuals. In Uganda, the poor hesitate and often do not dare to resist the powerful, not least in court. This is particularly obvious when examining the outcomes of court cases. Frequently, cases that involve a powerful actor but which have been brought to court by a poor one are not dealt with at all.

Having considered the different perspectives regarding property rights and the cases of conflicts relating to land, this research takes the view that there is need to apply legal and policy frameworks as anew window of opportunity to address the different forms of land disputes.

CHAPTER THREE

3.0 AN OVERVIEW OF THE LEGAL AND POLICY FRAMEWORK OF LAND DISPUTE SETTLEMENT

Land in Uganda has multiple laws governing it from the time an individual, a group of people, organization or the government acquires it to the time it is used for the best interest of the occupier or sometimes when it is transferred to another interested party as the case may be. The legal regimes guarantees an individual or any interested party over land with both substantive and procedural rights over land in the course of acquiring, using and even when transferring or assigning that right to another party. The legal framework imposes duties, procedures and rights to such a party who is either in occupation, usage or intends to transfer or assign, the right one has over land. Various laws and policies have been imposed to serve the purpose at village level. These include grand norm and subsidiary legislations policies have been included here though they possess no legal force, save when they are incorporated into legal instrument as to the part of the land policy of 2013 and the Land Act.

3.1 The Constitution of the Republic of Uganda

This is a mother law in Uganda which guarantees every citizen with the right to own property.¹⁸ The right to own property is very old. Various philosophers have digested about it for example Aristotle contended that the abolition of private property will mean that no man will be seen to be liberal and no man will ever do any act liberally, for it is in the use of articles of property that liberty is practiced.

John Locke as well, puts it clearly that no man could ever have power over the life of another by right to property in land or possessions since it would always be sin in any man of estate to let his brother perish for want of affording him relief out of his property, for justice gives every man a title to the product of his honest industry and fair acquisitions of his ancestors descended to him, so charity gives every man a title to so much out of another's plenty as will keep him from extreme want, where he has no means to subsist otherwise.¹⁹

¹⁸ Article 26 of the 1995 Constitution of Uganda

¹⁹ A. Rwegasira (2012), Land as a Human Right: A History of Law and Practice 1st Ed. Mkuki

The constitution of land has not been far from the concepts above as it guarantees the right to the citizens to own property which includes land.²⁰ It gives this right to own property and protects it in case this right is taken away from him. The constitution provides two items over this right: that is the right to own property and the second item is the conditions on how that can be extinguished from an interested party. The latter provides for existence of the law which extinguishes that right and sets out a mandatory requirement for payment of prompt and fair compensation.²¹

Per Aristotle is contention that if one is prohibited to own land as his liberty is curtailed likewise the constitution guarantee every citizen to own property anywhere in Uganda provided one complies to the laws. It is the same grand norm that guarantees a duty to do justice to the courts of law,²² vested with such mandate in the course of resolving such said disputes.

At the national level, the constitution of Uganda²³ vests land ownership in the citizens of Uganda *Article 237* specifically provides that ownership of land is vested in the citizens of Uganda to own it under freehold, mailo, leasehold and customary tenure systems.

The constitution permits the central local government to hold environmentally vital resources in trust for the people as provided for under *Article 237 (2) (b)*. These resources include natural lakes, rivers, wetlands, forest reserves.

Under *Article 32 (1)*²⁴ the state is obliged to take affirmative action in favour of marginalized groups based on gender or other reason created by history, tradition or custom, for the purpose of redressing existing imbalances. The imbalance in this case would be defined in terms of deprivation of rights of ownership.

In terms of land administration and institutions. The constitution establishes land institutions, thus the Uganda land commission; land tribunals and district land boards. It also prescribes the

²⁰ Article 26 of the 1995 Constitution of Uganda

²¹ Article 26 (2) of the 1995 Constitution of Uganda

²² Article 42 of the 1995 Constitution of Uganda

²³ Article 237 of the 1995 Constitution on the citizen of Uganda to own it under freehold, mailo, leasehold & customary tenure systems

²⁴ Constitution of the Republic of Uganda

sanctions for each of these institutions while the constitution prescribes the membership procedure and terms of service of the Uganda land commission, it gives the parliament power to enact legislation prescribing the same for the district land boards, and land tribunals.

Land administration in Uganda is still considered to be one of the causes of land rights insecurity in Uganda. If the committee could recommend solutions to the fraud, forgeries and inaccuracies in the land registry, then it will improve land administration.

Land tribunals are established under *Article 243 of the Constitution* and have jurisdiction to determine disputes relating to the grant, lease, repossession of land by individuals or any other authority and also it determines disputes to the amount of compensation to be paid for land acquired.

Objective XIV²⁵ of the National Objectives and Directive Principles of State Policy, stated in the constitution of Uganda, reflect the pledge to endeavor and fulfill the fundamental rights of by ensuring maximum social and cultural wellbeing. This oversight is appropriately covered under *Article 45*, which is explicitly makes it clear that non mention is not exclusion for those not mentioned to enjoying the rights, duties, declarations and guarantee relating to human rights in *Article 20* the oversight aside, Objective XXIII, limits itself to natural disasters and obliges the state to unleash it's machinery to deal with such hazards including general displacement of people or serious disruption of normal life.²⁶

3.2 The Land Act Cap 227 As Amended

The parameters of the act are defined within the constitution, which set the mandate for it's evolution holding it to defining tenure regimes especially customary tenure, recognizing the variant ways of handling it and providing for management of communal rights and resources. The land Act defines the incidents of customary land tenure to include it s territorial ore clan nature, existence of rules and regulations governing community, family and individual access to land and perpetual ownership of land. The Act provides that customary land tenure may be

²⁵ Constitution of the Republic of Uganda

²⁶ Constitution of the Republic of Uganda

converted to freehold by individuals, families or communities on application to the District Land Board.

It establishes certificates of customary ownership (CCOS) which is proof of ownership, however these not yet being issued, weakening people's ability to protect the land, the conversion of CCOS into freehold titles this does not recognize the difficulties of converting concepts of customary ownership into modern titles and the financial and cultural barriers that exist.

It is a broader level, the treaty to people's and right stems from the facts that laws governing customary tenure remain unwritten and so changes taking place not recognized, debated and changed for example the clan's role in protecting land from sale and protecting the rights of women and children is weakening and has not been effectively replaced by state laws.

Those most vulnerable changes are women and children. Vulnerability of people's rights will stem from the attitude of policy makers wishing to convert customary tenure from a system of land rights and responsibility shared within the household to that of an individual owner of land. This is proposed through the acquisition or the issuing of a title to "the head of the family" the risk is for the male head of the family taking the land as his sole property and selling it.

Disputes over land in Uganda involve ownership conflicts between states, private, common or collective owners here it is by arm chair decision resulting in unintended expropriation of individual or group.

Multiple sales/ allocations of land involve multiple sale of privately owned land by private individuals, multiple sale of common property.

Ownership conflicts linked to inheritance ie inheritance conflicts within a family inheritance conflicts within a clan.

Ownership conflicts due to lack of land registration i.e. several people claim the same property because;

- a) No land registration exists
- b) It is in bad conditions or

- c) It has been destroyed. Due to unequal knowledge and financial means only the well-off register land-even that of others.

