

TENURE IN COMMUNITY FORESTS

*A Study on Communal Land Associations as
Forest Management Regimes
in Budongo, Masindi*

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1. INTRODUCTION

Uganda is undertaking far-reaching policy, legal and institutional transformations in the environment and natural resources sector. These changes permit the formation and use of new strategies to manage resources. The use of Communal Land Associations as Community Forest Management schemes is an innovation. The Communal Land Association model is intended to respond to group land tenure interests in general; the extrapolation to forestry is the subject of this study.

1.1 Background

A lack of local control of natural resources can result in inappropriate policies, inability to effectively manage the resources, and misuse and abuse by users.¹ Prior to 1995, management and ownership of forests in Uganda rested with the national government.² The detrimental effects of a lack of local control have been realized in Uganda given the high rates of degradation and deforestation of unprotected communally-used forests over the last few decades.³ Since ratification of the constitution of 1995, new policies and approaches have been devised to improve the legal status and tenure rights for customary land interests in natural resources and reduce the power of the state, thereby placing the onus of fair and responsible usage on the local community.

Uganda has 4.9 million hectares of forest resource, which cover 24% of the land area. The majority of this forest area (81%) is woodland, 19% is tropical high forest and less than 1% forest plantations.⁴ The basic instruments of state authority over forests are the forest law⁵, which regulates the existence and management of forests, and the Land Act⁶, which regulates ownership and use of land upon which the forest resource is located. In terms of land ownership, the majority (70%) of the forest area is on private land and the remainder is held in trust by the government for the citizens of Uganda.⁷

The vast majority of private forests are natural woodland whose main commercial value is currently charcoal production; a smaller proportion is tropical high forest, whose main commercial value is hardwood timber. However, these private and community forests offer far more than just commercial value to forest owners, surrounding communities and the national economy. Forests have important spiritual value; they provide vital subsistence for many communities, and are ultimately important in maintaining an environment that advances development.⁸

The 1995 Constitution classifies private land ownership into different tenure systems, namely freehold, leasehold, mailo and customary tenure, and provides for enactment of the Land Act to elaborate the judicial principles underlying land tenure and management systems. Mailo holdings are those land assets that British colonialists gave to traditional rulers, mainly in Buganda, as private estates. Customary land is that which was previously held under the British Crown, but continuously used by local users governed by customary rules, which are limited in their operation to a particular community. Such land is owned in perpetuity.⁹ The considerable diversity of tenure scenarios for both private and customary forests implies that a range of solutions is needed to manage forests well.

Community forests are often controlled under customary ownership without clear management schemes. Under changing national governance systems, such situations generally result in user rights becoming increasingly unclear and destructive open-access use. This is especially detrimental to those with weaker rights, particularly women and the poor, as they rely disproportionately on common property resources and do not have means to influence management and usage. Formalized and constitutional Community Forests have the potential to avoid such problems by providing for democratic management and fair access to its members.

The Land Act provides for Communal Land Associations (CLAs) as bodies responsible for the ownership and management of communal land. A CLA is an “association that is formed by any group of persons to communally own and manage land” on behalf of that group.¹⁰ CLAs may designate all or part of their land for common use. Potential areas to be declared Community Forests include natural forests and land to be afforested, as well as areas to be developed as communally-run plantations. CLAs provide a systematic and participatory manner in which to manage a natural resource, in this case, forests. Rights to land directly influence the extent to which communities own, use, and manage the forest resource fairly.

1.2 Conceptual Framework

A common property regime is a group of individuals (a community) having rights to a resource. Rights to common property resources therefore are the private property rights of a group. Such property is corporate property as the ownership and use is vested in a group. Such property is usually governed by the social norms and culture of the community. The individual co-users

have both rights and duties with respect to the use and management of that resource and can exclude non-members from its use and decision making. Secure property rights over natural resources are fundamental to creating incentives for proper management of these resources. All types of property rights depend critically on the monitoring of and the ability to sanction violators. If not enforced, rights do not exist.

Rights to any resource are much more than a title on paper. They are essentially relationships between people that shape the use of a resource. Rights to resources are shaped by social institutions but evolve through social interactions and the interplay of contending interests which are subject to constant change.¹¹ Different systems of property rights are not exclusive but overlapping and different sets of rules may apply at different places and times or may be applied to different parties. A single user rarely has full ownership rights to control, use, and dispose of a resource completely independently. Rather, it is useful to think of a bundle of rights, with different users and stakeholders having the right to use that resource for a certain purpose or under various conditions.¹²

1.2.1 The “Common” Element

The term “common” denotes the need for a collective identity and interests in common property and mechanisms to operate collectively. There should be conscious and democratic participation by members in the formation of policies and management of a resource. Involving local communities at a grassroots level is fundamental to sustainable development and utilization of natural resources, including forests. Mobilizing people to participate is not a simple task. A number of impediments to genuine participation exist, including interference of politics and gender discrimination.

Several factors determine the successful participation in common property resource management:

- Expected Net Profits. The relative net benefits for users of the resource under different management schemes can determine willingness of participants. The likelihood of a common property regime to succeed depends partly on the perceived level of net gain for individuals participating in group management.¹³
- Level of commercialization within the community. Increased commercialization of the rural economy may reduce communities’ dependence on the commons by providing new economic opportunities

which individuals can use to diversify their income base. This leads to reduced willingness to contribute to collective management of common property resources.¹⁴

- Equity. The share of benefits among members is a major factor in determining whether an individual is willing to participate in community-based management arrangement. Without an equitable distribution of benefits, group participation can not be sustained. Those members of the community who are suspicious about the possibility of inequality distribution of benefits are less likely to be enthusiastic about collective management.¹⁵
- Reciprocity. Willingness to participate in group management is also significantly influenced by the expected behaviour of other members of the group. In this respect, members of the user group and other stakeholders must be honest and transparent. Some scholars have argued that small and more homogenous groups are more likely to have the spirit of reciprocity than large and heterogeneous communities.¹⁶

1.2.2 The “Property” Element

Possession of property implies legal or de facto ownership and tenure. Property are objects conceived as taken out of available free goods and brought under exclusive control by a person or group. Property may then be thought of as the exclusive relationship of the person or group of persons to an object or complex of objects of material value.¹⁷ The content of property rights is defined by legal concepts which indicate the variable strength of the relationship between holders of property and their property objects.

