ESCALATING LAND CONFLICTS IN UGANDA

A review of evidence from recent studies and surveys

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Abstract:
Despite progress made to address land-related legislative issues, the land sector in Uganda faces several challenges that include insecurity of tenure, overlapping and conflicting land rights, and glaring inequity in access to and ownership of land. Conflicts that are a consequence of colonial legacy are exacerbated in the majority of cases by competition over access, use and transfer of scarce land and natural resources, ever increasing population densities, largely driven by the high population growth rate, unsustainable agricultural practices, and policy and institutional weaknesses. Possibility of increasing conflict is largely driven by competition for influence and power which comes with demonstrated control over land matters such as ownership, allocation and access especially as regards overlapping land rights. Structurally, Uganda's population is growing at a high rate of 3.2 per cent and is projected to shoot up to 39.3 million in the year 2015 and 54.9 million in 2025 due to high fertility rate, set next to deficits in land governance, corruption and ignorance of the law, the automatic escalation of land conflict to phenomenal levels, is not only well deserved but is clearly foretold.

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CONTENT

1. INTRODUCTION

1.1 Overview of Findings

According to Advocates Coalition for Development and Environment (2009[2]), land conflicts will escalate in at least 30 districts in Uganda unless urgent measures are taken to resolve them. The conflicts include border disputes with neighboring countries[3], inter-district border disputes[4], wrangles between landlords and tenants[5], and tenants resisting acquisition of land by investors[6]. For many years numerous land conflicts and disputes have left parties dead or at least vowing to kill each other.

As an agrarian economy, the value of land as for Uganda is naturally high[7] as a strategic socio-economic asset, where wealth and survival are measured by control of, and access to land. As a wealth and survival asset, it is a central element in the most basic aspects of subsistence for many, particularly among the poor despite its being characterized by complex social relations of production[8]. It is therefore the single most important determinant of a rural family's livelihood and well-being, if land is the subject of dispute, it may fall out of the land market for quite a long time, since disputes and the attendant litigation is often protracted eating away resources and time that would otherwise be used in beneficial engagements[9], thus draining on resources of poor households and the economy.

From this review of literature, it is clear that one of the main reasons underlying the increased incidence of land conflict is the failure of the prevailing land tenure systems to respond to the challenges posed by appreciation of the value of land in a way that would enhance effective tenure security, thus property rights are deficient. It is useful to place land conflicts into a broader context of increasing land values and scarcity[10]. If land values increase in an environment where access to land across groups is highly unequal or governed by other factors such as ethnicity, it can give rise to conflicts that run along ethnic lines and spread to areas completely unrelated to land. This appreciation is attributed to increased population, a key variable that underlies the need for better definition of property rights to land.

Uganda's population is growing at a high rate of 3.2 per cent and is projected to shoot up to 39.3 million in the year 2015 and 54.9 million in 2025 due to high fertility rate (6.7) this relatively high level of population growth has led to increased land scarcity and it is also characterized by considerable regional diversity[11]. Population densities vary from 12 per km2 in the North to 282 per km2 in the West (Mugisha 1998)[12]. Rapid population growth, combined with either limited opportunities for non-agricultural employment or, in other areas, increasing non-agricultural demand for land, is a key factor that causes land values to appreciate, resulting in higher

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[2] By Lydia Namubiru, Uganda: Land Wars threaten 30 Districts in the New Vision Newspaper 24th April 2009

[3] examples include; Migingo Island in Lake Victoria pitting Uganda against Kenya, a 9 km stretch in Yumbe between Uganda and Sudan, the Katuna border area with Rwanda, the Mutukula border area with Tanzania, and Rukwanzi Island in Lake Albert, Semliki, Medigo area in Pakwach and Vurra border area in Arua

[4] Disputes over district borders exist between Moroto and Katakwi, Sironko and Kapchorwa, Bundibujo and Kabarole, Moroto and Lira, Tororo and Butaleja, Butaleja and Budaka and over Namatala swamp between Mbale and Budaka districts

[5] In Buganda region, conflicts are expected to worsen between land owners and tenants, the latter increasingly facing eviction as land becomes scarce and its value goes up. Violent evictions have pervaded the area in recent years

[6] Especially in northern Uganda; Amuru District in Acholi

[7] Refugee Law Project , 2006

[8] Deninger, 2003

[9] Rugadya…et al, 2008; Kigula, 1999

[10] Deininger and Castagnini, 2004

[11] As cited in status of Urbanization in Uganda, 2007

[12] Uganda's GDP grew an average of 6.2 percent per year between 1987 and 2004 (IMF 2005a). However, when the country's high annual population growth rate is taken into account the per capita growth rate becomes relatively modest.

competition for a limited or decreasing amount of land available. This is the major driver for conflicts across generations or ethnic groups as most of the land conflicts are in highly populated areas, a population policy might also be a key element in averting an escalation of land wars in Uganda.

Land disputes are evidence of pressure point in land use – localities in which competition over resource use increases, trouble spots in the definition and regulation of tenure rights, in which old rules (on mailo and other registered tenures) and norms (customary) are no longer sufficient to sustain orderly use and co-existence of land users and owners[13]. In other words, tensions over use of land and other resources have the potential to grow into bigger and societal level (ethnic or religious) conflicts if not responded to on time. Inequitable distribution of resources where powerful groups marginalize the weak could in particular be a source of grievance and conflict[14], where property rights are not responsive to scarcity of resources in a way that allows equitable access, efficient use and security of tenure.

In addition, questions about land conflicts at the national level must be framed within the context of unresolved political and cultural tensions. Starting with the award of huge land areas to absentee landlords by the British in 1900 under freehold (*mailo*) tenure and the co-existence of a number of tenure systems, has created considerable scope for overlapping rights to the same piece of land. The 1975 nationalization of land under Idi Amin added to this complexity, although it was overturned by the 1995 Constitution. In other cases, attempted reforms have increased conflict by applying simplistic legal categories of 'owner' and 'user' to complex and fluctuating interrelationships especially on mailo tenure. For example the 1998 Land Act prescription for the issue of the certificate of occupancy, by which the lawful or bonafide occupant is able to demonstrate legal habitation and becomes a "statutory tenant of the registered owner", has been extensively contested breeding conflict. The inclusion in the 1995 Constitution and the 1998 Land Act of four types of land ownership has meant at times an acknowledgment of overlapping rights to the same piece of land, and granting occupancy rights to land in perpetuity to both registered landowners and tenants.

Government interventions that have aimed to reduce land conflict in the past, do not seem to have been effective. This is not helped by the *de facto* elimination of the institutions that had traditionally dealt with conflict without establishing new ones to take their place, thus leaving a vacuum, which has fuelled the overall incidence of conflict. Failure to have a sound institutional presence for land dispute resolution is attributed to the adoption of an ambitious institutional design together with lack of funding which implied that the intended institutional reforms embedded in the Land Act could not take off[15]. As a result, institutions that had in principle ceased to exist with the passage of the Act were the only ones available and in some cases, continued to perform their functions due to lack of alternatives, despite their doubtful legal authority, providing a possible source of conflict. In yet other cases, increased uncertainty by overlaying formal institutions on informal arrangements, has given disputants an opportunity to manipulate overlapping normative orders through 'legal institution fora shopping'.

In Uganda, there is great inequality in access to and ownership of land among households and across districts[16]. Tenure insecurity curtails land users from investing in land improvement, putting up permanent structures, and undertaking soil and water conservation programs, in addition to the possibility that the lack of attention to women's rights may have made it more difficult for widows to avoid inheritance-related conflicts. There is clear evidence of significant and quantitatively large productivity losses due to land conflict, which suggests that measures to reduce the incidence of conflict will have a significant impact on the productivity of the

[13] Rugadya…et al, 2008; Kigula, 1999
[14] Rugadya, 2008
[15] Government of Uganda 1999, Government of Uganda 2003
[16] MWLE, 2004, 2007

agricultural sector. Tenure insecurity is widely felt, particularly among women landowners, tenant farmers in densely settled areas and pastoralists. The country does not have an Involuntary Resettlement Policy to cater for forced evictions (which arise out of infrastructure development, urban development, and conservation concerns) or relocations that come with pastoral search for natural resource access.

It is apparent that ethnicity has been used as a cover for the conflicts caused by land scarcity or competition over land. The "land" has neither ethnic nor political boundaries. When migrants, for example, are perceived as the source of deprivation and despair, particularly where there is societal heterogeneity, grievances give way to conflict such as those in Kibaale District where conflict is increasing economic and political power of the immigrant Bakiga population and pitying them against the indigenous Banyoro.

Resource capture by powerful groups within communities has the effect of shifting resource distribution in their favor and thereby subjecting the remaining population to resource scarcity, this results in large migration of poorer and weaker groups into ecologically fragile regions that subsequently become degraded and causing serious pressures on livelihood security, thus creating opportunity for conflict, the happening in Bullisa testify to this. It goes to show that despite years of intense domestic debate no consensus could be reached on a number of land-related legal issues to be included in the national land policy illustrates the political sensitivity of the topic.

1.2 Prevalence of Land Conflicts

It is clear that the occurrence of disputes on land is not a new happening but it is heightened phenomenon because of a changed environment in which capacities for response and containment both informally and formally is weakened or dysfunctional[17]. The fact that, in Uganda, legal changes aiming to reduce the incidence and impact of conflict did not automatically result in success implies that, in order to be effective, such legal initiatives need to be complemented by effective implementation.