However the formal land administration and dispute management institutions under the Land Act do not integrate the existing traditional land administration institutions and this constitutes the major lacuna in administration. Most land rights services of the ministry of land, water and environment, the ministry of justice and constitutional affairs and in regional and district offices. The main institutions for the administration of the land are District Land Boards²⁷ and the sub-county/ division land committees. Each district is required to have a district land offices, which provides technical services within its own staff or arrange for external consultants to the District Land Boards on the other land, there is the Sub-county/Division Land Committee, whole functions in relation to land include determining, verifying and adjusting on the boundaries of the land. Such functions are carried out by the committee before forwarding to the recorder²⁸ an application for the grant of a certificate of customary ownership.

The Land Act established the land dispute settlement institutions which are: the district land tribunals,²⁹ the parish/ward and sub county/ division executive committee courts (LC II and LC III courts). There is also the established position of a mediator for each district. The lowest court to hear land matters are the parish or ward executive committee courts. A ward in an urban council is the equivalent of a parish in a district council. The parish or ward executive committee courts are ordinarily referred to as "LC II courts." An appeal lies from the LC II court to the LC III court (the sub-county or division executive committee court). From the LC III court an appeal lies to the district land tribunal and from this tribunal to the high court. Land tribunals are underfunded and not every effective there will therefore be a vacuum within which conflict and land rights abuse is flourishing.³⁰

²⁷ The functions of the District Land Board include, holding and allocation of land in the district which is not owned by any person or authority, facilitating the registration and transfer of interests in land, causing surveys, plans, maps, drawing and estimates to be made by or through it's officers and agents

²⁸ The recorder in a rural area is the sub-county chief, while for a gazette urban area, the town clerk is the recorder and fir a division of a city it is the division assistant town clerk.

²⁹ For each district the Act established a district land tribunal, consisting of a chair person and other two members. An appeal lies from the decision of a district land tribunal to the High Court.

³⁰ CSOPNU, 2004

The Land Act permits the central or local government to hold environmentally vital resources in trust for the people. *Section 42 of the Land Act* empowers the government or local government to acquire land in accordance with *Article 26 and 237 (2) of the Constitution*. *Section 44(4)* provides that the government or local government shall not lease out or otherwise alienate any natural resource, though *Section 44 (4)* allows the government or local government to grant concessions or licenses or permits in respect of a natural resource.

As if it is not enough, the law provides that in case of contradiction as regards all matters of land in respect to laws applicable to the subject matter the Land Act stands to prevail. It is loudly provided that the land act shall apply to all land in Uganda and any provision of any other written law applicable to land which conflict or are inconsistent with any of the provisions of the Land Act, to the extent of the conflict or inconsistency, shall cease to be applicable to land or any matter connected to with land in Uganda.

Furthermore, the land act is applicable over the land in Uganda where there is a dispute on boundaries and the minister is bound to appoint an inquiry. It is worthy emphasizing here that the Land Act therefore applies to land to the extent the Land Act provides there to and the extent that any other law conflicts with it.

3.3 The Land Acquisition Act 1965

The government being the trustee of land in Uganda is entitled to acquire land anywhere in Uganda for public purpose. The term public purpose connotes any of the following instance; exclusive government use, for general public use, of any government scheme for the development of agricultural land or for the provision of sites for individual, agricultural or commercial development, social services or housing; anything connected with sanitary improvement of any kind, including reclamations, anything connected with the laying out of any new city, municipality, township or minor settlement or the extension or improvement of any existing city municipality, township or minor settlement.

The government can acquire land compulsorily on the grounds of public interest. The land owners must be paid fair and adequate compensation before the government can take possession of the property *Article 26 (2) and 237 (2) of the Constitution*.

The government when so empowered to acquire land it is guided by various principles which include but not limited to public interest: public utility or the interest of public economy. This therefore requires an approval by the parliament and the notice to issue there to the government gazette for protecting the interest of either party to the land. The government may acquire land to a transfer and on the basis of public interest. The Land Acquisition Act sets a mandatory requirement of notice to the affected parties and a requirement of prompt and fair compensation for unexhausted improvement.

Land Acquisition Act provides the procedure of land acquisition in Uganda. Land owners who are aggrieved can go to courts of law for an appropriate remedy in order for the government to acquire private land through compulsorily acquisition, it must approve that it is doing so on the grounds of public interest.

Public interest may arise where;

- i) Acquisition is necessary for public use,
- ii) Acquisition in the interest of defence,
- iii) Acquisition for public safety,
- iv) Acquisition for public order.

Land Acquisition is in public interest if it is in general interest of the community not the particular interest of individuals.³¹

Before the government takes possession of private land it has acquired, it must pay timely, fair and adequate compensation to all persons with the interest in the land *Article 26 (2) (b) (1) of the constitution*.

The compensation must be assessed at the actual market value of the land at the time of acquisition.³²

³¹ Abdullah and Others V Collectors for City Council of Kampala (1958) E.A 779. B.P Bhatt and another Vs Habib Rajahi (1958) E.A 536

Market value of the land means the price which a willing seller might be expected to obtain from a willing purchase at the particular time.³³

3.4 Registration of Titles Act

For a legal transfer of ownership to take place, one needs: the original title deed of the land, original stamp duty assessment forms and receipt, duly stamped transfer documents, original paid up land rents receipts, clearance certificate, stamp duty valuation report, original land rates clearance certificate consent to transfer plus application for registration the transfer documents are later stored at the registry of lands and then transmitted to the registrar who passes the instrument of transfer. It is then later sent to the commissioner in charge of land registration of verification.³⁴

The registrar cancels out the old owner and replaces him with the new owner in handwriting. The buyer and the seller are required to provide passport photos for this process.³⁵

There is concern that the new system has prolonged the process of land registration and titling. The computerization of land registry was funded by the World Bank to the tune over 23million dollars with hope that it would ease the titling of property, registration of land and generally improve land administration.

The land information system (LIS) was introduced against the background that less than 20% of the land in Uganda is registered. It was also anticipated that it would lessen the period of processing land titles and searches for those involved in land transactions; instead, witnesses that have appeared before the commission of inquiry into land matters, say that the system has slowed the process of land transactions than in the past.³⁶

³² Abdullah and Others V Collectors for City Council of Kampala (1958) E.A 779.

³³ Puran chand vs Collector under the Land Acquisition Act of (1894) (1957) E.A 129.

³⁴ Daily Monitor 18 July 2018

³⁵ Observer Uganda 2 September 2015

³⁶ Observer Uganda

3.5 Local Government Act 1997 (Amended in 2015)

This is a very important law that enables the government at a village level to govern and to make by-laws in relation to land ownership. This is to say the law establishes village authorities which are vested with powers to administer and or manage the village land in Uganda. It provides for the composition of the village authorities and the meetings of the local councils as well as the bindingness of the issued decision thereof. According to *Article 50 of the Local Government Act (1997 Amended in 2015)* the village committee which is headed by village (L.C.I) chairperson shall oversee the implementation of policies and the decisions made by its council.

3.6 Local Council Courts Act

Every village, parish, town division and sub county has a local council court. These courts have the power to handle land matters for land located within their area of operation.

However, they can only deal t with land disputes where the value of land is UGX 2,000,000 (Two million shillings) and below except customary land where there is no limit on the value of land.