Community-based rights are determined upon local norms and conditions. It is therefore appropriate for governments to recognize existing community-based land and resource rights rather than to grant rights based on state claims of ownership. Functionally, community-based management systems and the established property rights draw their legitimacy from the community in which they operate rather than from the nation-state in which they are located.¹⁸

Community-based rights often derive from the percept that the present generation holds the natural resource in trust for future generations. Thus the privileges of the individual are generally subservient to the rights of the community. By ensuring that the property is well managed and the rights to it are equitably allocated, community-based tenure rights contribute to social stability.¹⁹

User investment in sustainable management can only be achieved when their future access to resources is secure. Under traditional community-based management tenure systems, land and natural resources were held by the community with clearly defined spatial and temporal rights allocated to its members. Inter-generational transfer of family rights proceeded under the control of community decision-making. Accordingly, indigenous tenure systems often provided high levels of tenure security. Yet these tenure systems were not static and show a notable degree of change over time in response to social and economic changes, new technologies, natural calamities, migration and population changes and war.²⁰

However, traditional tenure systems have been undermined by both the colonial and modern governments. Rights are apportioned between the state, local governments and local communities and administered by a number of agencies creating a rigidity which cannot respond diverse conditions. State ownership and regulation has not had much success in enabling individuals to sustain long-term productive use of natural resource systems.²¹

Allocating individual tenure to resources such as forests is detrimental as they are often the sole safety nets for the poor. The shift to exclusive use of resources not only severely disrupts traditional and common property management systems, but also limits natural resource utilization strategies for the whole society. Secure rights to resources are important for both the economic and social empowerment to communities and can contribute to better forest management and enhanced livelihoods.

1.2.3 The “Management” Element

When the state confers the ownership, access and use of natural resources to a community, the community is expected to manage the resource appropriately. The management of the common property should be based on understanding the relationships between the physical characteristics of the resource and the patterns of appropriation and use.

Sustainable management is the main preoccupation of traditional resource management systems in Africa.²² Traditional decision-making institutions manage environmental resources based on indigenous community knowledge. This is done within the framework of their world view and in accordance with their ethics, norms and beliefs.

Despite the diversity of traditional resource management systems, traditional institutions are formed from the community and therefore decision makers are also resource users. Decision-making is based on knowledge acquired over time and responsive to immediate community needs and resource conditions. This method enables the communities to effectively control use of the resources and avoid over-utilization through monitoring and adjustment of use.²³

Community-based natural resource management requires proprietorship of the resources. This includes sanctioned ownership, use rights, access and management. Group proprietorship allows communities to negotiate resource management arrangements which take advantage of multiple-use opportunities. This approach requires that a substantial portion of authority and responsibility be devolved to the local communities. Although community-based management is vital, the state retains a stake in the outcome of local management. It is imperative that institutional capacity is built at the community level.²⁴ Community management groups must be able to continuously monitor and respond to changing conditions.

1.2.4 The Concept of Land Tenure

The term tenure is derived from the Latin word *tener* which means “to hold.” Tenure defines the social relations between people in respect of the object of the tenure, in this case land. “Those with tenurial rights have a certain social status vis-à-vis natural resources in comparison to those without tenurial rights to those resources²⁵”

Land tenure defines the methods by which individuals or groups acquire, hold, transfer or transmit property rights in land. Property rights may include a variety of different rights (e.g. to use, to transfer, to build on, to mine etc) commonly referred to as a “bundle of rights”. The rights may be transferred or transmitted either together or individually “unpacked” at the discretion of the holder with or without limitations, depending on the tenure system. Formal rules of tenure, therefore, define the nature and content of property rights and determine how society will allow individuals or groups to hold property rights in land or other resources and the conditions under which those rights are held and enjoyed.

Land tenure is culture-specific because it is determined by the history, social organisation and land-use patterns of a given community, which reflect,

among other things, the ecological characteristics of the region. Pre-feudal African societies characterised by diffuse political systems and kinship bonds, developed tenure systems whose focus was to guarantee rights of access to individuals and families.

Land is essential for food production and security. The rules governing access to land resources and the manner of their current use will affect not only the welfare needs of present and future generations but also the ecological status of the natural systems. The nature of property rights invests in individuals or groups and the manner in which those rights are exercised have important implications for the sustainable use of land, the conservation of natural resources, and the maintenance of ecological processes.

1.3 Global Examples of Land Tenure in Community Forests

In surveying international cases of communal forest associations, in most cases the groups forming CLAs obtain a large tract of land by petition to the government or out of publicly held land already customarily occupied, which is similar to the situation in Uganda. Lessons can be learned from international examples of communal forest associations and the way land tenure issues are considered. Inferences can also be drawn from the effects of tenure issues on the establishment and maintenance of CLAs. When analyzing management regimes of communal resources each situation must be accurately evaluated for the reality of tenure issues “on the ground” rather than as set out legally.

The basic tenets of a successful communally-managed forest are a management structure that is accepted by all parties with respect of decisions made. Following this, the establishment of a local community forest management must be allowed to develop to the needs and tenure context of the local community rather than to a prescribed set of guidelines from the state.²⁶ In this context, local communities presumably have much more significant knowledge to local practices and boundaries. Prescriptions from national agencies are more likely to result in long-term conflict. Also, the state needs to respect the communal tenure of the community management group and their decisions about usage on a long-term scale.²⁷

Otsuka and Place consider the value of products of the common forest as a determinant in the success of community management. The more valuable and more rare the product, the more difficult it is to manage well within a group.²⁸ This risk can be moderated by maintaining a community

management scheme but specifically designating certain parts of the resource to individuals.