According to findings of a 2008 household survey by *Rugadya…et al* for Ministry of Justice in 20 districts[18], land disputes rank the highest among conflicts countrywide and are often the cause of other disputes including family and domestic violence, assaults and murder. One of the major conclusions of this survey was that land conflicts and disputes point to a lapse in land tenure administration and management especially with regard to boundaries, land ownership and its transmission, occupation, trespass, fraudulent transactions and succession wrangles.

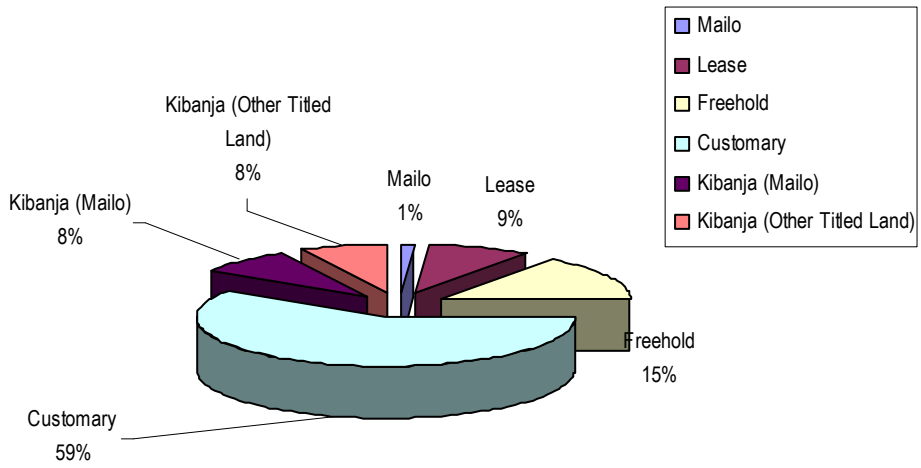
Findings show that there is a county wide increase in land disputes, where the occurrence of land conflicts at household level is (34.9%); with rural households accounting for (36%) of these conflicts compared to urban households that take a share of (33%). Overall the most commonly cited types of land conflicts experienced by the households surveyed are 'boundary discrepancies' (32.1%), land ownership wrangles (18.8%), inheritance and succession wrangles (15.5%) and illegal land occupation (12.3%). A significant 20% of all land disputes that occur are not reported to any dispute resolution institution, given the severity of land conflicts, this is a precursor to social tensions that could erupt into violence.

However, (59.9%) of land disputes are resolved at the institution of first call. In terms of regional distribution, the eastern region had the highest dispute prevalence of (48%) and lowest was in western Uganda at (15.4%). Child headed households reported a comparatively higher prevalence of land conflicts (41.3%). As regards, tenure types, mailo land is the most affected

[17] Rugadya, 2008
[18] The most comprehensive survey of land disputes country-wide so far by MOJ in 2008

tenure with the highest disputes prevalence of 30% while in all the other regions customary tenure is most conflict prone accounting for nearly 60% of conflicts as illustrated in the figure below.

Figure 1: Land Conflicts by Tenure type



Source: Rugadya…et al, 2008

However, Deningner and Castagnini (2004[19]) in a four-region survey, argue that there is weak evidence that land conflicts are more frequent on freehold land (mailoland)[20] and less prevalent under customary tenure, even though it is evident that the number of households affected by land-related is between 2.5% and 5% of households. Their study found that lands under customary tenure are significantly less likely to be affected by dispute; their probability of having conflict was 11% lower than that of otherwise identical plots. However, other studies[21] have shown that conflicts regarding property rights, access rights, and use of resources, have a higher incidence among communal tenure households than among individualized tenure such as mailo.

The most striking finding of this study was that the mean output per acre on plots without conflict is US$201, more than double the US$90 observed on plots affected by conflict. It also illustrated the fact that 33% of producers had lost land due to conflict and the probability of having a conflict is 14% higher for a household headed by a widow and 48% higher for one headed by a separated woman than for a male-headed household. The average conflict had duration of 3.5 years, with family conflicts being shorter (2.5 years) and landlord-tenant cases, as well as those involving government, extending for almost 5 years on average.

The World Bank (2007[22]) household survey in 6 districts of northern Uganda, found a steady rise in the number of land disputes from 12.8% at the time of displacement to 15.5% during displacement, and 16.4% at the start of IDP return with expectation of further increments as the IDP return progressed. Disputes mostly occurred on land that was left behind upon displacement, (65%), inherited land (71%) and land given as a gift (17%), while on the other hand land acquired through purchased had only a dispute prevalence rate of (3%). The most common

[19] In a specialized survey was undertaken by the Economic Policy and Research Council (EPRC), jointly with the World Bank, in the second half of 2001. The survey covered 430 households (126 peri-urban and 304 rural ones) in five districts of Uganda, Lira, Mbale, Kibale, Mbarara, and Luwero

[20] Since there is limited econometric analysis to establish direct co-relations or causality of escalating land conflicts with the factors that are cited as the factors for escalation

[21] Associates for Development, 2004 Gender baseline survey; MOJ, 2008

[22] Rugadya, Nsamba-Gayiiya and Kamusiime, 2007

disputes arose out of illegal occupation of land or cultivation by unknown persons or unauthorized family members or occupation by early returnees or shifting of boundary marks from original positioning.

In 2007, Samaritan's Purse – Uganda (SP), an international relief agency, carried out interviews in Otuke County, Lira District found that as IDP return progressed, the numbers of land dispute cases reported also increased, in a 5 months period, an average increase of 45% of reported cases on land disputes was recorded. In Gulu district, returnees from internally displaced people's camps were locked in land disputes over boundaries as original land marks had disappeared and the elders who knew them had died during displacement.

Findings from the Joint Survey on Local Council Courts and Legal Aid Services in Uganda conducted in 2002, found that land disputes rank highest (16%) of the disputes reported at the Local Council Courts and this finding closely matches with findings from Criminal Justice Baseline Survey, which indicated that land disputes were mainly related to boundary markings, encroachment (particularly in Kibaale district), eviction of 'bibanja' holders, sale without spouse's consent, demand for access-ways, double selling, arising upon separation and divorce and inheritance matters.

In 2007 a study by Sanginga, Kamugisha and Martin, found that bunds and boundary disputes, affected over 70% of households in Kabale. This was fuelled by excessive fragmentation of very small agricultural land, and the high competition over the use of farmland. Increasing competition for land access also created different types of conflicts related to property rights (43.9%), from competing inheritance claims, illegal sale of land, land grabbing, ownership and access, destruction of terraces, cutting of trees and theft of resources. Other forms of conflicts included bush burning (40%), cutting of trees (43%), and theft of crops, livestock, and farm implements (45%).

The table below shows the results of a 2003 PAES survey[23] of 120 households in five study sites located in the north-eastern, western, and south-western parts of Uganda. In each site, land emerged as the primary source of disputes; in the case of the Kabale-Ntungamo border area, it is the sole source of dispute. More than 77% of conflicts or disputes in the study areas are over land (both arable and pasture) underlie many community clashes.

Table 1: Sources of Disputes among Land Users

Conflict Indicator	**Sango Bay**	**Lake Mburo National Park Area**	**Kabale Ntungamo Border**	**Kibale National Park Area**	**Katakwi – Kotido Border**
	% of Land Users				
Land	80.0	91.3	100	91.7	77.0
Water	11.2	0.0	0.0	0.0	13.1
Others	8.8	8.7	0.0	8.3	9.9

Source: Partnerships for African Environmental Sustainability (PAES, 2004)

In 2007 a study[24] in Teso found that about 85% of the respondents had experienced threats to tenure security and 59% felt these threats were significant. 23% of the respondents felt that the government, the army and rich people had taken too much interest in their land without clearly declaring their motives or intentions, thus suspicion and tensions.

[23] Implementing the project "Integrating Environmental Security Concerns in Development Policy" covering Burundi, Ethiopia, Rwanda and Uganda to represent countries with heightened environmental insecurity; recent history of civil conflicts; fast population growth; high population density; and a majority of the population depends on environmental resources for livelihoods and survival using the conceptual framework of PAES which illustrates changes in the quality and quantity of agricultural land may induce a variety of social and economic changes in society.
[24] Rugadya, Nsamba-Gayiiya and Kamusiime, September 2007 for the World Bank – Uganda Office

2. PECULIAR LAND CONFLICTS AND DISPUTES IN UGANDA

Uganda's formal land tenure system was initially established by the British during that country's colonial era. Before colonial rule, land tenure consisted of a number of customary tenure systems, both sedentary and pastoralist.

2.1 Landlord-Tenant Relations

The one major, and best known, intervention by the British in Uganda's land tenure relations was the introduction in 1900 of formalized individual private property ownership in the central region of Uganda (Buganda)—this region was not only one of the most important, it also contains some of the best agricultural land. Thus, the impact of the Buganda Agreement was significant in that, it set in motion, firmly and steadily, the conversion within Ugandan communities of customary property rights towards individualized property rights (West 1972: 27). Similar interventions were carried out in other regions of the country such as instituting restricted freeholds for local elites in Ankole and Toro, and the establishment of leasehold estates on Crown (public) land. Often these public land leaseholds were given to elites even though communities were already occupying these lands[25].