The first court in which to report a land complaint is the village local council court. These courts such as reconciliation, declaration, compensation and damages to the affected persons. Each local council has a certain number of identical positions, such as chairman, vice chairman etc. the local council does not transfer nationally instead the national government appoints Resident District Commissioners (RDCs)

3.7 The Uganda National Land Policy 2013

In Uganda the centrality of land in the economy; the political ambiguity on the land question, the social and cultural complexity of the land question particularly the fact that for the many communities land relations are also social relations and the overall governance framework in which land issues are played out and resolved is important.

A national land policy is essential for the optimal utilization and management of land resources since it is known that the majority of Ugandans are dependent on land for employment and survival. It is crucial for an integrated and effective system responding to a wide variety of intra-sectoral variables between the land sector and other productive sectors in the economy without a

comprehensive policy it is a challenge to confront the fact that land is a factor of production influenced by and interacting with socio-cultural processes as well as macro-level policy processes and strategies whose strategic management is important for sustainable economic growth and social transformation.

The rationale for land policy rests on the following reasons;

The need to reduce ambiguity at sector-level by comprehensively integrating scattered and isolated policy statements on different aspects of sustainable land use, formulated in response to isolated sectoral demands in agriculture, environment, natural resources management, housing, transport and for private sector development and industrialization policy. A harmonized framework with a common horizontal denominator is necessary to stem sectoral conflict regarding administrative decisions, regulations and laws that often overlap, leading to serious administrative conflicts and bureaucratic competition for responsibility and resources. Regulating use and land development without losing sight of tenure issues requires an integrated policy for the identification of effective inter-linkages between land and other productive sectors.

As a development resource, agricultural land in Uganda has not always been utilized optimally and sustainably. The primary reason is that there is less investment. In agricultural production farming. The continued growth of the country will require a coherent and pragmatic approach that frees land for commercial agricultural production in order to move out of poverty and attain food security by creating alternatives in the service and industrial sectors.

Post-independence attempts to settle the land question through the Land Decree 1975, the Constitution of Uganda 1995 and the Land Act failed to address the historical complexities and fundamental issues underlying land tenure relations in their entirety. The land act did not exhaust all the critical issues on the content and viability or property rights under various tenure categories to streamline land tenure in a manner that instills confidence in individuals, communities and institutions that own desire to own land as an asset. Despite the break from the past by vesting residual authority in the citizens of Uganda, the 1995 constitution created substantial ambiguities in how land as a property is dealt with.

Uganda is a party to a larger body of international and regional conventions, treaties and declarations dealing with human rights issues, human settlements land governance which require adherence to specific principle in land sector management these instruments call for establishment of an international framework for the environment governance, land use and management. Uganda as a country is expected to comply with these frameworks.

To safeguard property rights of individuals, the government has established an institutional framework for the proper administration of land in Uganda and include the ministry of lands, housing and urban development charged with the responsibility of providing policy direction national standards and coordination of all matters concerning lands, the judiciary whose mandate involves adjudicating all cases, including those relating to disputes over land, civil society organizations and civic leaders also play a role within the institutional framework.

3.8 Land Sector Strategic Plan

The LSSP 2001-2011 was the operational, institutional and financial framework for the implementation of sector wide reforms and land management including the implementation of the Land Act. It was intended to guide government, the private sector and civil society in the management and use of Uganda's land resources. It was an integrated approach to the land sector and was linked, among others to the poverty eradication, action plan and the plan for modernization of agriculture.

LSSP as designed to remove barriers to increased land utilization, created by unequal distribution of land access and ownership. The underlying principle was the realization that tenure insecurity and uncertainty of land rights among the vulnerable groups including IDPs affects productivity and use of land. It holds that the poorest groups in society are also the most insecure in their land rights. LSSP further acknowledge that accessible and fair land dispute resolution is critical to tenure security especially for poor and vulnerable groups.

In the positive sense, LSSP laid down the framework for the development of land policy and legal framework which addresses three main elements; tenure policy, land use policy and land laws. This is the framework, within which land issues of IDPs can be addressed, in terms of

service delivery, LSSP facilitates the decentralization of land services, the devolution of land management and empowering communities and district to make better use of their land resources, a system and principle that is ideal in delivering at lower levels of administration where the IDPs are likely to approach for service.

Within the LSSP, the dispute resolution is the system based on local courts at lower level to improve the transparency and fairness of their decisions with an upper tier of impartial appointed tribunals set aside to consider high value cases and appeals.

This strategy appears to be spot on in terms of the roles of local councils as emerging power institutions in dispute resolution despite their lack of sufficient and appropriate knowledge of the legal dispensation on land both in statutory and customary terms. Besides by taking this avenue, traditional institutions and systems of land administration appear to be technically thrown out or ignored out best.

CHAPTER FOUR

4.0 LAND DISPUTE AND SETTLEMENT MECHANISMS IN UGANDA

Land dispute have been in place due to various circumstances which have been the determinant of the mechanism to be employed to settle a particular dispute in Uganda. These have included boundaries over the village land, issues emanating from land adjudication in the course of granting a certificate of customary right, or in any matter which the parties deem a controversy over land which may include any their interest over the land.

It is the nature of the dispute which determines what mechanism can be employed to resolve the land matter at hand. For the purpose of this study, the mechanism of land dispute settlement at village level is categorized into two parts: judicial and non-judicial mechanisms of dispute settlement. The former is so named on a reason that parties to the dispute are bound to undergo ordinary court processes as to sue any other party of whose decision aggrieves his interests; while the latter is an administrative procedure which is not final and conclusive to the matter in dispute and does not involve litigation before the courts of law or quasi-judicial bodies as the case may be,

4.1 Non judicial mechanism

4.1.1 Mediation through the mediator appointed by the minister.

This is established where there is a dispute between the village using the land with a person or body which is in occupancy with the land or boundaries demarcated as a village land before the village is in dispute over the land occupied under a granted right of occupancy, occupied as a reserved land, occupied as a general land or is declared an urban area. Where there is such a dispute over the land, the minister responsible for lands may appoint a mediator whose role is to persuade the parties to reach a compromise over the boundaries. In case this comes out successful, then the disputes stands concluded as per the agreement.

Mediation is a process by which disputing parties engage the assistance of a neutral third party to act as a mediator. The mediator is a facilitator who may in some models of mediation also provide a non-binding evaluation of the merits of the disputes; if required, but who cannot make any binding adjudicatory decisions. The parties are free to evaluate the law and the facts, even to

error in what is law, is fact or important, and to walk away with decision if either of them does not like that the deal is offered.

Mediation is confidential, time effective and relatively cheap. The parties to mediation have full control of the process since all decisions are arrived at through consensus and not dictated by the mediator. There is no appeal in mediations and mediation agreements are binding contracts. Mediation brings finality to the dispute resolution process as opposed to litigation that may involve numerous appeals in the process of bringing the dispute to a close. In case the matter is not resolved then the second approach is resorted to as inquiry.

4.1.2 An inquiry

Where the mediator has failed to mediate the parties on the matter in dispute. The land inquiry commission is asked to investigate the inquiry dispute upon receiving the report on mediation failure. The land inquiry was constituted in September 2016 by President Yoweri Museveni after several notable incidences of land wrangles in the country.

The inquiry shall be held at any time within a month from the date of appointment and at only venue. It is set that the inquiry shall be open to the public save when the chairperson to the inquiry deems otherwise for the interest of the evidence to be provided. Each party to be inquiry shall be represented and the inquiry shall make sure each party is substantively heard.