The biggest lesson may be that regardless of the tenure conditions before the formation of a CLA, the relationships of individual members and their respective benefits and restrictions need to be definitively determined in a universally respected process.²⁹ Where CLAs are formed without clear regulations for the users, even if outsiders are successfully barred from exploitative access usage will not be sustainable, and thus, neither will the CLA. As has been discussed fully in other literature, common property without clear usage regulations becomes open-access (even within communities) and common property management schemes fail.³⁰

Based on his work in India, Prateep Nayak aptly summarizes³¹ eleven salient needs for secure tenure of common land associations: 1) there should be a tangible forest boundary; 2) there should be an appropriate and acceptable user unit; 3) the forest should be within the physical limits of the user unit; 4) the organization should be a locally designed organization; 5) there is an independent rule making system; 6) there is no forced sharing of forest benefits; 7) there is significant monitoring and sanctions for rule breakers; 8) there are mechanisms for conflict management; 9) there are forums for collaboration; 10) users have a clear set of rights; and 11) there are appropriate state laws assigning and recognizing the tenurial rights of the community forest.

1.3.1 Kenya: Traditional Management in the Forests of the Maasai³²

In the Loita/Purko Naimina Enkiyio forest of Kenya, the Maasai have maintained customary tenure over the resource as a Trust land forest. The community maintains both ownership and all access rights. This customary arrangement has been in place throughout the establishment of the nation of Kenya and has resisted or ignored change in the political atmosphere.

The land organization is a traditional tribal governance system, allowing certain sectors of the community to use certain resources. For example, only “traditional seers and medicine men” may use certain sacred resources such as medicinal trees and limestone. Other forest resources are made available to certain skilled groups, such as honey gatherers. Such roles are respected under the traditional system. Each member understands the “*responsibility to*

ensure that irresponsible actions that might be destructive ...do not take place." For example, herders restrict forest grazing to the dry season only.

Management decisions are theoretically vested in the local government County Council, yet in reality most management lies with the Maasai traditional leadership structure and other local community stakeholders with assumed roles. Some harmful decisions have been made by the government organizations, such as a drive to gazette the forest and access permits being given away to outside parties.

In this instance, the reality of management and tenure is far different than the legal design. The Maasai and others in the local community have consistently maintained a customary tenure despite management legally being in the hands of the local government. Problems have arisen because these conflicts have not been confronted or resolved, despite the potentially dire results for local community stakeholders if their relationship to the resource is not considered.

1.3.2 China: Creation of Collective Tenure in the Taohua Villages³³

All land in China is officially owned by the government but long-term management or leasehold can be in the hands of individuals or communities. In the case of the Taohua villages, forest land was designated under individual household responsibility but the village arranged them as a collective single plot made from 18 natural-area villages.

The creation and management of the forest is under governmental structure, but in this case the community decided to manage the forests collectively rather than individually. On paper, the land is classified as private leasehold, but the community management scheme takes full control. The relationship between the community and the national government is smoother under the control of a collective organization.

All forests in the study area are communally held; there are no private forests for individuals. Also, all work is through collective labour; during harvesting, all labourers are employed by the community. In this situation, benefits are distributed mostly to the "owners" but also to the other community members. The owners earn extra income through both their labour contributions and the selling of timber. The non-timber forests (watershed protection, conservation, fuel wood, and fertilizer-source) are managed with a per-use application system. The collective administration distributes the income

amongst all members (including those whose forests were not harvested at that time), but this system is valuable because of the consistent and long term returns that result.

Decisions are largely made through the local governance structure, but some emanate from group decision making via a representative governance structure. The representative design emphasizes ensuring representation of each of the ethnic groups. However, the extent of true democracy in these organizations is unclear. Management plans are designed by the Village Committee leaders, reviewed by the village committee, and then put up for approval to the Villagers' Representative meeting. As part of the community management, all harvesting is collectively managed; no individual cutting is allowed. This allows for strategic planning of forest regeneration. Focus is also put on making sure the harvesting uses low-impact techniques to maximize the long-term stability of the resource. The collective benefit distribution ensures the security of the forest because everyone consistently benefits rather than having to wait until their own holdings are harvested and long-term benefits are ensured. An important principle of the communal forest organization is a central, transparent accounting system.

In this instance, individual resource rights were combined into not only a collective ownership but also collective income distribution. The individual household rights to land were combined into a community forest which has been very successful at sustainably managing the forest (~90% forest cover). The author points out that "a good leader is always accompanied by good rules." Despite changing laws and tenure designations, the community has consistently managed the forest collectively. Combined labour and combined property increased community commitment to the communal property. With this type of common property scheme, privatized rights combined to form communal property for a more valuable asset.

1.3.3 India: De facto community forests and the Van Panchayat system³⁴

Two forms of community forest in India are of note. In some community-based forests in India, villages took de facto control of degraded state-owned forest land. The government's tacit and temporary recognition of the community forests results in a lack of tenure for the organization. There is also an official form of community-based forest management, the Van Panchayat system, created in 1931 by the British. It allows desiring communities to form a community forest out of land already designated within

the revenue boundary of the village. All residents and those who already possess resource rights can be right holders in the institution. Once a Van Panchayat is formed, the land cannot be redistributed.

Even the informal community forests took firm control by developing elaborate rules and regulations for the use of the forest, as well as defining boundaries and users. The formation of these organizations was done despite denial of requests to be recognized by the government. However, once the organizations proved successful at sustainable management, the government granted usufructory benefits and short term tenure to the communities for their use of these degraded forests. Conversely, a Van Panchayat is, once founded, a permanent institution. For a Van Panchayat, one third of villagers must consent, but even after this step has been fulfilled, other villagers and neighbouring peoples must also be consulted, and the committee formed through an election.

For informal community forests, the government theoretically maintains ultimate control over the resource but the community is able to access the forest mostly for subsistence usage. The Van Panchayat system, on the other hand, has very strict rules and full tenure regarding the usage of the forest, including a provision that forests products are to be used for the benefit of the community, and can oversee the distribution of income from the sale of forest products.