As a result of the 1900 Buganda Agreement, the land tenure system in the Buganda was formally transformed from a customary system based on the King's domain over land and community members' rights to agricultural land, to a system approaching freehold tenure whose operations were set within legislative norm. The colonial government conferred to chiefs and other notable personages' individual ownership rights to large extensions of land called *mailo* estates. Land not held under mailo or established customary tenure became Crown (public) land. Approximately half of Buganda (more than 8,000 square miles) became formally privatized. These *mailo* estates were already settled by smallholders under customary tenure; however, their usufructory rights were not legally recognized. *Mailo* owners permitted these peasants to retain possession of the land (called *kibanja* land) they were occupying. *Mailo* tenure in effect converted them from customary usufructory holders into tenants on private property[26]. Other persons who wanted to settle on *mailo* land had to approach the *mailo* owner and get permission to occupy a specific piece of land. Initially, most tenants paid little or no rent and labor services, particularly on large estates. *Mailo* owners were considered lords of their area and their tenants were their servants.

Although *mailo* tenants were legally tenants, these families continued to feel that they held customary rights to land; although they paid rent to the landowner, they considered themselves permanent holders of their land. Subsequent legislation in effect acknowledged these rights by making it very difficult to evict tenants[27]. The result was a confusion of who holds what rights. Formally, landowners have legal private ownership rights to the land, but their tenants felt they have permanent usufructory rights to the land they held even though they paid rent. When the mailo owner sold land, for example, it was understood that, his or her tenants remained on the land.

With the commercialization of agriculture and growth of a market economy, the value of land as an asset motivated some *mailo* owners to begin charging high cash rents from their tenants. In the late 1920s, legislation was passed[28] to protect these tenants from arbitrary eviction and specified the type and amounts of rent to be paid. It also laid out the rights and conditions of both tenant and landowner. Rent consisted of two types: *busuulu* and *envujjo* (in the literature, these are often called taxes). *Busuulu* rent was for the land itself and was a set amount for each *kibanja* held regardless of size; *envujjo* is paid on the production of cash crops (cotton, coffee, and maize)

[25] Susana Lastarria-Cornhiel, 2003
[26] Susana Lastarria-Cornhiel, 2003
[27] Rugadya, 1999
[28] The Busuulu and envuuju Law, 1928

and certain other economic activities (such as beer production for sale). *Envujjo* consisted of a set cash or in-kind payment per unit of production.

With regards to tenants' rights, legislation allowed eviction for a minimum of causes (such as failure to pay rent for three years) and only by court order, giving tenants permanent and secure usufructory rights to the land they held. These rights have been inheritable; tenants, however, could not transfer the tenancy nor sell the land to another person without consent of the landowner. Thus, while tenants were legally operating on private property, actual practice was based on customary norms, and 'rents' did not actually reflect the asset value of land[29].

Since law established the amounts of both these rental payments in the 1920s, over time their value eroded, eventually becoming quite small in real terms. Some landowners did not even bother to collect rents, particularly from poor farmers. Other landowners began to circumvent these limitations by not accepting new *busuulu* tenants, by granting short-term (several years) tenancies on a strictly sharecropping basis, by charging high initial premiums from new tenants, and charging extra fees for cash crops or perennial crops[30].

Furthermore, Idi Amin introduced a Land Reform Decree in 1975 that made all *mailo* land into public land, owned by the government under the management of the Uganda Land Commission. It declared all land to belong to the state, abolishing all other ownership rights including *mailo,* and repealing previous legislation, including legislation that protected *kibanja* tenants. Individuals occupying land, whether under customary or *mailo* tenure, could obtain long-term leases. Other major changes included no restriction on rents and greater flexibility for landowners to evict tenants. The decree officially existed until the passing of the 1995 Constitution, but it was never really put into effect by Amin's anarchic regime. Subsequently it was also largely ignored by local authorities, tenants and landowners alike. A tenure structure to codify the rights that persons had to land under the new ownership model was never fully implemented, and *mailo* owners and tenants continued to operate in the semi-customary arrangements they were practicing previous to 1975.

In the mid-1980s, Uganda realized that a new land law was needed to clarify and protect land rights. Initially (1990), the Agricultural Policy Committee, recommended that the 1975 Land Reform Decree be abolished and that all land be privatized, that is, put under freehold tenure. With regard to *mailo* land, the recommendations proposed that tenants be given freehold rights to the land they hold as tenants, and that *mailo* owners be given freehold rights to the land they hold which is not rented out to tenants. As a result, a draft law was written and debated. While this would have been in line with property rights development and practice in the central region, other regions in Uganda still have strong customary tenure systems in place. In addition, some provisions in the 1995 Constitution made the land draft law unfeasible, for instance the new Constitution recognized four land tenure forms: customary, freehold (individualized private property), *mailo* (approaching but not full freehold), and leasehold.

2.1.1 Eviction of Tenants

The previous socio-cultural bonds that existed between *mailo* owner and tenants have increasingly dissolved as the value of land as appreciated in the land markets, the feeling of brotherhood-ness and good neighborliness have faded as the value of land has increased, therefore tenure relations have degenerated as well. Existing landlord-tenant relationship as enacted in the Land Act 1998 (pursuant to Article 237(9) (a) of the Constitution) attempt to revert back to the pre 1920s time, instead of resolving the tensions between landlords and tension,

[29] Lastarria-Cornhiel, 2003

[30] Rental arrangements in other parts of Uganda, such as in Bunyoro and Lango, are similar to the arrangements on *mailo* land in that tenants pay rents or have sharecropping arrangements with owners of relatively large estates

which are now a major contributor to the escalating land disputes and conflicts. The prescription bonds the *mailo* owners with the tenants and specifically requires the right of first refusal to the tenant in event of the mailo owner desiring to sale. This restores conditions similar to the 1928 Busuulu and Envujju law offering statutory protection – non-eviction except for failure to pay rent of nominal value rather than economic value (initially set at 5,000 Uganda shillings) – irrespective of the tenants size of land albeit the appreciated value of land in Buganda region. Section 36 of the Act permitting mutual agreement between tenants by occupancy and registered owners to achieve the objectives of Article 237 (9) (b) has failed to work.

It would appear from the provisions of the 1995 Constitution and the 1998 Land Act that both the *mailo* owner and tenants have rights to land in perpetuity, which is a source of tension and conflict. The definition and rights accorded to tenants is unpopular and restrictive, it lacks legitimacy on the part of *mailo* owners thus resulting in massive forced evictions, as owners sale to persons who have either the military muscle to evict, or the judicial capacity to manipulate the legal system or the resources to undertake quasi-compensation, which is often not consumerate to interest forgone or lost[31]. The mutual agreement between the registered land owner and the occupant as provided failed to work, hence the rampant evictions. To create a harmonious relationship that is considerate of the realistic economic and social situation and to extent possible fulfilling the expectations of landlords (mainly economic) and tenants (mainly secure tenure) since the current legal provision is not feasible.

2.1.2 Land Amendment Bill 2007

It is now accepted (at least by the Ministry for Lands) that the current provisions in the Land Act Cap 227 are not effective in resolving the deadlock between landowners and tenants. Rampant mass evictions by registered land owners or their agents or purchasers is now common and progressing unabated, despite popular and political outcry. According to President of Uganda there are 3 problems; the ignorance of the tenants of their rights under the law; a heavy financial burden involved in court litigations; and corrupt elements in the Judiciary. He further asserts that a combination of these 3 factors has seen rampant evictions od peasants from these pieces of land alienated from their original owners by t he British[32].

A bill to amend the Land Act has been presented to Parliament and is in committee stage, to be re-introduced with the report of the parliamentary committee on legal affairs. The stated object of the bill is to amend the Land Act, Cap. 227 to enhance the security of occupancy of the lawful and bonafide occupants on registered land. The purpose of the amendment is stated to be to "further enhance the protection of lawful and bonafide occupants and occupants on customary land from widespread evictions from land without due regard to their land rights as conferred by the Constitution and the Land Act."

There are four key issues that the Land Amendment Bill 2007 is attempting to address:

(i) First, the Constitution 1995 and the Land Act 1998 created permanent occupancy interests on registered land for the *kibanja* holders; hence a land use deadlock between the statutory tenants (lawful occupants and bonafide occupants i.e. bibanja holders) and the registered land owner (mailo, native freehold, leasehold owner)[33]. While the 1998 Land Act provides for the issuance of a certificate of occupancy to the occupant on application of the registered owner, issuance of such a certificate would depend on mutual understanding between the two parties. The certificate is meant to enable the occupant to prove that he or she is a legal occupant if a problem arises. In effect, the bonafide occupants are made tenants of the state (statutory tenants) on land that is

[31] Rugadya…et al, 2008
[32] President's Independence Speech on 9/10/2007
[33] Rugadya…et al, 2008

private owned under mailo or other title. Without documentary proof, which the certificate of occupancy strives to provide, tenants are not secure from possible eviction provided the evicting party, tenders satisfactory proof that he or she is the rightful owner of land by presenting a land title.

(ii) Second, the government is saddled with a dilemma; the existing landlord-tenant relationship as enacted in the Land Act Cap 227 has served to escalate land conflicts and evictions by personifying overlapping and conflicting land rights on one and the same piece of land; the of definition rights accorded to bonafide occupants is unpopular and lacks legitimacy on the part of most landlords. The landlords feel cheated because the law (Land Act 1998) legalized an illegitimate acquisition process, one that did not involve the owners consent, moreover in the conventional sense, a tenancy is only supposed to exist with consent of the land owner.