The procedures of conducting the inquiry are left to the discretion of the person chairing the inquiry.

The principals guiding the proceedings shall base on the rules of natural justice. In this case the person holding the inquiry has powers like that of the judge of the high court, witnesses are summoned, production of documents is required, and witnesses are examined under oath.

The authenticity of the proceedings under the inquiry take precedence against and person as it is to judicial proceedings. The instances like perjury, subordination of perjury, fabricating evidence, false swearing, destroying evidence, conspiracy to defeat justice and interference with

witnesses with justice, contempt in the course of conducting the proceedings, preventing or obstructing the service are treated at the inquiry as it is done under ordinary court proceedings.

The next step under inquiry is report preparing as to the outcome of the inquiry. Often when such reports are published by the authority and may recommend to be minister of lands to reestablish the lawful management of the land and proper allocation of the interests in that land.

4.1.3 Negotiation

Negotiation is one of the alternatives to formal dispute resolution mechanisms. In negotiation, one can settle the disputes by discussing it with the opposing parties or discussion can take place through representatives of the parties to the disputes. The parties to a dispute can on their own motion start a process of negotiations through correspondence or through one or two mediators with a view to finding a mutually acceptable solution of the problems. Negotiation by definition excludes the participation of an authority that has the obligation or the right to apply a particular false to the issue in dispute. Negotiations are often dependent on the bargaining power of the parties. Often extraneous terms such as maintaining good relations with the opposing part results in compromising legal rights. The advantage of negotiations is that time is saved and this time court goes in favour of the process of negotiation. During negotiations, decisions are reached at through consensus and the process is conducted and undertaken in good faith.

Negotiation preserves the confidentiality of the issues discussed. It is relatively based on the good faith of the parties.

4.1.4 Conciliation

This is a dispute resolution mechanism where a third party facilitates communication between the parties to a dispute and tries to de-escalate the conflict in order to reach an agreement. During the conciliation process, the conciliation in a mediation process.

It is a requirement that there must be a legal relationship between the parties before their disputes can be referred for conciliation. The legal relationship between the parties may be contractual or

otherwise, these may include; a hand lord tenant, employer employee etc in the event that there is no legal relationship the parties must agree that their dispute should be referred to conciliation.³⁷

The outcome of conciliation is a settlement agreement in an event of an agreement between the conflicting parties; which may restore or improve on the relationship between parties. It is confidential. The proceeding and the record of proceedings are not made public they are only availed to the parties and the parties are permitted to discussed the content of the proceedings. Conciliation can be conducted on weekends or public holidays. However trained conciliators are not readily available in the communities or villages. This makes it difficult for the parties to refer their dispute for conciliation. This may increase the cost of conciliation as trained conciliators have to be hired and reimbursed for their transport and accommodation more over participation of the public in conciliation is not permitted in the event that the community is interested their participation is curtailed and they may not be able to air their views.

4.1.5 Arbitration

Arbitration is a method of dispute resolution involving one or more neutral third parties who are usually agreed to by disputing parties and whose decisions are binding.³⁸ Usually, the arbitrations are like judges.

This is a dispute resolution process where a neutral third party decides for the conflicting parties. The parties have the liberty to choose the arbitrator but if they fail to choose the arbitrator but if they fail to choose the arbitrator then a designated body or institution may choose for them. The claimant and the respondent file formal written documents, the claim and a response respectively. Compared to mediation, arbitration follows a very streamlined procedure usually agreed by the parties. The process is confidential, the proceedings and the award are not disclosed to the public.

³⁷ See Section 4 of the Arbitration and Conciliation Act Cap 4 Laws of Uganda 2000 Edition

³⁸ Black's Law Dictionary P. 100

However arbitration does not allow for appeals and as such an aggrieved party is unable to appeal the decision of the arbitrator however harsh it may be. Direct enforcement is possible. Arbitral awards must be registered in the courts of law before they are enforced.

The successful party has to apply to the courts of law to have the award registered. This will require money for the application and registration. It will also require lawyers which will increase the costs of arbitration.

In customary land dispute resolution arbitrators are the elders (generally a panel of exclusively old men).

Whose main objective in conflict resolution is to re-establish harmony, cohesiveness and unity within the community. A conflict is therefore not considered to be simply a matter between the individuals involved but rather an affair of the entire community. Customary conflict resolution fits in very well with the requirements of cultures based on balancing conflicts. In a traditional context, dispute resolution requires the intervention of a respected intermediary with decision making authority. Therefore, consensual approaches won't work and what is needed is arbitration.

4.2 Judicial mechanism

4.2.1 The local council is under the ministry of local government, it is responsible to the district. It is empowered to deal with land matters.

The integrity and knowledge of an individual are the criteria for one to become a member of the district council furthermore, the person must be resident within the district with the age of 30 years, a citizen of Uganda who is mentally fit but not a member of parliament the locality.

The local council is vested with two major powers Appellate capacity and the mediation capacity
The appellate capacity: the first instance on appellate capacity is when the decision of the district adjudication committee is challenged by an interested party aggrieved by the decision through appeal. The decision so issued by the committee may be challenged through appeal to the local council. In the course of exercising such powers, the council is with all the powers and shall comply with all the procedures applicable to the committee. It is as well empowered to amend the adjudication record, correct any error in the adjudication record and or direct that the

district adjudication adviser conduct further investigation into the subject matter of appeal. For the best interest of justice when the council deems it just, may call upon a person who is likely to be affected by the decision but has not appealed and avail him with an opportunity of being heard on appeal before the appeal is determined.

It is interesting to note here that the decision issued there to is appealable to the land tribunal within the locality and it is done after the leave has been sought.

The second instance where the local council operates as an appellate body is under the process for staying the suits. No person is allowed to institute and civil action or proceedings of any kind in relation to land adjudication until the adjudication record is final likewise where any action or proceedings have begun be it village adjudication or application for determination of the adjudication no proceedings may be instituted until the finality of the said proceedings.

Mediation capacity of the local council; the council is purposely established for this main task when it fails within the hierarchy of the bodies established to settle land disputes. The rationale for its establishment is to mediate the parties and this assists them to arrive at mutually acceptable solution on any matter concerning land. In case of any dispute thereof, the local council may stand to mediate the parties to the agreement.

It is well settled that in both instances above explained (where the council is vested with power to mediate the parties), fails the parties are entitled to refer the matter to the courts of competent jurisdiction. The courts district land tribunal through the wording of those two laws on what should be the competent jurisdiction of reference is still debatable depending on the pecuniary jurisdiction of these courts preferred.

4.2.2 The District Land Tribunal³⁹

This is established under the laws of Uganda.

It is vested with territorial jurisdiction which enables it to operate in the district, zone or region within which it is established.

³⁹ Section 74 (2) of the Land Act Cap 227

District land tribunals have been established but are not in force yet. The tribunal is vested with pecuniary jurisdiction it is also vested with powers to deal with land matters touching the public corporations particularly where there is no high court within the locality.

The tribunal is composed of the chairperson and two other members and the chairperson shall be a person qualified to be a magistrate grade 1⁴⁰ it is a trite principle of law that the assessors are required to give their opinion before the chairperson gives an award.