Though the informal community forests have strict rules, the short-term nature of the government's permission (five years) for informal community forests does not grant the community a sense of security in their management investment in the forest. The permanent Van Panchayats have the power to make its own rules and regulations, and fall under strict guidelines from the forestry service but also grant large number of powers to the Van Panchayat leadership (similar to those of forestry officials such as the ability to collect fines).

Both types of community forests discussed offer lessons. The greatest strength of these organizations was the significant legal recognition of their leadership. This unfortunately has suffered in recent years as the government has expropriated regulatory powers to the central government. For the informal community forests, the short-term tenure is problematic for a truly successful organization. For the Van Panchayat system, government driven uniformity is detrimental.

1.3.4 Honduras: Threats to community forests from privatization³⁵

The forests in La Campa, Honduras have been a customary holding by the community based on indigenous systems. Over time, some land that was all previously communally managed has been converted to private plots through a de facto establishment of claims; despite acknowledgement there is not enough land for every member to have a sufficiently-sized parcel. The private land owners continue to also be users of the community forest. The lack of clear tenure rules and boundaries of the forest allows not only for poor management of its use but also loss of the communal land to private parcels.

The community forest has always been the majority of land for the village, outside of agricultural and residential space. This land management and ownership has been appointed to county, in the form of a municipal council, who has the ability to recognize private land claims, but still theoretically under the final rule of national regulations. Members of the community use the forest according to their needs for private consumption and local sale only, not according to their wealth. Wealth is an element affecting usage, as for example, there are no limits to the number of cattle that may be grazed, nor the amount of fuel wood taken.

This community forests experiences much of the detriments of an open access resource, though usage is restricted to within the community and for only subsistence needs. However, forest resources are used for commercial gains such as the grazing of cattle and the use of fuel wood in the making of pottery. From this study, there appeared to be little community decision making, resulting in a situation where neither concerns about sustainability nor privatization are elicited.

In this instance of common property forests in Honduras, the customary community forests are threatened by increasing privatization, despite usage of the community forests by even the private land holders. These private land holders still have access as members of the community, but otherwise users of the community forest have been successful in barring outsiders from usage, but not in regulating their own usage. The biggest threat to the community forest is a lack of a strong and democratic management organization which could both defend the tenure of the community forest itself and prevent parcels being lost to privatization.

1.4 The Evolution of Community Forests in Uganda

In the pre-colonial era, land was governed by customary norms and practices. Land relations were unique to each community, such as systems based on territorial control in which access to land resources were governed by a complex network of reciprocal bonds within the families, lineages and larger social units. The primary function of those relationships was to protect and guarantee individual and community rights as prescribed by custom. As long as such bonds remained, related individuals or groups could secure access to the resources of that community.³⁶ Forestry resources were regarded as open access property which meant that this resource was not owned by anybody and could, therefore, be accessed and used by everybody. However, various communities developed rules and norms to govern their forest based activities which ensured sustainability.

Colonialism changed the nature of property relations, especially those related to natural resources ownership and access. Lands that were originally regarded as common property were allocated to colonial sympathizers and natural resources were effectively alienated by the colonial state. The Crown Lands Ordinance of 1902 vested land which was of open access in the Crown. This land included natural resources such as forests, wildlife and water bodies.³⁷

The colonial government poorly defined most property rights to natural resources. In the post-independence years, the bureaucracy did not improve much on the granting of rights. De facto rights, however, have existed all along. Whenever contested by private parties or by government, conflicts ensued. The resolutions of these conflicts were essentially processes of spontaneous self-organization. In this era, certain forest areas were gazetted and accorded state protection while others were left at the mercy of the surrounding communities. Because of the existent insecurity of tenure, these forests remained open access resources with no controls or management regimes to ensure their protection. As a result, heavy degradation of the forest resource and the surrounding ecosystem took place leaving some of the forests completely depleted.

The major land reforms of Uganda are enshrined in the 1995 Constitution and the Land Act. The Constitution vested all land in Uganda to its citizens according to the systems of customary, freehold, leasehold and mailo tenure.

What was previously public land became land owned by those occupying it as customary owners, now with security of tenure. The Constitution provides for the enactment of a Land Act to elaborate the principles underlying land tenure and management systems introduced by it. By recognizing customary tenure, communities are able to organize themselves and develop rules and norms to manage those lands that are common property resources. This legislation provides for communities as corporate entities (CLAs) that can develop a common land management schemes to manage the common property resource.

The National Forests and Tree Planting Act provides for the securing of forest resources that were previously open access. It categorizes these into two types of ownership: private forests that are individually owned, and the forests to be managed by a community. Community forests are those forests declared as such by the minister responsible for forests in consultation with the District Land Board and the local community. These forests are not gazetted forests and therefore are not managed by the government. These forests are often found on customary land without clear ownership, management, or control. The Land Act provides the framework to guide self-governance by these communities.

2. STUDY DESIGN

Understanding resource rights should start with local perspectives of those who use the resource, their daily experiences, how they conceive the resource and their rights to it; and the options they have for acquiring and defending their access and ownership to the resource. This project is primarily a qualitative field-based analysis of the communities themselves and their quest to establish CLAs.

2.1 Philosophy and Objectives of the Study

The Forestry Policy (2001) is committed to the wise use and management of community forests. It recognizes that this can be achieved by involving private and customary land holders through appropriate incentives and governance frameworks. CLAs provided for in the Land Act provide this opportunity.

Thus, the philosophy of this study is that communities need strong social and legal powers in order to position and protect their interests in a forest resource. It is imperative that their bundle of rights³⁸ is clearly defined, demarcated and owned. However, the process of disentangling ownership in a particular forest resource raises a number of tenure issues that impact on the operations and achievements of the governance institutions established for such a purpose.