(iii) Thirdly, the controversy on nominal ground rent as provided for in the Land Act Cap 227, given the raising economic value of land given the increase in population, which not only served to devalue the titleholder's property but sent their minds thinking creatively on how to re-inject the values in their properties, in order not to lose consumerate value. Thus desperate landlords have sold to those individuals with the political backing, appropriate legal muscle and the economic ability to massively evict tenants.

(iv) Lastly, there is a legal lacuna as far as compensation to lawful occupants and *bonafide* occupants are concerned. Prior to the 1995 Constitution, a registered land owner could apply to court to pay compensation, be adjudicated by the court and given a 3-month or 6-month quit notice to the tenant on payment of fair compensation. The statutory protection given to the lawful occupants and *bonafide* occupants under the Land Act leaves no room for compensation. The mutual agreement proposed between the registered land owner and the occupant further secures occupancy with little room for negotiation of compensation, hence the rampant evictions.

Extensive controversies have surrounded the proposed amendment bill and generated debate in a wide section of the population, with the Kingdom of Buganda in particular opposing the entire prescription as non-effective in stemming the rampant and widespread evictions, since the actual causes of the evictions are not treated within the Bill. Buganda Kingdom argues that the current legal dispensation is sufficient to tackle evictions if it is implemented, since evictions arise out of lack of enforcement of the provisions in the Land Act; in particular sections 38A (on security of occupancy on family land) and section 39 (the consent clause i.e. restrictions on transfer of family land). The kingdom further argues that, it is the impunity of those with the might that are purchasing from desperate *mailo* owners, well knowing that such land is teeming with tenants.

Government on the other hand, argues that the proposals of the Land Amendment Bill 2007, seek to nip the problem in the bud, by deterring the well-to-do buyers, from purchasing tenanted titled land from desperate landlords, by criminalizing the evictions and setting punitive measures of up to seven years imprisonment for whoever assists or participates in the process. The public reaction to the Bill is unprecedented tensions under the guidance of the Kingdom of Buganda.

2.2 Kibaale Land Question

Kibaale district is the enduring colonial legacy of the 1900 Uganda Agreement, under which a large tracts of land taken from Bunyoro Kingdom were awarded to the British royal allies in neighboring Buganda Kingdom[34]. After 1900 the Baganda elite received land titles to most the land in the "lost counties", in form of *mailo* land which is the present Kibaale District. There

[34] Buganda became the centre of the colony while Bunyoro was made a subsidiary territory

were several popular uprisings[35] during the period of Baganda rule (1900-1964), but after a post-colonial referendum in 1964 the Banyoro got back political power in the two disputed "lost counties". However, only political and administrative powers were transferred, formal ownership of land never reverted, until today approximately 60% of arable land is in the legal possession of Baganda absentee landlords and the central government.

As compromise solution to *mailo* tenants, especially in Kibaale, a Land Fund was created by the 1998 Land Act, to acquire the registrable interests from the Baganda landlords for the tenants. One of the major objectives of the fund, according to the latest comprehensive national land policy document, is to redress the historical injustices and inequities in the ownership. The Land Fund is under the Uganda Land Commission (ULC), but political indecisiveness remains to whether the acquired *mailo* land is going managed directly from ULC or redistributed via Kibaale District Land Board. The 1998 Land Act does not specify the arrangements, but the government's decentralization approach would suggest the latter arrangement. The original purpose of the Land Fund was that all tenants in Uganda would acquire the registrable interests on the land they had tenure rights to, the political purpose has however become to buy registered *mailo* from the Baganda absentee landlords in Kibaale[36].

The situation in Kibaale is far more complex than any other region and is further complicated by the fact that the Government has over the decades resettled different groups of people in the area, immigrants now comprise 50% of the district's population, up from 10% five decades ago[37]. The "lost counties" [38] have re-surfaced attention in recent years, in a two prong manner; as a contentious ethno-political issue where historical claims are turned into political capital in terms of land legislation and government intervention and secondly, as ethno-territorialism.

2.2.1 Ethnic cleavages and rivalry based on land claims

The genealogy of the ethnic-land conflict in Kibaale is disputed, but most Banyoro[39] and Bafuruki[40] agree that it is a relatively new scenario that became apparent in 2001. What they do disagree on is what the conflict is all about. There are three major related factors for this; first, there has been a large increase in the non-Banyoro population in Kibaale District over recent decades. In 1965, only ten percent in the area were Bafuruki (Beattie 1971), but today the non-Banyoro share of the population is likely to be more than fifty percent[41]. Furthermore, the total district population doubled from 1991 to 2002, giving Kibaale the highest net population growth in the country as a result of voluntary migration in combination with official resettlement schemes which acted as a pull factor for further voluntary migration (Nsamba-Gayiiya, 2003). Many Bafuruki have left the gazetted schemes to avoid fragmentation of land holdings and to acquire more land elsewhere in the district.

Secondly, since the signing of the 1900 Uganda Agreement, ethnic group entitlements have usually been followed by the dominance of an ethnic group in an area. In turn, district-making has entrenched the popular as well as political perception that certain groups are indigenous, while excluding other ethnic minority groups in the district. Subsequently, physical origin and

[35] The most significant ones led by the Bunyoro-Mubende Committee (MBC) founded by young Banyoro as an ethnic protest movement for all Banyoro in the "Lost Counties
[36] *The Monitor*: 14 December 2004
[37] Eddie Nsamba-Gayiiya, 2003
[38] What came to be known as "Lost Counties" comprises Buyaga and Bugangaizi (Kibaale District) and other areas still in Buganda Buhekura (parts of Mubende District), Buruli (Nakasongola District), Bugerere (Kayunga District), North Singo (Kiboga District) and North Bulemeezi.
[39] Ethnic groups of the area are considered the indigenous.
[40] negatively connoted ethnonym Bafuruki derives from the Runyoro-Rutooro term *abafruka,* which means "to settle", and it covers all non-Banyoro migrants in Kibaale regardless of ethnic origin
[41] According to a conservative estimate, more than 30,000 have been resettled in Kibaale District alone, and this

background matter in terms of political rights in each district. As a trend, politics has become more explicitly based on claims to ethnic entitlement based on indigenity[42] in the 1990s.

Third, in terms of contestation of ethnic entitlements the government's decentralization of power and legislative reforms need to be taken into account as long as it feeds into existing notions of ethno-territorialism and the contested politics of belonging. Indeed, there were no Banyoro-Bafuruki confrontations until the district elections in 2002, when political mobilization became important, and ultimately a Mufuruki candidate was elected as the district chairman. The resulting outcry and threats from the Banyoro elite made President Museveni remove the elected chairman and install an indigenous Munyoro representative thus the political situations, the electoral crisis and the land redistribution threw ethnic divisions into sharper contrast and tensions, with the grounds for further conflict re-affirmed. Indeed the threat of conflict over tribalized or ethicized rights of belonging and land rights identity have continued to this day, with little hope of dwindling.

2.2.2 Ethno-Political

Henry Ford Miirima[43] asserts that the Banyoro perceive themselves as marginalized and their political ideology is shaped by the dialectics of collective suffering and resistance. Banyoro leaders present Bunyoro Kingdom as the most powerful kingdom in East Africa prior to colonialism, and the "lost counties" legacy is used to explain the poor state of the kingdom as well as underdevelopment in Kibaale District. Miirima argues that the Banyoro were not fooled by the promises made in relation to the Land Fund as a political and moral imperative that the Banyoro should get back their land rights that they lost with the 1900 Uganda Agreement. The Banyoro have lived as squatters (*bakopi*) on their ancestral land for long enough. The 2002 district elections set precedence for Banyoro supremacy in political matters[44]. The move was clearly a support to indigenity and legitimated in the "lost counties" history in what is described as "a recuperating district with…a strong, ancient and wounded tribal psyche"[45]. Because of this position, the Bunyoro have felt that the onerous on the central government to resolve the land question in Kibaale. Thus deservedly await a political declaration of returned lands from the central government.

2.3 Pastoralists

Before colonial rule, land tenure in Uganda consisted of a number of customary tenure systems, both sedentary and pastoralist. In general, customary tenure in sedentary agricultural communities revolved around kings and chiefs who allocated land to clans and community households according to customary norms and practices. Every person and household had the right to access sufficient land for their subsistence; this right came either from the lineage or clan head or from the chief to whom the person pledged allegiance. Transfer (rent, sell, and sometimes inheritance) rights were not granted—land not used or wanted reverted to the King or chief. Since most lineages in Uganda are patrilineal, when land was handed down within a family, it passed from father to son[46].

[42] Local people and communities have a historic relationship with their lands and are generally descendants of the original inhabitants of such land. Sometimes Banyoro in Kibaale make a distinction between themselves and other Banyoro because of their "Lost Counties" legacy. They then refer to themselves as the Bagangaizi, and recently many political actors have used the generic expression *abaana enzarwa*.
[43] Press secretary of Bunyoro Kingdom and MBC secretary a Banyoro ethno-political social movement who claim to represent all Banyoro in Kibaale
[44] A Mufuruki was elected a district chairman, but largely due to the protests of the President Museveni intervened and forced the elected chairman to step down and hand over powers to a Banyoro compromise candidate
[45] New Vision: 24 April 2002
[46] Lastarria-Cornhiel, 2003

In the semi-arid regions of the country, where transhumance was practiced, access to land by clans and households was generally based on agreements with other clans that permitted the movement of households and cattle during the year to areas where pasture and water were available. Thus, households did not seek access to a piece of land in particular community or lineage on which to build shelter and plant crops, but rather access to lands along the traditional cattle corridor. About a quarter of Uganda's land area is located in the cattle corridor and is used for pastoralism. Along this corridor a number of land conflict nodes within and between ethic groups such as the Bahima, Basongora, and Karimojong that practice pastoralism and sedentary agriculturalists exist.