The tribunal is vested with five major tasks when dealing with administration of justice over the land disputes. It operates as a court of original jurisdiction to entertain the subject matter in disputes; it is an appellate body is revising body and an executing body of its own decision and the decision issued by the local council.

The tribunal is vested with powers to deal with any subject matter in dispute over land as a court of first instance. it is well documented that the tribunal shall be guided by the jurisdiction within which it can exercise its functions. In the course of hearing, the right to legal representation is well established.

The advocates are vested with audience within the tribunal as well as any recognized agent of any interested party. The proceedings are conducted in public and the tribunal is bound to issue the person timely for the best interest of justice and the person aggrieved by the decision of tribunal has a right to appeal.

In order to attain ends of justice in respect to the appeal, the tribunal may rely on the records present before it from the local council. If it deems it right, additional evidence may be received. But further wise, the tribunal is permitted to make inquiry as it deems right in relation to the appeal brought before it. Each party to an appeal may be represented by an advocate or any recognized agent.

⁴⁰ Section 76 (2) of the Land Act Cap 227

The tribunal is also vested with revisionary powers. The tribunal may call for records of the lower land tribunals for the purpose of examining the records of any proceeding there to in exercising revisionary powers the tribunal may involve the powers vested to it on appeal.

The tribunal is lastly vested with powers to execute its order and the orders of the lower land tribunals.

It is important to note here that the lower land tribunal cannot execute the decree of its own such powers are vested to the district land tribunal.

However the government is waiting a report from justice law and order sector to decide whether or not the district land tribunals should be re-introduced. The land tribunals were established by an Act of parliament to handle disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals. The mandate of the district land tribunals explained, prompting the chief justice, to issue a practice direction to transfer the hearing of land cases to the chief magistrate and grade one magistrate.

Courts. The justice law and order sector which is under the ministry of justice is in the process of conducting countrywide survey tribunals. The state minister for justice Fred Ruhindi stated that government is awaiting a report from the justice law and order sector determines the next step of action on the land tribunals. He asked parliament to review the powers of magistrates' courts to enable them to handle land cases valued at up to 50 million shillings currently the magistrates' court can only handle cases on land valued at five million shillings.

4.2.3 District Land Boards

District land boards⁴¹ hold and allocate public land or land which is not owned by any individuals or authority in their respective matters. They are also required to compile, maintain and review a list of rates of compensation payable in respect of crops, buildings of non-permanent nature and any other thing on the land in their districts every sub-country gazette urban area and division (for cities) has a committee which advises the boarders on matters relating to land including ascertaining rights in land. The district land boarder has ordinarily been

⁴¹ Section 56 of the Land Act

a body vested with the original jurisdiction to entertain registration and transfer of interests in land.

In the performance of its functions, a district land board shall be independent of the Uganda land commission⁴² and shall not be subject to the direction or control of any person or authority there shall be a secretary to a board who shall be a public officer appointed by the district service commission.

The proceedings are not absolutely governed by the board alone but also the best interest of justice functions the board shall be guided by the principals of natural justice where the statements of witnesses produced by parties to a complaint are heard and relevant document produced by any party are dully examined.

The laws government the district land boards that is the land Act 1998 as amended and the constitution of Uganda, the board is vested with different sides of exercising its functions; to hold and allocate land in the district which is not owned by any transfer of interests in land and deal with any matter which is incidental or connected to the other functions.

4.2.4 Uganda Land Commission

Uganda Land Commission was established by the 1995 Constitution of the Republic of Uganda.⁴³ The constitution provides for the setting up of Uganda Land Commission as an autonomous body, and at the commencement of the financial year 2006/2007 Ministry of Finance Planning and Economic Development created a vote for Uganda Land Commission.

The commission's mandate is to probe efficiency of the laws, policies and process of land registration acquisition, administration and management. It is also tasked with an inquiring the effectiveness of the Uganda land commission in administering public land and relevant bodies in the reservation of wetlands, forests, road reserves and national parks among other gazette spaces.⁴⁴

⁴² Section 60 of the Land Act

⁴³ Article 238 of the Constitution

⁴⁴ Daily Monitor 14, February 2018

The land inquiry commission was established to deal with land issues in Uganda. It seeks to find a solution to the land-related challenges in the country. It was constituted in September 2016 by president Yoweri Museveni after several notable incidences of land wrangles in the country and the delays in land acquisition for government projects, the committee is expected notable comprehensive report that provides a solution.

According to land minister, Ms. Betty Amongi, on top of proposing reforms, the committee shall issue “administrative and criminal sanctions against persons found culpable of wrong doing in all the process.” This is important in addressing some of the injustices faced by the Ugandans especially land evictions. One of the pronounced ambitions of the government is to make changes to the compulsory acquisition of land the government has been complaining about several projects being delayed by a hectic land acquisition process.

In a statement issued in August 2016, Betty Amongi mentions that “there are scenarios where 90% of a community who want services have accepted the value government is paying, then 10% rejects it and the project is compromised or abandoned and monies returned or not utilized. Issues the committee could explore further on 29th March 2017 the 2017 case backlog report was released and it indicated that the land case backlog constituted 25% of the entire “delayed justice.” One of the reasons given for the case backlog in was that “land matters often require locus, yet the mediators lack funding to travel to the villages to meet with the communities.” The committee could perhaps explore whether alternative dispute resolution is feasible.⁴⁵

The committee appears to be addressing issues already taken care of in the land policy of 2013. In fact, the land policy traces the history of Uganda’s land problems to the colonial era that ushered in the 1900 Buganda Agreement and Idi Amin’s 1975 land decree where the government nationalized land ownership.

4.2.5 The High Court of Uganda

This study deals with the high court generally and not the high court (hand division perse. It is on this regard that the courts that have been left with exclusive jurisdiction on land matters are only the district land boards; land tribunals district council established by the constitution as may be

⁴⁵ Daily Monitor

conferred on it by the constitution or in exercising its powers under the law the court has various obligations. It is a court which entertains matters of which it has original jurisdiction appeals from the district land tribunal, local council courts, revisionary and supervisory powers and it executes its own orders.

The High Court of Uganda is headed by the principal judge, who is responsible for management of the court, including assigning duties to member justices of the court.⁴⁶ The principal judge is also responsible for supervising the magistrate's courts below the high court. The high court has the following eight divisions: (a) anti- corruption division (b) civil division (c) commercial division (d) criminal division (e) execution and Bailiffs division (f) family division (g) international crimes division and (h) land division.

In all proceedings involving public corporations and other matters relating to the national interests as the minister for lands may publish in the gazette, touching land shall be dealt with by the high court in its status as a court of unlimited jurisdiction. Despite this right position but still the district land tribunal may deal with land matters touching the public corporations in special circumstances. The high court on the other hand function as an appellate court in case a party to the proceedings is aggrieved by the decision of the lower court. The appeal to the high court is lodged to the court whose decision is to be challenged by way of petition.

The Appeals that originate from the proceedings that emanated from the lower courts must contain the petition of appeal, record of the proceedings, the judgment and the decree and the same must be presented at the high court by the lower court from the date of filling the petition. The high court when acting as a supervisory body, may call for records, inspect them and give directions to the lower courts that is magistrates 'courts.

In case any party is aggrieved by the decision of the high court in any instance, may appeal to the court of Uganda upon seeking leave from the high court on the other hand, the high court is vested with powers to execute the decree of its own.