As a result, the study specifically documents:

- How tenure issues have been considered in management of community forests; and how rights in land can constrain or support community involvement in community forest management;
- How communities secure their tenure rights in community forests; How the resources are utilized such that user rights are both respected and protected;
- And the roles played by different local stakeholders in creating the CLAs.

2.2 Data Collection Methods and Instruments

a) Literature Review:

Literature Review has been used in establishing the parameters for the study and international best practice in community forest management regimes, especially in terms of tenure issues.

b) Key Informant Interviews

Key Informant Interviews were undertaken with specific persons who have

been involved in the process of creating CLAs. At the national level, interviews were conducted with the Forestry Inspection Division and the Land Tenure Reform Project. In the District, using a key informant interview guide³⁹, interviews were conducted with the District Forestry Officer, the Local Council III (LC3) Chairperson and the Executive Secretary of the local civil society organization (CSO) facilitator Budongo Community Development Organization (BUCODO).

c) Focus Group Discussion

Focus Group Discussions were conducted in the six selected communities to document the experiences of the community and its members in the process of formulating CLAs and Community Forest Management Schemes. A Focus Group Discussion Guide⁴⁰ was used.

d) Case Studies

Case Studies were used to further understand two existing areas of conflict. Local residents living on the borders of the forest who were not members of the CLA were interviewed regarding their relationship to the CLA and their perspectives on the conflict.

2.3 Study Area and Sites

The study was carried out in Budongo Sub-county, Masindi District. The sub-county is the first area in Uganda where the Forestry Inspection Division (FID) has piloted the management of community forests using CLAs as the formal governance institution.

There are 60 identified pilot Community Forests in Budongo, of these only four have been well-developed in the pilot; another six are currently being formed.⁴¹ The study focuses on the four fully covered in the pilot to date and two of those in development to constitute six study sites in total.

Budongo Sub-county has a population of 38,176⁴² and is located approximately 20 km to the west of Masindi town. The sub-county has a multi-ethnic population composed of the indigenous Banyoro and migrants including the Alur, Kebu, Lugbara, Madi, Lendu and Bagungu. These peoples co-exist harmoniously and use mostly Swahili as a common language. Six sites in four parishes were studied, and are depicted in Table 1 below.

Table 1: Description of Study Communities

| Community Forest | User Villages (Interview Site Bolded) | Approximate Site Location [GPS] | Parish | Date Visited |
|------------------|--|---------------------------------|-----------|-------------------------------------|
| Tengele | Kabala, Rwentale 1, Rwentale 2, Nyantongi | N 01.645° E 031.477° | Nyantongi | Morning , July 9 th |
| Kimanya Hill | Kimanya 2 | N 01.596° E 031.491° | Nyantongi | Midday, July 9 th |
| Ongo | Abangi, Oni-eni, Ogadra, Kibale | N 01.630° E 031.413° | Kasenene | Afternoon July 9 th |
| Kanyege | Kanyege | N 01.688° E 031.492° | Nyabyeya | Morning July 10 th |
| Motokayi | Karongo, Nyabigoma , Ekarakaveni | N 01.657° E 031.528° | Nyabyeya | Afternoon, July 10 th |
| Ewafala | Kadukulu 1, Kadukulu 2, Ewafala , Nyabyeya | N 01.676° E 031.567° | Kabango | Morning, July 11 th |

Source: Field Data Collection, July 2004.

The forests surrounding the communities are tropical hardwood forests. The major local uses of the forests are for fuel wood collection and access to water. Building materials from poles and logs are also significant in the local economy. However, timber harvesting is generally not part of the local economic activities. Auxiliary uses include medicinal and food plants, as well as other forest products.

These communities are made up mostly of sedentary arable farmers. The main food crop is maize, whereas the key cash crop is tobacco. Most land holdings are customary with an average acreage of two acres.

2.4 Profile of Respondents

On average each focus group discussion comprised of 13 individuals. 82 individuals were consulted in all the study sites; of these 20% were females. At this level, respondents included both CLA committee members (27%) and other individuals drawn from communities on the bounds of the study forest sites. The Socio-demographics of the respondents revealed that the average age was 36 years, 48% and 42% had attended ordinary and primary level education respectively. Most respondents (65%) stated their main occupation as peasant farming. Those mentioning carpentry were only 6%.

2.5 Study Challenge

The study team was unable to explore the entire bounds of the study site forests; though this would have been appropriate with regard to capturing tenure dynamics, especially land conflicts. Instead, two case studies were carried out to capture these issues.

3. FINDINGS

This study investigates the establishment of the pilot CLAs in Budongo Sub-county, especially in terms of the way tenure and tenure transformation affected the process. Issues of tenure are manifest in a few specific issues, particularly that the formation of these CLAs arises from an attempt to protect the rights of local users from non-local abusers. Difficulties in the creation process relate to conflicts surrounding boundary ascertainment, and particularly delays in legal recognition. Fully understanding the creation and management process allows for discussion of the role of tenure and rights in the process, and ultimately the ways in which communities can be further aided and empowered in their quest to control and manage local resources.

3.1 Genesis of CLAs in Forestry

The genesis of CLAs in forestry has two distinct dimensions: the national and community conceptions. The combination of the two notions resulted in the application of CLAs in forestry management. This section stresses the origin of the innovation in the forestry sector and the communities where it is taking root.

3.1.1 The National Perspective

Key informant information indicates that the initiative to pilot the CLA model in the management of community forests has its roots in the activities of the Forest Sector Co-ordination Secretariat (FSCS), a body set up under the Ministry of Water, Lands and Environment to oversee forest sector reforms. Krystyna Krassowska¹ developed the guidelines. The secretariat later contracted Environmental Alert in Luweero, and Budongo Community Development Organisation (BUCODO) in Masindi under the Masindi Forestry Advisory Services Project, to pilot the initiative.