Pastoral activities and way of life based on pastoral livestock production assumes the movement of livestock and people to different geographical areas as ecological and climatic conditions vary during the year and over years[47]. This movement presumes that arrangements and agreements regarding common property are made with communities living in the areas of movement. These arrangements and agreements involve issues of use rights (e. g., where and when) and resource management (e. g., how many animals, which resources). While the pastoralist system is a customary tenure system, it is quite different from customary tenure systems practiced by sedentary agricultural communities. The basic differences are spatial and temporal: agriculture needs relatively permanent rights (across time) for a fixed spatial area, where as pastoralism is based on temporary rights of access across a variety of spaces.

Uganda's policy since colonial times has privileged individual private property. Freehold tenure and land markets have been put forward as progressive and efficient structures for economic development. Thus, customary tenure systems that permit traditional pastoralism have found their areas restricted as common grazing lands become individualized private property. This tendency continued even under the Land Reform Decree of 1975 (that decreed all land to be state owned). This decree triggered the grabbing of grazing land by speculators through long-term leaseholds, especially in the southwest region, thus "progressive ranchers" fenced off the hitherto common access, grazing area, water areas, cattle tracks, and salt lick, marginalizing the traditional cattle grazers.

The fact is better pastureland (better soils and water access) become individualized, pastoralists operating under communal grazing tenure found themselves pushed on to marginal, more arid areas, in the process common pool resources (CPR) were severely congested particularly community pastures for grazing. This individualization of land ownership has threatened the right of access to common grazing land and water and the livelihoods of agro-pastoral communities, a significant segment of Ugandan society. Although the 1998 Land Act has provisions for setting aside land for common use, national regulations and standards are lacking, as a result, both disputes within agro-pastoral communities and with other communities are on the rise.

2.3.1 The Karamojong

The Karamoja area in northeast Uganda has a long history of civil strife characterized by cattle raids and intercommunity fights over scarce pasture and water. The problem dates back to colonial times and arises from the disruption of an integrated livestock and crops culture by a host of policy and institutional failures. The Karamoja region is a vast nomadic pastoral area with a shallow natural resource base compared to other parts of Uganda. Rainfall is inadequate and too erratic for crop cultivation (averaging 350 to 750 mm per annum). Rainfall in this region is highly seasonal, coming mostly in torrential downpours that last for several hours. Prolonged drought conditions alternate with instances of heavy flooding. Overgrazing in the rangelands and

[47] Livestock owners move their animals when the dry season arrives to an area where pastures and water are available. This may entail constant movement during the year (nomadism) or only several moves (transhumance).

around watering points, severe soil erosion, and depletion of underground water aquifers and reservoirs characterize the Karamoja environment.

Karamoja is also at the center of three major international illegal arms and ammunitions trafficking corridors involving Sudan, Ethiopia, and the Kenya – Somali frontier. This illegal trade has compounded the region's complex political, economic, and social challenges. Karamoja has experienced long-term environmental changes typified by severe land degradation, low, erratic and unreliable rainfall, and recurrent prolonged conditions of drought. The resulting diminished crop cultivation, increased competition over-shrinking pastoral resources, growing water scarcity, and pervasive poverty have made the region an area of severe environmental insecurity and protracted conflict.

Since Uganda's independence, however, the Karamoja region has been treated separately from the rest of the country. The 1964 Karamoja Act gave the region special status in the areas of administration and development. This status was short lived as Idi Amin repealed the Act upon assuming power in 1971. The present NRM government reinstated the special status for Karamoja and established the Karamoja Development Agency (KDA), by Statute 4 of 1987. In addition, the Government established the office of Minister of State for Karamoja under the Office of the Prime Minister. Despite the treatment of Karamoja as a special region, development policies have generally undermined pastoralists in Karamoja. Uganda today lacks a national policy on pastoralism that clearly and specifically articulates the challenges of pastoral development in a dryland area like Karamoja. Interventions by the government to contain armed conflict have instead caused untold suffering to the people of Karamoja.

The colonial administration declared a huge part of Karamoja a protected area and thereby restricted pastoral mobility. International borders and tribal administrative boundaries were also created with entry allowed only by "special permit". Like any pastoralist society, the Karimojong cope with these changes by moving to places where pasture and water can be obtained and by conducting cattle raids as a means of re-stocking lost cattle. A family's ability to protect its herd depends on its capacity to defend its property; hence the proliferation of small arms and ammunition, which both reflects and fuels the conflict.

The accessibility of arms in Karamoja has come at a price—frequent conflicts. The movement into dry season grazing areas outside Karamoja is usually associated with heavily armed warriors, sometimes wielding sophisticated weaponry for protection of the herds. Many times, these weapons have been turned on unarmed civilian populations in the host communities, where Karimojong warriors are accused of allegedly committing crimes ranging from stealing food and household property to rustling cattle from their hosts and committing highway robberies, rapes, and other atrocities, including murder and kidnapping.

2.3.2 Basongora Conflict

In Kasese, Government holds 65% of the land, three indigenous tribes of Bakhonzo, Basongora and Banyabindi are squeezed into "a corridor of survival" and left to share the remaining 35% portion of land that was not taken over by the Government for game parks or forest reserves. Starting in 1906 the colonial government designated the area around lakes Edward and George as a game reserve. It was later gazetted as Queen Elizabeth National Park in 1952. This was a national asset, whose the economic importance grew as wild life and the construction of hotels tremendously boosted the tourism industry. At the same time the then colonial powers, the British and Belgians finalized the western boundaries putting part of the hitherto public good (cattle corridor) in the present day DR Congo. The subsequent creation of the present Virunga National Park in DR Congo greatly reduced the available land for communal use by the Basongora pastoralists (Government Archives 1971). The outcome of these actions was the

Basongora pastoralists lost their home and have since continued to move around the region creating conflict with local residents[48].

The Basongora pastoralists occupied the plain land from River Rwimi through the present Kasese Town, Queen Elizabeth National Park (QENP) across the Semliki River into the present DR Congo up to the Mulamba hills. In their continued movement in search of pastures and water for their animals and economic survival, they encroached on the QENP when they joined their mainstream Basongora community in Nyakatonzi area in 2006 – 2007[49]. As a result of land scarcity, the Basongora cattle keepers encroached on Queen Elizabeth National Park upon their return from the Democratic Republic of Congo, the UWA personnel intervened to protect the wild life in the QENP and chased the pastoralists out. Violent clashes broke out with the Uganda Wildlife Authority which tried to push them back into the survival corridor, which left many dead and injured or disabled and property destroyed.

Government's reaction in respect of this crisis, where the Basongora pastoralists who had rejoined the mainstream Basongora community in Nyakatonzi area was to grant temporary grazing land near Nyamugasani River by UWA while waiting for government action with the inter-ministerial committee (IMC) that examined the conflict[50]. In September 2000, the government decided to relocate the 8,000 Basongora pastoralists with 50,000 heads of cattle occupying the QENP to new land including Ibuga Refugee Settlement (3,500 acres), Ibuga Prison Farm (1,400 acres), Hima Army Production Unit (3,500 acres), Mubuku Prison Farm (5,300 acres), Karusandara (1,100 acres), Muhokya (1,000 acres). Additionally the Basongora ancestral land in Bukangara and Rwehingo totalling 25,000 acres was to be shared between the cultivators and the pastoralists. This gave the pastoralists (17,000 acres) and (8,000 acres) to the Bamba and Bakonzo cultivators in Western Uganda. The government also was to develop a long term plan and budget for the modernization of the Basongora community in Kasese District[51].

The residents of Kasese district have been demanding degazetting of most of their land or compensation from government on grounds that half of their territory is gazetted as game parks, forest reserves, prisons, or other government institutions. Similarly, the Karamojong have been angered by the gazetting of most of their fertile land, leaving unproductive land for human beings. This situation spurs them to go to neighboring areas, especially Teso and Lango, in search of pasture and water, setting the stage for conflict.

2.3.3 Decline in Public Resources

Another major decline of the public resources occurred in the 1960s and earlier 1970s following a shift in the Ugandan government policy on land use. In its continued and unabated pursuit of the neo liberal policy of privatization, the Government of Uganda in the 1990s privatized three ranches that were grazing lands. The partial privatization of the cattle corridor by the conversion of the Bukangara and Rweihingo areas into cultivation land and the creation of the Mubuku Irrigation Scheme to promote cotton production greatly affected the size of pure public goods. Further the government allocated grazing land for other uses like ranching in Mbarara, Masaka, Rakai and Nakasongora districts in the 1970s and 1980s[52]. The impact of the above policy decisions has been the reduction of the once large public good supporting huge herds of cattle in the cattle corridor. Dispossessed by these policy actions; some of the pastoralists changed their traditional lifestyle and economic activity. They settled down and converted to cultivation and farming in areas such as Ankole and Buganda while the rest remain pastoralists and therefore the major causes of conflicts in the diminished grazing land, is the increased human and animal

[48] Nabeta, 2009
[49] MAAI Report, 2007
[50] Nabeta, 2009
[51] IMC Report 2007
[52] Nabeta, 2009

population with increased competition and rivalry. For example the 1984 Creation of Lake Mburo National Park led to expulsion of pastoralists from the park and confiscating land and cattle, belonging to mainly Hima pastoralists.