⁴⁶ Article 138 of the Constitution

4.2.6 Court of Appeal of Uganda.

A court of appeal is an intermediate level of court, between trial courts and the Supreme Court which hears these cases on appeal from a lower court.⁴⁷ Each state has its own court of appeals for cases involving state law.

The court of appeal is established under the constitution and is headed by the deputy chief justice and has fourteen other justices.

The court is empowered like any other land courts to apply laws as they are elaborated under the land Act. In all land matters any person aggrieved by the decision of the land courts must seek leave in order to appeal to the court of appeal the applicant shall be required to seek a certificate from the high court certifying the existence of the point of law involved on appeal.

The court of appeal is also vested with powers to revise the proceedings of the high court when performing the function as a land court. Revisional powers of the court may be done by an interested party to the proceedings. The court is moved by a notice of motion and an affidavit. The court is also vested with review powers of its own decision

⁴⁷ Article 134 of the Constitution

CHAPTER FIVE

5.0 THE FINDINGS AND RECOMMENDATIONS AS A WAY FORWARD FOR THE ISSUE OF LAND DISTRIBUTION DRAWING EXPENSES FROM THE COUNTRIES THAT HAVE HAD TO DEAL WITH DISPUTES OF LAND.

The chapter provides policy recommendations to the responsible government ministries, departments and agencies (MDAs) while some of the recommendations call for immediate interventions, other require policy and legal reforms that may take considerable time to accomplish, the targeted MDA's are the ministry of justice and constitutional affairs, ministry of local governments and ministry of lands housing and urban development.

The recommendations are derived from the states obligation and respect, protect and fulfill human rights under the various international human rights instrument that Uganda has ratified. However, this part of the study will explore the land distribution drawing experiences from other countries that have had to deal with disputes of land which include Rwanda, Burundi, Democratic Republic of Congo and Zimbabwe.

5.1 Core Issues and Best Practice

The core issues in relation to conflict and land are "security of tenure, access to land and equal distribution of land. These are issues not objectively given, universal or independent from one another." They are socially constructed and framed and their meaning changes according to the social geographic and historical context and they are interrelated. It goes without saying that the accuity of these problems and their very existence implies as realities and issues in a given social context.⁴⁸

5.1.1 Access to Land

There has been increasing interest in recent years in the possible links between land access issues and violent conflicts. Access to land has a number of meanings. In its most basic form, it points to the ability of willing farmers or breeders to obtain land on which to plant and harvest or

⁴⁸ Deninger 2003

pasture on which to graze their herds. Defined as such lack of, or inadequate access to land is a very common problem.

Access should not be thought of as strictly related to ownership *per se*, as it covers the whole range of property rights and arrangement from share cropping and all possible forms and modalities of leasing. Some degree of conflict typically characterizes a situation involving competing claims to the ownership or use of the same piece of land. In some cases government involvement that supports (or is perceived to support) one side over another, can significantly increase tensions (e.g. Rwanda and Burundi). In Uganda and Kenya warring clans of pastoralists facing resources scarcity kill each other during cattle raids as they search for productive grazing land and reliable resources. In Mozambique land disputes between immigrant charcoal burners, local farmers and grazers have caused violence and property damage. Many of these disputes result in forced displacement, destruction of property and loss of life. Conflict and competition can also occur when people are resettled into an area already held or occupied by others.

Today a “Menu” of approaches helps facilitate broader access to land and engender greater equality in economic opportunity increasingly, market mediated and community managed efforts are being explored including land rental market facilitation.⁴⁹ Another variation in approach to improving land access is the allocation of immediately available or accessible state-owned land.

5.1.2 Tenure Security

Land tenure insecurity has many faces—from the community evicted by a land hungry war lord, to the drought defeated small holder who has sold his last plot for food and cannot find a landlord willing to enter a share crop arrangement to the returning refugee widow who is unable to wrest her husband’s land from his family. It may also be a case of land that poorer villagers thought was theirs to share that the government thought it’s own to distribute and often have documents to “prove it”—documents that, may conflict with others issued at different times, with the law, or with human rights and justice norms.

At this point in time, multiple claims, each with its own historical legitimacy may exist over the same land. The law, and the documents is plural, complex, uncertain, incomplete and currently unenforceable.

⁴⁹ Deninger 2003

Tenure security is critical for a number of reasons among many others. It may for instance have an impact on investments which are often discouraged by insecurity, access to credit, which is facilitated by sound titles, incentives for resource conservation, which grow with security as well as crop selection which are constrained by insecure tenure, institutions matter here perhaps more than in any other area of land policy.

While generalization on this scale is no doubt risky, tenure is possibly becoming less secure than ever before. It finds itself caught between the common but not universal breakdown of customary systems and attempts by weak national states, to replace or do away with them. The situation is difficult in poor transition countries such as Cambodia, where the basis of traditional system has been broken and new legal regimes are shaky.⁵⁰ It appears however to be most critical in Africa, where is the laws and customs which have in the past assured farmers' land rights are under pressure. While the states that claim to replace them when they are not simply "failed" or "informal" in many instances, moreover, it is states actions themselves that create insecurity by instituting a legal pluralism that enable some to challenge customary systems by resorting to state authorities.⁵¹

Tenure insecurity also arises in post conflict situations where people have competing claims the same plot of land. Well-designed post-conflict activities can help resolve this type of tenure insecurity. Land can also be approximate cause of conflict e.g. when land disputes, tenure insecurity or inequality in land access is recognized as grievances which (often in combination with other factors) can motivate violence. Tenure insecurity is generally addressed through approaches that incorporate dispute mitigation and consensus-building measures and that work to clarify rights by legal reforms is needed.

5.1.3 Distribution of Land

The likelihood of violent conflict increases substantially when gross inequalities characterize land holding patterns, particularly when a large landless or land poor population has limited livelihood opportunities. Land holding inequalities combined with other drivers of violence have

⁵⁰ Daudelian 2003

⁵¹ Lavigne Delville 2000

been critical elements in many conflicts throughout history. Land holding inequalities also represent an underlying factor in the violence that has occurred more recently in countries such as Zimbabwe, Brazil, Nepal, and Venezuela and could potentially impact the situation in South Africa.

Unequal distribution is the most traditional topic in the debate about land and violence and it is the issue that has driven most attempts at land reform. This problem is central to the discussion of land in Latin America but it is also a feature in southern Africa particularly in Zimbabwe and South Africa where a small minority of people still control most of the land that is proper for agriculture collective property. In particular state farms and state sponsored cooperatives used to be a significant component of the discussion of distribution, but market mechanisms now universally dominate policy initiatives and attention is now focused on the impact of liberalization on the distribution of land between small and large land owners.

5.2 Experience in some African Countries

Most of African countries have in recent years experienced political strife, armed conflict and population displacements with severe humanitarian consequences. While these events have clearly evolved around political struggle for the control of the state, recent research has pointed to the significance of access to renewable natural resources as structural causes and sustaining factors in struggles for power in the region. Contested rights to land and natural resources are significant, particularly in light of land scarcity in many areas and the frequency of population movements in this review it is clear that in Rwanda (focusing on the potential contribution of the new land policy to national stability) in Burundi (in relation to the return of refugees and the resettlement of IDPs)

5.2.1 Rwanda

In Rwanda, unequal access to land was one of the structural causes of poverty which was exploited by the organizers of the genocide. The Belgian administration had given the conflict an ethnic character. In addition to generally privileging Tutsi above Hutu within the administration, they made changes to land tenure regimes which altered the client-patron contracts governing labour relations and access to land causing resettlement. The 1959 social revolution involved

violence against Tutsi, many of whom fled and their lands were re-allocated to others. Limited access to land exacerbated by its inequitable distribution and by tenure insecurity (brought about by frequent episodes of population displacement and subsequent re-distribution of land by the state).