3.1.2 The Community Perspective

In spite of the formal drive for CLAs by civil society initiatives it is apparent from the communities in Budongo that there was a realization among them for the need to assume joint responsibility for common resources. Economic and environmental concerns were the issues that created receptiveness for the CLA idea among communities as depicted in Table 3.1

From the table, it can be deduced that primarily environmental concerns triggered the positive response to the CLA initiative. Central was the alarming rate at which forests within the bounds of communities were being destroyed

Table 3.1: Community Perspectives on the Genesis of CLAs

| CLA area | Origins | Reason for adoption |
|----------------------------|---|--|
| Tengele (Nyatonzi) | BUCODO sensitized the community realized the need and accepted the idea. | Ineffective control by local leaders (LCs) |
| Kimanya Hill (Nyatonzi) | Organized 3 years ago, had not considered a CLA; idea originated with BUCODO, the LC approached them. | Realized drastic change in the environment/ climate; Accelerated deforestation due to human activities; Saw positive CLA example in neighbouring village |
| Ongo (Kasenene) | Initiative was underway to establish community control, CLA provides means to realization. | The community desired benefits from the local forest resource. |
| Kanyege (Nyabyeya) | CLA initiative came from BUCODO. | Feared the forest would be handed over to the NFA; thus, no local input and little access; An individual [then ARDC] was threatening to takeover the forest; Community felt a CLA was the best practice for managing a large resource. |
| Motokayi (Nyabyeya) | Initiative came from BUCODO on request by local government on behalf of the community itself. | Forest was being degraded; high rates of deforestation. |
| Ewafala (Kabango) | BUCODO presented the idea, sensitized the community, and it was adopted. | Community observed many negative environmental changes; the desire for a community initiative to protect the forests already existed. |

Source: Focus Group Discussions, July 2004

by non-community members. Other auxiliary concerns were the realisation that the communities were not benefiting from the resources; also fears of loss of rights to the control of influential individuals and statutory bodies. It was attested to by district-level key informants that within the communities the desire for ownership of these resources existed, the CLA initiative created an opportunity for communities to realise this aspiration.

3.2 Formation of CLAs

The process of setting up CLAs in the Budongo communities has three distinct elements: mobilisation, elections and formalising their existence. According to both communities and key informants the initial phase of mobilisation was characterised by sensitisation spearheaded by BUCODO² and the District Forestry Department, the mobilisation was done through local councils with the help of the district forest department.

The aim of this effort according to the Local Council III Chairperson was *"...rally the community around this new idea, it has not been tested any where in Uganda, we were lucky it was going to start in Budongo, we were going to be a learning model."* In addition, the Executive Secretary of BUCODO noted *"...the mobilisation was intended to explain to the community the new idea and develop consensus on how to proceed."*

Elections have occurred only to elect a tentative committee to steer the CLAs to official recognition. None of the CLAs are yet officially recognized, so the process of formalization is discussed throughout the rest of the findings section.

3.2.1 Composition and Election of CLA Committees

According to district level key informants, whereas the law has clear provisions on the process and requirements on the formation of CLAs, it was deemed necessary to establish a tentative committee that could spearhead the initiative on behalf of the wider community. However, due to the realisation that the tentative committees would have no powers until after registration and declaration, it was decided that LCs 1 and 2 would be part of these committees for purposes of mobilisation and enforcement of resolutions.

Thus, the Village Forest Committee (VFC) has a membership of ten, six drawn from Local Council 1 while the other four are directly elected by the village. This functions where the CLA is constituted by one user village bordering

the resource, as is the case with Kimanya Hill and Kanyege Forest. Where more than one user village to a resource exists as was the case for the other study sites, the non-LC members of the VFCs form an electoral college and elect three from among themselves to the CLA committee, one of whom is the chairperson. Under this arrangement, the other members (six) of the CLA committee are drawn from the Local Council 2.

Eligibility for election of the non-LC members of the CLA committee is determined by consensually identified criteria formulated during mobilisation. One has to be a permanent resident, 18 years and above, with at least primary five level of education and unquestionable integrity within the community and has to be nominated openly at the village gathering. It is also stipulated that 1/3 of the VFC members would be constituted by women.

The communities did not express concern that the usually predominantly male LC is being used to constitute the CLA committee, they argued that in any case men were strongly involved in degrading the forests; thus were the best suited for the task of protecting them (Kanyege forest). In two (Motokayi and Ongo) of the six study sites, the chairpersons of the CLA committees are women. Whereas the designed process is open and balanced, it is debatable whether it was followed carefully and transparently with adequate civic education; the Ongo and Kimanya Hill community members could not readily explain this process.

The significant inclusion of the LCs in the current governance structure of the CLAs could also be problematic because such a process simply transplants a power structure already in place. Despite that the chairperson of the committee is not a member of the Local Council, the majority of the members of the committee are. Thus, the current power structure, and interests of the local and national government, has the power of the majority within the current decision-making structure of the CLA. While this provides the young CLAs with political power and clout, it also can theoretically endanger community interests. It could prevent dissent and thus development of appropriate policies, as well as hamper the development of leadership among others in the community. The Tengele community noted that prior to the formation of the CLA; the LC had done an inadequate job protecting the resource.

Ultimately, integrating the current government power structures into the community could have implications on the concept of ownership over the

resource because people don't necessarily feel any more empowered than before. As one national level key informant said, "many community initiatives have been hijacked by the leaders." Once the tentative stage is over, will the general community be able to democratically operate an organization that represents their rights in the resource? If six out of the ten leaders must leave the CLA management committee, will that not create a dearth of experienced leadership?

3.3 Governance

Currently, there is very little indication of institutional organisation in the CLAs, save for the formation of the committee. While the law stipulates that the District Registrar of Titles facilitates the creation of the CLA constitution, the expectation is that a tentative draft of consensual operational rules should exist anyway. These do not exist; only one CLA (Ongo Forest in Kasenene Parish) was found with a draft constitution. In general, it is difficult to determine the extent to which these interim structures operate with a set system of governance and therefore accountability.

In all of the study sites, respondents claimed community participation in planning and decision-making by holding village meetings for CLA business. This method, however, is not necessarily tolerant to dissenting views, nor sensitive to gender dynamics.