Pastoralists depend on open grazing and reduction in access to common resources affects them tremendously since they have little or no land yet are dependent on livestock for a living. Migrations to far away places or to areas that have large tracts of grazing land is considered a viable alternative, such as Teso, Kayunga, Kiboga, Sembabule, Apac and Mpigi districts. The development of internal migration policy and legal framework is important to curtailing land use and access conflicts arising from pastoral movement, given incidences of large internal migrations are increasing with the recent case being, the movement of Bahiima and Banyarwanda pastoralists to Teso, Bullisa and Lango regions. This has generated tension with the local people, and the Government has deployed soldiers to protect the migrants from possible attacks from the locals.

2.3.4 Bullisa: Pastoralist versus Bagungu

Bullisa district is another trouble spot where oil prospects are just the latest catalyst to a looming land war. The British colonial government took 80% of the land in Bullisa and Bugungu to gazzette Murchison Falls National Park and Budongo Forest reserve, the remaining 20% was zoned into grazing land near the lake and land for cultivation near the park, which has been communally owned and used by the Bagungu for over 60 years. However, in 2004 Bullisa was invaded by nomadic herdsmen who hardly paid any attention to the zoning thus violent clashes between cultivators and herdsmen. In addition, the herdsmen claim they individually hold land titles for about 40 sq miles in Bulisa. But the indigenous residents refute these claims, arguing that all this land is communally owned

Initially Government announced a temporarily resettlement of the Balalo pastoralist in Kyankwanzi in Kiboga District to avoid the clashes with the Bagungu in Bullisa district. The indigenous Buganda out rightly rejected the resettlement of the Balalo pastoralists in the area. A further complication was that the government's directive to move the Balalo pastoralists in essence amounted to surrendering their constitutional rights if they had legitimately acquired land in Bullisa district. This could amount to forceful deprivation of the private property without adequate compensation, this case is still unresolved and continues to fuel the clashes between the Bagungu and the Balaalo over land.

2.4 Gazetted Land

The Government of Uganda has adopted a policy of converting gazetted (public) land to private use in order to encourage investment and economic growth. However, this process, known as degazetting, in some cases has become a source of conflict between the government and local communities. The attitudes of communities in relation to the policy vary widely. Although as gazetted land whose stewardship constitutionally lies with State on behlf of the Citizens of Uganda, and could only be changed by Act of Parliament, the President had made several suggestions for degazettement of such land under the doctrine of trusteeship clashing with conservationists and environmentalist over specified biodiversity conservation areas. The protection or re-establishment of ecological and legal integrity of reserves is a spark because of the general consensus that Government uses degazettement and gazettement to deprive local people of their proprietary interests in land and the specific biodiversity resources that it is supposed to hold in trust for the people.

These conflicts point to weaknesses and gaps in law and policy on land or impunity and non-compliance of the government to the rules of the game that govern stewardship of Uganda's natural resources under the doctrine of trusteeship. However, either because of the colonial

history where the state is a predatory and survived on plunder of natural resources, the government to date still finds it difficult to act in the interest of people and as a trustee for its people. It still looks at natural resources as a source of income and wealth and therefore has been unable to fulfill its role as a trustee. This has increased conflict between the people and the state. When the government wants to remove or stop people from using or exploiting natural resources, it applies the doctrine as was the case in evictions from Mabira, Kibaale forest reserve, or Mountain Elgon but discards the doctrine when it wants to exploit the resources for its own benefit.

For example, while the Government degazetted the Namanve Forest Reserve in 1997 without strife, its decision to degazette the Butamira Forest Reserve in 2002 brought it into conflict with local communities. The case ended with the Government issuing a land use permit—over community objections—to Kakira Sugar Works Ltd. to turn the forest reserve into a sugarcane plantation[53]. In another instance, the Mabira Forest Reserve located in Mukono District[54] represents the only occurrence of medium-altitude moist semi-deciduous forest that is protected in Uganda and is also home to numerous rare species.

Racial violence erupted when a peaceful demonstration arranged by environmentalists, opposition leaders and religious groups to oppose government planned to allow Ugandan-Asian industrialists to grow sugar cane on protected forest land angered residents of Kampala. The government proposal was to allow the Mehta Group to clear a quarter of the Mabira forest reserve to grow sugar. The 30,000-hectare (7,400-acre) reserve contains some of the last patches of virgin forest in Uganda and serves as an important water catchment area. Like other forests in Uganda, is being adversely affected by human activities.

2.5 IDPs' and returnees in northern Uganda

Since 1986, a combination of factors has emerged to create widespread uncertainty and insecurity in the regime of property rights in northern Uganda. As IDP return commenced in late 2007[55], tenure security declined increasing the number of land disputes[56]. Having been off their land for 10-20 years, in IDP camps, unlawful occupation of land belonging to the displaced and land grabbing has taken place, thus boundary disputes are common within families and with neighbors, followed by land scarcity (perceived). The perceived land scarcity drives all persons into a state of jealously protecting the little they have and reacting to the slightest provocation to protect their land, while illegal occupation of land by neighbors (early returnees) and relatives also accounts for land disputes. Inheritance disputes especially those related to land rights of widows and orphaned children, arising from the family (paternal uncles or clan heads) are also common.

In addition, a high level of distrust of the Central Government's intentions toward land in northern Uganda, has given rise to a substantial level of tension[57] with high chance of erupting into violence over land between the central Government and the leadership of Acholi (Acholi Parliament Group & the District local governments). This situation has been fuelled by politics driven by feelings and emotions that have shaped and defined the articulation between Government and people of northern Uganda over land and natural resource tenure. It is felted by the people of northern

[53] Tumushabe and Bainomugisha 2004
[54] Continues to be one of the most densely populated districts in the country with 200-230 people/km2, Timber harvesting, hunting, and other human activities within the forest reserves are having major ecological effects, including local extinction of species in Uganda .The most prominent commercial pursuits on the outskirts of the Mabira Forest Reserve are sugar and tea growing, harvesting, and processing..
[55] It cannot be overstated that the population emerging out of the IDP camps is significantly different from the one that went into them.
[56] Rugadya, Nsamba-Gayiiya, and Kamusiime, 2007
[57] It is believed that Government is engaged in designs to help well placed and politically influential people from other parts of the country to access and enclose land especially common property resources areas or use government agencies taking advantage of the law to enclose and title land that belongs to clans and communities.

Uganda that the government, the army and rich people have taken keen interest in land without clearly elaborating their motives or intentions, this is not helped by the fact that Government and the Executive openly and vigorously backs the pursuit of land by investors for large-scale commercial interests, an opportunity that speculators and grabbers are manipulating for individual gains and benefits[58]. The situation is worsened by a number of highly publicized multiple attempts to acquire land in the sub-region presumably for investment and potential government development programmes[59], while some of these proposals may have been legitimate investment programmes, the absence of a clear national policy and institutional framework for pursuing these initiatives has fueled the suspicion that "government" or investors as trying to usurp the land of the Acholi, thus conflict.

On return from displacement, a number of people have attached a higher value to land and thus moved to individualize what was previously perceived to be communal land while rigorously defending what had been allotted to them for access, use and sharing by the members of the community, hence disagreements and clashes. The growing competition over land driven by factors ranging from speculation, the apparent breakdown or weakening of traditional land management institutions to external influence, have adversely impacted the capability of traditional institutional arrangements, custom and social conventions that are at the heart of the pre-war land and resource management mechanisms. There are also overlapping claims by different clans; the clan land claims in some cases are being pushed back to the pre-colonial clan settlement patterns which were disrupted by subsequent movements of people as part of the colonial administrative policies and the tsetse fly control programme during the colonial days[60].

For example, the Acholi have rightly argued that the Government and other external actors (be they development or investment) have failed to understand or appreciate the fact that customary tenure has a holistic "bundle of rights"[61] and for Acholi region, this bundle is segmented to suitable land use practices[62]. These principles include, for example, controlled hunting, preservation of selected tree species for cultural, spiritual and medicinal values etc. The bundle of land rights in any tenure regime consists of three types of rights: use rights, (Use rights in the Uganda context include, among others, planting and cutting of trees, burying of deceased, digging out sand, clay, and gravel for commercial sale.), exclusion rights (Exclusion rights placed on other persons include: barring use of footpaths, collecting firewood and water, and grazing livestock) and transfer rights (Transfer rights include: giving (whether *inter vivos* or to heirs), renting out, pledging, and selling land to others)

Traditional community (clan) governance, social welfare, and disputes resolutions mechanisms over land have deteriorated. This leaves a dramatic and disturbing power vacuum among the people of northern Uganda that is rapidly being filled by political and civil government authorities. Formal structures for dealing with land disputes, such as local council courts, are weak and often corrupt. The potential for disputes and conflicts between power structures is more poignant than ever especially the Acholi political leaders (Acholi Parliament Group and the Acholi local political

[58] In Rugadya, Nsamba-Gayiiya, and Kamusiime, 2007 and LEMU, 2004

[59] Divinity Union Ltd. In 1999 put up a proposal to turn several districts in Northern Uganda into a grain belt (the company is owned by Gen. Salim Saleh). UWA proposed to degazette Lipan controlled Hunting Area into a national park. In 2003, a Security and Production Programme (SPP) was conceived as a potential "Strategic plan for solving the insecurity in the sub-region"

[60] The most conspicuous of these clan conflicts now are the Pawel versus Lamogi and the Patiko versus Lamogi conflict. clans and clan members who are edged out of clan lands will most likely resort to occupying fragile biodiversity ecosystems and marginal lands

[61] (1) The right to derive benefit from the asset (Use right), (2) The right to decide who shall be permitted to use the asset and under which conditions (Management right) (3) The right to derive income from the use of the resource (Income right) (4) The right to consume destroy and transform the land (Capital right) (5) The right to sell give away or bequeath the asset (Transfer right)

[62] the Acholi traditional land tenure regime has four interlinked arrangements which include: land for homesteads, land for cultivation, land for grazing, and land for hunting. This regime of tenure was exercised and enforced through an elaborate clan structure with inbuilt mechanisms for conflict resolution and mitigation.

leaders) over issues of mandates and roles by these politically influential actors in the context of the evolving land and natural resources tenure regime. Each of these actors is contesting the mandate of the other over land matters in the sub-region. Political power, political influence and the potential wealth arising out of land and natural resources control appears to be the key drivers of this conflict. The conflict is largely driven by competition for influence and power which comes with demonstrated control over land matters such as ownership, allocation and access.