Political leaders distributed false maps showing Hutu-owned fields which would supposedly be grabbed by Tutsi after Rwandese patriotic front (RPF) gained control.⁵² Even today many people still consider land disputes to be at the heart of most conflicts between households, and a number of organizations have estimated that at district level, at least 80 percent of disputes reported to administration center on land in certain areas are figures as high as 95 percent.

The case of Rwanda is particularly stark illustration of the link between inequality in the distribution of land assets and the outbreak of conflict. Hence, as strong puts it, "a structural adjustment programme which explicitly sought to tilt the balance of the economy away from the state and towards the private sector was very likely to be interpreted in ethnic terms." According to Andre and plateau this urban-based rivalry, sharpened by the effects of structural adjustment is the main reason for the outbreak of civil strife in 1994 however, the situation in rural areas characterized by fierce competition for land but no ethnic based inequality played a key role in turning a low-level conflict into genocide. One lesson here is that land inequality is not necessarily a source of conflict, but that it can be an aggravating factor when associated with extreme poverty and vanishing opportunities.

Modern Rwanda provides for an example of the ambiguity of policies aimed at promoting the early stages of the transformation of an agrarian system, and the haziness of policy options facing decisions makers. In Rwanda, government policy influenced by the 1993 peace accord, directed people to share land resources and opened up public lands (such as Akagera national park) for resettlement.

Rwanda has drafted a national land policy, which acknowledges that a significant share of land is in the hands of rich elites mainly from urban areas. In response the draft policy lays out

⁵² Huggins et al 2005

mechanism for achieving consolidation of plots and describes how land may be allocated to landless. There may be advantages of economies of scale via e.g. mechanization on consolidated plots, but there is a little evidence to underpin this, and the mechanisms to promote consolidation will result in some people losing their lands but being compensated. Even so, there are few alternative livelihood sources in these areas.

The policy also defines the 'landless' to who land might allocated specifically as 'old case' refugees who have returned. Rwandans who fled to country in 1959 or later and stayed outside the country for more than 10 years whilst these people were severely affected by land problems yet in reality the issue of landlessness is much wider than this (involving processes of impoverishment amongst all social groups, in context of extreme land scarcity) and will continue to expand as relative land scarcity increases.

Firm criteria for selection and allocation need to be set in place and a balance struck between centralized authority over the process and local authority. The policy also states that in addition to the 'old case' refugees, land from the reserve will be given to, "those who place an application for it, having a consistent plan of development." There are fears that this may open the way for land acquisition by the corporate sector to the detriment of peasant livelihoods.

5.2.2 Burundi

Inequitable access to land has long been one of the structural causes of conflict in Burundi, and contributes to poverty and grievances against the government and elite groups. 93 percent of the population is rural and dependent on agriculture for subsistence and over 80 percent of rural households have less than 1.5 hectares of land. Landlessness stands at about 15 percent nationally, but at 53 percent for the Twa, a marginalized minority group and so are women who are barred from inheriting land by succession rules.

The biggest tensions and the strongest insecurity are related to the issues of the refugees who left the country beginning in the 1970s and whose lands have since been occupied. Their return hovers like a threat over a significant part of the country and the state has not taken measures that promise to facilitate their re-integration or some form of compensation for them or for current occupiers how would be displaced. Every wave of conflict generates new movements of refugees

and reproduces the problem. The return of the refugees, and situation of internally displaced people, will hinge on the way land scarcity and land hinge ownership disputes were managed.

The country's land scarcity problem will be exacerbated by the return and repatriation of thousands of refugees and IDPS and threatens to be a major source of instability for the state to some degree all Burundian refugees and displaced persons have been the victims of land expropriation, the current experience demonstrates the dangers of a rushed repatriation process that is not prefaced by a conflict resolution mechanism on land claims. Displacement itself can further exacerbate hostilities as members of the local community might view new incoming populations with suspicion. It has to be remembered that the cycles of violence have entrenched a culture of distrust and fear which is a major challenge for national reconciliation.

The recognition of the currently informal certificate de possession (issued at commune level) will bring increased security of tenure at local level, however, this move towards formalization of land documentation will require a well-designed policy which will facilitate formalization but will not result in those without papers being dispossessed by those able to take advantage of money, literacy and connections. This process will require large injection of resources unlikely to become available in the near future.

Small urban 'elite is in a position to 'buy' out the rural poor, to the extent that selling land may be the only means to meet cash needs for health care or food for the majority of the impoverished. Yet, while it is understood that primary policies and legislation regarding the post transition period must be set in place before overall 'reconstruction' gets under way, the lack of implementation of the recommendations agreed to under the peace accord does not bode well for the immediate future. Therefore, the legal and regulatory vacuum that currently exults with regard to fundamental issues such as land tenure is a major indictment against the transitional government.

5.2.3. Democratic Republic of Congo

The complex conflicts in the eastern DRC have numerous sources in addition to various economic and political issues, ranging from the military and economic strategies of western powers and neighboring countries the weak nature of the state in DRC and the historical relationships between ethnic groups, these include natural resources of much greater value and much more 'lootable' character than agricultural or pastoral land such as diamonds, gold, cobalt, coltan and cassiterite.

In the DRC, a 'modern' system of land administration for white settlers, enabling them to establish their plantations was super imposed on traditional systems with compensation paid to the customary leaders (mwami) rather than to the people leading eventually to an undermining of both the customary and statutory systems.

The independent Zairian state introduced a land law emphasizing individuals ownership in 1973, removing the legal starts from land occupied under customary rule. This enabled those in political and economic power to appropriate any land not yet titled. The traditional authorities became the privileged intermediaries for the sale of land. Rewarded with ministerial posts and newly armed with Zairian citizenship, immigrants a large number of former colonial estates in their hands.

This review makes clear the fact that the main land issue in the great lakes region for decades has been security of tenure and access. Competition over land exacerbated by the destabilizing effects of modernization and enforced or spontaneous migration is more commonly a source of conflict than generally supposed, reallocations of land during conflict or the profit form sale or use of land can provide a means of sustaining such conflict. Post conflict access to land for many people can be fundamentally altered through massive insidiously conflict changes social relationships in profound ways, and perceptions of mutual rights and responsibilities in relation to land between individuals, social groups and the state are altered due to changes in perceived legitimacy of institutions and obligations.⁵³

⁵³ Margaret Rugadya 2006

5.2.4 Zimbabwe

Zimbabwe's experiences with land reform are of particular significance to other countries in the region like South Africa and Namibia.

What the Zimbabwean government learnt from its own experience is that in agriculturally based economy no development programme will succeed if people are not given access to land, equitable access to means of production is vital to the success of any development programme.