Communities claimed that the CLAs had not yet reached that level of maturity. This is to be expected as the process of formalisation is yet to be concluded and justifies close involvement of non-community stakeholders in their operations. Specifically, according to district level key informants, the involvement of local councils was to obtain political endorsement. In Alimugonza forest in Pakanyi Sub County, Masindi, a similar initiative failed due to lack of support by the local councils. Even in Budongo, once the process of formalising the CLAs is complete the communities will elect CLA committees that are independent of the Local Councils because the LCs are the courts of first instance for land conflicts of a customary nature at the community level.

3.4 CLA Regulatory Framework

The extent to which the communities have considered the regulatory framework is surprisingly small. As noted elsewhere, the greatest desire of the community is to protect their forest resource from outside abusers such

as timber harvesters from other districts. The communities seem to have little concern regarding the regulation of local users, convinced both that abusers are only outsiders and that local users will be responsive to and respectful of new rules regarding forest usage.

Establishing systems of benefit-sharing within the community was not a central issue, despite some communities' plans to use communal profits for either distribution to individuals or for community development projects. Communities expect that regular individual use of the forest for water and fuel wood will be completely sustainable. Management of local requests for tree-felling for local use was also treated as a non-issue, though two communities cited a need for regulations to make sure benefit-sharing is fair and equitable.

Additionally, little consideration has been given to integrating indigenous knowledge into the regulatory framework. Kanyege, Tengele and Ongo communities demonstrated a desire to utilise and protect both indigenous knowledge and species in the management of the forest resource while two communities, Ewafala and Kimanya Hill, specifically expressed doubt in the usefulness of indigenous knowledge in their management of the forest. Tengele forest CLA members expressed, without reasoning, a desire to protect "mother trees" (large indigenous tree specimens). The only other cited example of indigenous knowledge was the use of boundary plantings to delineate the community forest area.

An example of the alternative to indigenous species and processes is planting locally non-indigenous pine trees are fast growing and valuable as lumber but have additional risks such as forests fires. The lack of indigenous knowledge in the Budongo area could be attributed to the indigenous knowledge having not been dynamic enough to meet local needs and thus be maintained, a possible consequence of colonialism and certainly a consequence of the influx of immigrants to the traditionally Banyoro area. BUCODO desires to assist in dissemination and reinvigoration of the indigenous knowledge, including capturing the knowledge of the indigenous Banyoro and sharing it with the community.

A civil society key informant was not concerned about the situation as he feels that management will be developed as the CLAs gain official status. BUCODO's first goal was to establish a sense of ownership in the community

over the forest. Based upon communities' central management goal of barring destructive outsiders, BUCODO appears to be successful. When the next stage of CLA development occurs, BUCODO will assist in the creation of a sound management plan. Otherwise, the lack of a management concept is primarily an issue of a lack of legal recognition and empowerment, but also is symptomatic of poorly developed CLA leadership and community participation. The communities seem to have considered little about the powers and responsibilities that will come with official management.

3.5 Expectations of the CLAs

The most prominent expectation of the communities is that forming themselves into a CLA would protect their resource from outsiders. They also hope for improved conservation of the environment. A number of the communities desire increased economic benefits such as eco-tourism or sale of timber, but the underlying hope is that the CLA would protect the basic needs of fuel wood, poles, and water. Without the CLA, the communities expressed that they have neither land nor resource tenure. In the absence of a CLA or any other management system, the forest resource is not only open-access with hugely destructive timber harvesting practices, but also the boundaries are not respected and the forest area is encroached upon by neighbouring farmers and settlers.

3.6 Reality of the Budongo CLAs

All the CLAs expressed concern for the tentativeness of their situation. Most of the communities were unable to properly explain their structure and plans, giving the explanation that they were awaiting approval from the government, specifically the District Registrar of Titles. As has been noted elsewhere, Masindi does not have a District Registrar of Titles. The District Registrar of Titles not only is supposed to register the CLAs request for a Certificate of Customary Ownership, but also guide the creation of their constitution. Such a task is inconceivably large for one person, given that in only one sub-county, the pilot area of Budongo Sub-county; there are approximately 60 pilot CLA sites.

The CLAs are tentative at the hands of distant government officials and thus rely heavily on both BUCODO and the LC structure. As noted, the involvement of LCs during the development of the CLAs is quite intentional, both to maintain an official sanction and to capture the associated powers of community leadership such as the ability to sanction abusers of the forest.

This limits the extent to which community leadership for the CLAs can develop. Some communities expressed frustration over their extremely limited extent to which they could stop destruction of the forest while their CLAs are unofficial. However, a key informant explained that despite not being official, the communities are starting to monitor and control their forest with the legal power of the participating LCs. In a case study of a boundary conflict in Kanyege forest, one of the controversial settlers divulged that under pressure from the community they had halted their expansion into the forest.

Figure 1: Case study of Kanyege Forest, Nabyeya Parish (July 10th, 2004)

Interview with two controversial settlers

1. OW, Male-25 years, household of 3, occupying about 1 acre
2. OS, Male-45 years, household of 7, occupying about 2 acres

Settlement in the bounds of the forest:

In total, 22 settler households with over 50 individuals were brought to the forest bounds by a former Assistant Resident District Commissioner (ARDC) of Masindi District.

Perspectives on Status of the Land

These settlers expressed conflicting views. OW claimed that the ARDC told them it was public land and they could settle anywhere, while according to OS, the ARDC claimed he had a land title.

Effects of Settlement

They alluded that at the time of settlement, the boundary of the forest was not where it is now. Because of their activities, it had receded. OS divulged that under pressure from the adjacent village, they had stopped expansion.

Willingness to leave forest area

Both settlers expressed an unwillingness to leave. They claimed it would be unfair to remove them and that even if the CLA were given powers; they would not leave except if requested by the former ARDC.

Concern of status of the forest

They both agreed that the forest should stay, but also claimed they would have limited livelihood options if the forest was conserved.