2.6 Conflicts about Refugee Resettlement Camps

Uganda has a long history of hosting refugees that dates back to the 1940s, when it hosted Polish refugees; Rwandese and Sudanese in the 1950s. Refugees were placed in gazetted areas in close proximity to the local populations such as in the settlements of Nakivale, Oruchinga, Kyaka 1 and II in Southwestern Uganda; Rhino Camp, Imvepi and Ikafe in the West Nile region; Achol Pii, Parolinya and Adjumani settlements in Northern Uganda; and Kiryandongo and Kyangwali settlements in Central Uganda[63]. Land conflicts between refugees and nationals are a result of government policy of settling refugees in gazetted areas.

Refugees are of a rural background and can support themselves through agriculture until their repatriation. In addition, the refugee problem was considered temporal and would end as soon as the circumstances that led to their flight had ceased. However, this has not been the case and the government was not prepared for a protracted refugee situation exacerbated by an increase in the population of both refugees and nationals. Host populations first welcomed refugees as those in need of protection and also as would-be beneficiaries of infrastructure to be left behind on their repatriation. However, as the refugee situation became protracted, hospitality gave way to a competition for resources such as agricultural and grazing land, water and forest resources. This has not been helped by persistent refugee flows from Rwanda and the Democratic Republic of Congo, Kenya, Somalia, Burundi and Ethiopia resulting in increased xenophobia against refugees and a call for them to repatriate[64].

Land conflicts between refugees and host population can be attributed to two main factors, that is, exceeding of field or residential boundaries (encroachment) and acquisition by nationals (sometimes in the form of land loans)[65]. Land conflicts are fuelled by the fact that large expanses of settlement land are un-utilized land since the refugee population is small. The relative degree to which individuals can profit from land resources is influenced by three factors: utilization, duration of occupancy and relocation rights. However, population increase and the advent of a cash economy increased the value of land, leading to strained social relations between refugees and nationals. Land conflicts in the refugee hosting areas are partly attributed to lack of clear refugee settlement boundaries. This has resulted in a limitation on expansion of refugee agricultural activities especially women in other parts of the settlements; limited access to natural resources such as fuel wood and water and grazing land. It is about 'the bundle of rights' held and enjoyed in the land resource[66].

In some instances, such as Nakivale, there were no clear demarcations between refugees' and host population's land. The lack of clarity can be traced to reluctance of the Ankole kingdom to favour permanent settlement of refugees in 1962 when they were first given land to settle. As a result there has been increased encroachment on refugee land by nationals, a practice exacerbated by weak administration systems[67]. For instance, some encroachers have even acquired land tittles on gazetted land, since the procedure of acquiring a land title is very simple and open to abuse. All one needs is to fill out an application form from the district land board and take them to

[63] Kalyango, 2006
[64] Kalyango, 2006
[65] Kalyango, 2006
[66] Rugadya, 2009
[67] Kalyango, 2006

Local Council 1 (LC1) and have a 'neighbor' sign for confirmation. Institutional responses are further hindered by migration of nationals from other areas, such as Nyabushozi and Bushenyi, because of land shortages. This migration is caused by anticipation that refugees will repatriate especially to Rwanda and leave vacant land in the settlements. On the other hand, refugees from Rwanda are coming to Uganda because there is land for settlement.

It is important to understand the interplay of various factors that influence access to and utilization of land by both host communities and refugees. At the centre of land conflicts are questions of ownership, access to and control over natural resources. Land is regarded by locals as belonging to Ugandans with refugees having no rights whatsoever. Regarding their interests in land, locals accuse the government of placing refugees' above those of the national population. Moreover, refugees are regarded as non-citizens who should not have any rights over land.

2.7 Prospects of Oil discovery in the Albertine Rift

Findings of an initial exploration study on oil discovery in the Albertine Graben[68], a clear dual linkage (cause of new conflicts and exacerbating existing conflict) between oil discovery and land conflicts in the study districts, is identified, although all conflicts are still in incubation stage and are manifested as tensions, discontent and unrest. There is a trend of extensive sporadic individualization of customary land creating large chunks of registered land in form of leaseholds, across the districts surveyed in this study. This rapid and extra-ordinary transition is driven by individual scramble to strategically reap from the expected demand for land anticipated in the region due to oil discovery

Within the Albertine Graben, degazettement has been characteristic to transforming land tenure relations, however, communities that were supposed to benefit from such a situation were either unaware or not in position to take over, manage and direct tenure relations in lands officially reverted to them. A situation fraudulently harnessed by local council officials for personal gain who have sold land to new settlers or migrants at exorbitant prices, rather than the degazettement being of advantage to the communities in question. This trend has taken with it all communal lands and resources which have been privatized to the exclusion of communities who ought to be the rightful holders of such land. Even in situations where tenure was already transforming and land tenure relations are fragile for example in Amuru District due to IDP displacement and return, the discovery of oil is heightening community fears related to land grabbing, a fact that has been willfully manipulated for political gain by opposition politician and is not helped by the visible government and executive interests as witnessed by the extensive deployment of army and presidential guard brigade in areas where oil prospecting is taking place.

In areas where successful prospecting has taken place such as Hoima district, land conflicts are beginning to fester, but are yet to translate into a full blown conflict though the indicative signals are very strong. Privatization and individualization of customary land to individuals external to these communities through fraudulent sale and approval land transactions, has restricted and limited their access to key water points, firewood etc. leading loss of access to resources mainly for grazing and fishing communities. Speculative amassing of large chunks by investors or local elites positioning themselves to reap from the expected boom in the land market and the influx of immigrants into localities where oil prospecting is taking place has driven up the price of land.

This rise in value of land has not gone unnoticed by the local communities, those whose land has been taken over by oil companies for prospecting they have received compensation, but are beginning to see it as not consumerate in lieu of the gains that the companies will make in the long run, thus discontent. It is not clear to the community, which mechanisms are used in determination of compensation, nor is there an option for the community to seek better

[68] Margaret Rugadya and Herbert Kamusiime, 2009

information. In areas where oil prospecting took place but was not successful such as Kanungu and Bundibugyo districts, there is no effect on land conflicts due to discovery of oil, except for the rise in land prices for those purchasing and renting land for use as communities realize its resource value.

Non – transparency of oil companies over operation is creating fears over possible landlessness among the local community as oil companies take over land for oil mining and production. This situation is pushing communities to the extreme imaginations of landlessness. The communities are threatened by the high likelihood of losing land to the rich and remaining landless. Privatization and individualization of customary land to individuals external to these communities through fraudulent sale and approval land transactions, has restricted and limited their access to key water points, firewood etc. Speculative amassing of large chunks by investors or local elites positioning themselves to reap from the expected boom in the land market and the influx of immigrants into localities where oil prospecting is taking place has driven up the price of land.

3. STRUCTURAL DRIVERS OF LAND CONFLICTS

Despite peculiar land conflicts, courtesy of a colonial legacy, there are structural drivers of land conflict in Uganda, inherent in the functioning of the institutional structures, within which individuals and groups secure access to land and associated resources that have exacerbated the situation.

3.1 Deficit in Dispute Resolution

A governance deficit manifests itself in variety of ways such as absence or weak central authority to enforce law and order, control by interest groups and biased policy, absence of transparent rules of law and enforcement, inadequate institutional and legal framework, and deficiency in capacity (i.e., manpower, finance and broad-based political support), where there is potential or actual conflict, there is governance deficit. There are two parallel legal and judicial systems in place for dealing with land issues, that of customary tenure and that of the state administration. Although the latter recognizes the former, there are unresolved contradictions in the way in which it has co-opted it, which could be a potential source of conflict over land in the future and are likely to give the more powerful an advantage in land disputes. The nature of mediation and dispute resolution mechanisms are important factors in determining whether parties involved in a conflict will resort to violence: if they are seen as partial or ineffective, violence is likely.

Formal tenure covers significantly less than 20% of the area, implying that more than 80% of land is held under forms of customary tenure which de facto falls outside the realm of the law statutory law[69]. This has led to a situation where, instead of complementing each other, "traditional" and "modern" systems compete, giving those who are affected by conflicts an opportunity to resort to "institutional shopping", i.e. pursue conflicts in parallel through a variety of channels. There is a multiplicity of land dispute resolution institutions[70] working in parallel, which many times leads to "forum shopping" by aggrieved parties, without a clear hierarchy – this has created overlaps and conflicts in land disputes processing.