Land reform is a political process which is influenced by many state holders, both at the national and international level. What has also emerged is that market based forms of acquiring land are simply not the answer to a situation where there are historical injustices and resources constraints. There is need to strike a balance between the market based land acquisitions. The government of Zimbabwe became impatient with the slow rate at which land for resettlement was being acquired.

The government of Zimbabwe is a signatory to the global plan of action as agreed at the Habitat II conference in Istanbul in 1996 the global plan of action recognizes access to the land as being fundamental to the sustainable development of a country. In this regard the government has done well although there have been problems of implementation, mainly due to the mismatch between the scope of the exercise and the provision of infrastructure and support services.

The effects of the land problem in Zimbabwe have had impacts on the political stability of the southern Africa region and this has given rise to a regional approach to the issues of land reforms. Land reforms are a long term hands on process and other countries would do themselves a huge favour by learning from the Zimbabwean experience.

5.3 International experience

In this review experience is drawn from Eastern Europe, Asia and Latin America, as regions that share similar or comparable circumstances to Uganda and a large part of sub Saharan Africa. Land administration projects in south East Asia primarily concentrate on delivering security of tenure to private held land, land for fast, simple and unambiguous title registration, security large areas of rural land for communally settled groups and sustainable local resource management has

been over looked in land administration designs in Asia.⁵⁴ These issues of accommodating people on the ground are overshadowed by foreign investment, large corporation and corrupt local government interests. There is also a very fuzzy area concerning the recognition of 'indigenous' groups and a range of debates about various orthodoxies and approaches in common property discourse often the problem lies in the formal classification of (indigenous) groups. A number as African nations are well advanced in identifying communal types tenure registration solutions in rural communities. Due to various environment and social variable which make these societies unique solutions cannot simply be reassigned into Asian scenarios, however, aspects of the formalization and institution building process could possibly be applied in Latin America, concentration of land holdings over whelms other issues and redistribute land reform has been a core part of the policy debate for decades. The situation of the 'native' varies greatly across countries. The conflict over land is a long lasting one, since Latin America (indigenous) people have been deprived of most of what they had (not only land) since the 16th century. However access and security of tenure over small land has been an ongoing subject for political, sometimes violent struggle the political and economic weakness means that they have usually been unable to return their land when it was seized for the construction of large agricultural estates (or of mines), and have been the victims of violence retaliation when they tried to resist.⁵⁵

5.3.1 Cambodia

Cambodia is still dominantly an agricultural society and issues of land have crucial impacts on most people's life, in 1975, after the revolution by the Khmer rouge, the post-colonial society was completely reformed. The new leaders introduced an agrarian, totalitarian communism of a scale not seen before or after by the rest of the world. The individual ownership of land was banned, cities emptied and people were forced to live in communes that engaged massive irrigation projects. The chaos of past war Cambodia left tens of thousands of families involved in land disputes with then military and the government claiming land either seized or turned into concessions (for forestry or agriculture), most often in fighting or that had been under continued military control for a long period of time.

⁵⁴ Dalrymple, Wallace and Williamson, 2004

⁵⁵ Pons-vogon and solighat le com te, 2004

A new land law was drafted in a transparent manner and eventually passed in August 2001 on the whole, the process was deemed a success today disputes are less violent than they were, tensions have lessened, and public scrutiny has reduced the ability to resort to violence. Cambodia currently provides a perfect example in dealing with problems of post conflict land administration. This is a cautious success story which shows that a lot can be done if there is a unified aim and will. Cambodians can be credited for recognizing a number of critical problems and making a good progress in addressing them. The following main lessons are learned; that systematic first registration with modern legal technical and social standards can be feasible. The Cambodian case shows that things can be done cheaply while still maintaining appropriate quality the key is to engage the community and to develop a locally suitable application for mass surveys and data collection.

That a post conflict situation is likely to boost the momentum for community participation the Cambodian communities have been very eager to carry out the land registration.

That the donor community can play an important role in supporting the creation of common policy for land issues. In Cambodia, it proved possible and successful to unify donors and the NGO community for supporting the government's policy making.

The issues of access to land and secure tenure may not any longer be matters of peace and war. In Cambodia today as was the case a few years ago, but they continue to be key issues for stability.

5.3.2. El Salvador

Agrarian issues have been at the heart of social and political conflicts in El Salvador. The 12 year civil war which wracked El Salvador from 1980-1992 arose in part from efforts to address the pressing questions of land and rural property. In 1992, the peace accords negotiated between the Salvadoran government and the rebels of the farabundo marti national liberation front (FMLN) established a land to some 35,000 families in an effort to re-integrate former combatants into civilian life.⁵⁶ The aim was to reduce the concentration of land holding and

⁵⁶ Forley, Vickers and Thale, 1997

increase substantially the number of individuals who own small plots or share in the ownership of cooperative lands.

However land holding patterns have changed and a significant minority of the rural population has acquired ownership of a plot of land. But under current conditions substantial numbers of beneficiaries of the land reform programs will fail financially and run the risk of bankruptcy and economic marginalization. More broadly if the peace process has succeeded in part by addressing, however imperfectly, the concerns of the rural poor to access to land an economic policy that threatens the viability of the land reform beneficiaries will weaken the support for the democratic political process. The implementation of the peace accords in El Salvador was a major test of the ability to faster the redistribution of assets. On the crucial issue of property rights, Salvadoran elites accepted limited transfer of land to the former combatants in war zones but reject comprehensive agrarian reform to assist dislocated and impoverished assume direct responsibility for the costs of war and denied a greater role for mass organizations in resource allocation.

5.4 Conclusion

Because of the colonial injustice which left Uganda with a dual land ownership structure, the greatest challenge that the country has had to face over the last 50 years has been to redistribute land equitably and at the same time overcome the various legal and financial constraints in the way, Uganda has come a long way and has probably learnt a few lessons along the way but there are still various issues to be addressed. Land reform involves issues of property rights; land use, actual agricultural production and land administration among various other factors.

What the Ugandan government has addressed is just one but very essential component of land reform, but it still needs to address other dimensions so that land problems does not continue to manifest itself in other forms like diminishing agricultural production, uncertainty over land rights and land administration. In 2016 the president appointed a commission to look into the land disputes in the country. At the time of writing this paper the commission submitted its report to the president although the president has not yet signed it.

5.5 Recommendation

In light of the analysis above about the land dispute settlement in Kitovu division, Wakiso district and the several attentions thus the following recommendations.

As a matter of urgency the ministry of lands, housing and urban development should redraw or reopen district boundaries in areas with border disputes. This requires comprehensive consultations with all affected communities to ensure that that final decision is acceptable to all.

The ministry of lands, housing and urban development should standardize the compensation rates for all land within the same area. This would reduce cases of variation in compensation rates for land with the same value and within a particular area. The compensation rate should be fair and commensurate with the value of the land taken.

The judiciary should implement the strategies in place for backlog reduction in order to reduce the long periods the cases of land disputes taken in the courts of law and strengthen alternative dispute resolution institutions and mechanisms.

The Uganda law reform commission should recognize customary lands ownership in its own right without requiring registration so that people can be able to defend themselves in court without being asked to produce documentary proof.

The ministry of justice and constitutional affairs should offer legal aid for the poor people and monitor the activities of the civil society organizations operating on land matters to ensure that they are impartial when addressing land issues.

The Uganda land commission should ensure that all government institutions have their lands surveyed to avoid encroachment by private individuals and companies.

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