It is also common for dispute resolution to be undertaken by the President's Officer (Director for Land Affairs), and the offices of Resident District Commissioners. This situation has left the justice-seeking public confused, delays in settlement of disputes and creates a backlog as disputes escalate. It should be noted that the multiplicity can only be positive if it is creating variety rather than confusion amongst users to the extent that they are viewed as complimentary (both formal and informal). However the duplicity in roles, hierarchy and jurisdiction needs systematization, while recognizing the values and incorporating the roles of traditional institutions in defining the functions of statutory institutions.

In the absence of formal government structures, access to the justice system is difficult and at the lower ends is poorly equipped to deliver and enforce justice. Experience has shown that many types of land disputes are best managed outside the courts. Limited court capacity to process land claims efficiently and transparently is a serious constraint in many places. Thus, alternative dispute resolution processes, especially mediation and arbitration, can be useful, while customary and community-based mechanisms for conflict resolution may be relevant in some cases, given the fact that dispute resolution in customary tenure is based more on mediation than upon passing judgment in favor of one party or another[71].

[69] Rugadya, 2008
[70] According to the LCCs/Legal Aid Baseline Survey (2006), the mechanisms for access to justice in Uganda include the formal justice system, the informal system with the LCCs, and the non-Government system involving legal aid service provision. The LCCs operate in 953 sub-counties, 5225 parishes and 44,402 villages
[71] Rugadya…et al, 2008

The framework of laws for administration of land justice exists however, the efficacy of the institutions is well below the expected standards, so in practice one can hardly speak of meaningful access in the area of land justice, since there is little motion in terms of cases moving to final resolution, with that the public is loosing confidence in the justice system, extra judicial means to resolve disputes are now being pursued leading to loss of lives or under hand eviction orders from the Registrars', because the systems moves too slowly, in part due to the staffing (a few Judges for example in the Land Division in High Court who have other responsibilities as well such as criminal cases).

Local Council Courts (LCCs) are the institutions that mainly deal with land conflicts but are often going beyond their legal mandates when dealing with land conflicts. LCC2 and LCC3 are the courts that are supposed to deal with land conflict but due to a lack of effective mechanisms it is the LCC1 that deals with land conflicts but LCC1 does not have the legal authority to do so. The surveys have found that people trust the LCCs as they are seen as accessible, fair, and uncomplicated. However, LCCs are far from perfect institutions and have problems with exploitation and nepotism. Vulnerable groups such as women and children are particularly prone to exploitation by the LCCs. They need gender sensitization as well as education campaigns on human rights.

3.2 Deficit in Land Administration

It is important at this level that land administration is distinctively addressed from conflict resolution, rather than rely heavily on either of the two, since they are complimentary in nature and the smooth functioning of one determines the efficiency of the other. The Land rights administration is beset by a number of malfunctions – these are a source of land disputes and conflicts – until recently, land sector institutions were designed to serve the interests of a narrow minority of relatively wealthy registered landowners. Land conflicts and disputes are on the increase and yet there is lack or no capacity at all in the institutions charged with the adjudication and settlement of land disputes both statutory and traditional. The increasing and continuing proliferation of administrative and statutory land governance institutions existing in parallel with traditional institutions is creating a complex land governance infrastructure; this is made worse by the fact that some of these institutions are not fully operational in certain areas; such as northern Uganda and yet they are defacto legal institutions.

For example, the Surveyors Registration Board[72] has been blamed on the increased number of unqualified land surveyors who have deliberately failed to adhere to professional standards, "mistakes are done during boundary openings and the problem is serious due to increased number of 'undercover' surveyors". "If we are to curb land conflicts, there should be no short cuts to quality"[73]. Out of the 650 surveyors so trained in the country, only 56 are registered members of the Institute of Surveyors of Uganda, a professional body for surveyors in the country. Within the traditional institutions on the other hand, custodians of customary law are modifying customary or informal systems to address changing socio- economic conditions often times skewed to guaranteeing greater and more secure rights for male custodians at the expense of weaker and marginalized groups thus more disputes.

Many of the land administration institutions are weak or not functioning. Land Committees that are to be responsible for recording land boundaries on customary land and recording transactions of in certificates in occupancy at the local level have largely not been formed due to financial constraints. There is also a lack of knowledge on the part of the sub county chiefs that are supposed to perform the role of recorder to the level that they are not even aware of this particular responsibility. District Land Boards are also rare and District Land Offices that are

[72] a government regulatory body charged with the professional registration of surveyors
[73] John Musungu, Chairman Surveyors Registration Board

supposed to support them are weak. The land register in Uganda, which operates on the Torrens System of land registration, embodied in the Registration of Titles Act (Cap. 230), was established over 100 years ago. It is estimated that 60% of the records in the register is currently out of date; this therefore means that the available information is no longer reliable and therefore impinges on the integrity of land register since it does not depict the true situation with regard to the current ownership and other interests on registered land.

According to the Baseline Evaluation Report (2007), the Land Registry's main problems revolve around; (1) fraudulent and back-door practices which lead to the losses of the property by rightful owners, undermine public confidence to the state registration system, affect the land tenure security, makes the transactions of the property uncertain and has tragic consequences for many families that suffer from such practices (2) counterfeit land titles circulating in the market, which create additional uncertainty in the market (3) the existing registration system and procedures are too disorganized and practically ineffective to prevent such cases and properly resolve the issues (4) the degraded registry environment and damaged and outdated land records leave a little chance to the genuine owners and clients to protect themselves or get reliable information about the property (5) a great majority of the title records in registry strong rooms are in very dilapidated and sorry state, and they continue to deteriorate, with consequent loss of information and strategic data sets (6) inappropriate systems are still predominantly used in the land records management and archiving system; the manual system results in wear and tear, loss of documents and consequent loss of information.

3.3 Corruption and Ignorance of the Law

Corruption and illegitimate demand for money both in land administration and dispute resolution is at the extreme. Despite Government of Uganda's (GoU) array of policy formulations and technical achievements, several studies including the 2003 National Integrity Survey reports indicate that the perception of corruption and real level of corruption in public offices in Uganda is still high. The Land Registry processes about 15,000 to 20,000 transactions annually[74]. MOJ carried out a survey in 2004 and found out that the registry was making an average of 100 filings per day. The filing involves transfers, lodging and release of caveats, withdraws and release of mortgages, extension of leases, surrender of leases, fresh registration of leases and free holds. The report of the survey indicates also that 92% of the lawyers perceive an increase in corruption in the Land Registry.

Corruption and illegitimate demand for money slow the justice delivery process. A 2008 survey[75] for Ministry of Justice found that 88% of respondents were asked to make un-receipted payments in dispute resolution institutions. 52.3% of the respondents in the survey reported that they had made payment to District Land Tribunals (official and unofficial payments for the services they received). Bribery was highest (33.0%) in the central police; 16% in the High Court; 16% in the Magistrate's Court; 11% in the District Land Tribunals; 7.3% in the LC1 Courts. Bribery was least common in the customary courts where only 2.7% of the households paid a bribe.

It is also a fact that knowledge on law and rights especially land law is limited amongst communities. A survey[76] for Ministry of Justice showed that an aggregate of 90% of respondents had no knowledge of what is contained in the Land Act. Not even a single district amongst those surveyed had more than 15% of their population with any knowledge of the contents of the Land Act. In another survey[77], six years after the passage of the Land Act, it was found that such knowledge remained low; only little more than a quarter of the population indicated that they were informed about the law.

[74] MOJ Survey, 2004
[75] Rugadya..etal, 2008
[76] Rugadya..etal, 2008
[77] Gender Baseline line Survey, 2004 for Ministry of Lands

3.4 Population Growth

By 2050, Uganda's population is expected to reach 120 million, three-fold the current population. Uganda's population is growing at a high rate of 3.2 per cent and is projected to shoot up to 39.3 million in the year 2015 and 54.9 million in 2025 due to high fertility rate (6.7) this relatively high level of population growth has led to increased land scarcity and it is also characterized by considerable regional diversity[78]. Population densities vary from 12 per km2 in the North to 282 per km2 in the West (Mugisha 1998)[79]. The average Ugandan woman gives birth to seven children in her lifetime. Rapid population growth, combined with either limited opportunities for non-agricultural employment or, in other areas, increasing non-agricultural demand for land, is a key factor that causes land values to appreciate, resulting in higher competition for a limited or decreasing amount of land available. This is the major driver for conflicts across generations or ethnic groups as most of the land conflicts are in highly populated areas, a population policy might also be a key element in averting an escalation of land wars in Uganda, especially those related to inheritance. Population growth can be contained through family planning, cultural and legal measures. Legal measures include abolishing of early marriage by setting a higher marriage age of first marriage for all kinds of marriages and legalization of abortion for unwanted pregnancies. In the words of Chief Administrative Officer (CAO), Mukono sums it all: '… every funeral results in more land conflicts because of especially polygamous marriages and belief that making a will is tantamount to signing your own death warrant…'

[78] As cited in status of Urbanization in Uganda, 2007

[79] Uganda's GDP grew an average of 6.2 percent per year between 1987 and 2004 (IMF 2005a). However, when the country's high annual population growth rate is taken into account the per capita growth rate becomes relatively modest.

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