3.7 CLA Rights to Land and the Forest Resource

The Land Act stipulates that a properly formed CLA can obtain a Certificate of Customary Ownership. The land designated for a Certificate of Customary Ownership does not have to be surveyed by professional surveyors, but only ascertained and agreed on by the customary owners and the neighbouring residents. This makes a certificate of customary ownership much easier and

significantly less expensive to obtain than a leasehold or freehold title. However, according to district level key informants the process is much slower and less clear to the District Land Boards who are charged with the responsibility of granting a certificate.¹ This indirectly can give an advantage to private landholders who may be trying to obtain the same land.

The drive to create the CLAs came out of a desire to protect a basic resource that the entire community relies upon, and previously under open-access was not protected. The CLA has complete ownership and management rights over the land rather than to an individual, under oversight of the Forestry Authority and even the Minister of Lands. In this way, the forest resource can be protected for long-term usage by the community. Assuming the democratic structure and community participation is maintained, the executive committee of the CLA will be able to hold and manage the forest in trust for the community. Out of the six communities visited, only one of the temporary executive committees had not sufficiently conceptualized how they planned to control the resource in relation to the entire community; that executive committee considered the possibility of using their power unanimously. There was little concern within the community of loss of individual rights for the good of preserving the resource. None of the communities expressed concern with vesting management in the executive of the CLA, and the communities interviewed felt the executive would administer the resource fairly.

The Land Act prescribes the registration of the CLA membership, which is any group of users involved in the management of the resource. According to BUCODO, the method in which the Budongo CLAs are being established automatically includes all permanent residents of the village. This is, by definition, an inclusive method, but at the same time assumes an authority that may prevent dissent.

In the two case studies of conflicts, the individual violators of the CLA's presumed boundaries felt as if they were powerless against the CLA. In discussions with district level key informants, the leaders cited "rules are rules." Not only does the drive for conservation of the forest seem to be the rule, those in conflict felt they had few means to negotiate. However, according to BUCODO, for one of the two conflict sites visited, the CLA had engaged in dialogue and consequently reduced the requested riparian buffer (and increased the land allowed to the farmer). This farmer felt that "those

BUCODO people ate my land," but was also quick to offer reconciliation by desiring to be a member of the CLA and help protect the forest.

Figure 2: Case study of Motokayi Forest, Nabyeya Parish

Interview with Household affected by Adjudication of Boundaries
1. DM, Male-69 years, household of 7

Perspectives on Boundary Demarcation

Feels that the demarcation was not fair, claimed, "the BUCODO people ate off a chunk of my land."

DM did not appreciate protection of the forest by the CLA, but only viewed their activities in terms of his having lost part of his land. As to whether he would seek recourse, he claimed he was old and wanted peace.

It was clarified from the BUCODO field officer that the buffer zone was supposed to be 50 meters from the boundary of the forest, but it was negotiated before demarcation to 18 meters, but still DM felt it was unfair.

A neighbor to DM had uprooted the boundary mark and gone ahead to cultivate in the buffer zone.

Asked how he came to settle in the area, DM could not give a clear answer.

DM attributed the increasing destruction of forests to the need for fertile land to grow tobacco and also to the need for timber for tobacco barns. He however expressed interest in joining the CLA claiming that since he is adjacent to the forest he would be in the best position to protect it.

According to the district level leadership, the CLA is an appropriate form of management because it provides the communities with a sense of ownership. Without community ownership the main management and conservation mechanisms are the laws, which independently are costly and difficult to enforce. Natural resource management must be dynamic, and the CLA model provides very well for this need.

3.7.1 Inventive Tenure Issues in the CLA Areas

There are novel land and resource tenure dynamics emerging in the CLA areas of Budongo. In Ewafala, where the forest was nearly depleted, the communities want the land to be owned communally but trees to be owned by individual households. Others in the same community want the bounds of

the forest to be extended to their own land where they own both the land and the forest developed thereon. They feel better protection will be accorded this way.

On Kimanya hill, a community forest is to be established for commercial reasons, which is an equally novel idea. The desire is to own land communally, but households be allocated plots for tree planting and management. The community claimed that the pine trees to be planted require significant care and are prone to bush fires so a common management scheme provides security; in addition, they felt the issues of benefit sharing will be solved through this individualized approach.

The character of boundary demarcation for most of the community forests currently envisaged is also unique. The community forest will have a boundary marked by two lines, three meters apart. The inner line to the forest planted by the CLA will be of indigenous tree species while adjacent landowners will plant the second line with any tree species of choice, though it was indicated that the preference is Eucalyptus.

According to district level key informants, there is strong community interest for land remaining collective. There are local experiences where individuals acquired individual land tenure rights on forested land and communities lost resource tenure rights. The cases in point are Rwangara forest in Nyantonzi where people even lost access for collecting fuel wood, and Karongo-Kanyege forest where the forest is being replaced by an out-grower sugarcane plantation.

3.8 Constraints and Challenges to the CLA

The CLAs and BUCODO's effort should both be contented and concerned that the communities' primary problem, the lack of a District Registrar of Titles, is an external issue. The move to develop the CLAs has obviously made much progress, and has created the framework for significant organizations. It is regrettable that an external factor holds the CLAs in limbo, yet it also allows the CLAs to shift attention away from internal challenges they are facing. Granted, without title and thus legal boundaries, CLAs do not have the legal power to protect their land, but it is surprising that they have considered very little about their regulatory framework.

Discussions with the District Forest Officer revealed that some of the potential

areas for the CLA community forests are also being sought after by private landholders. As is discussed, the legal form of tenure designated for CLAs, Customary Tenure, can place difficulties upon the CLAs as much as it can provide opportunities.

The District Registrar of Titles is necessary for the official registration of the CLAs, and according to legislation, the Registrar of Titles should play a role in helping the CLAs develop their constitution. However, it is unrealistic for a single position to be able to adequately consult and advise the 60 pilot sites in a single sub-county, or the potential hundreds in an entire district. Due to this reality, the CLAs should presumably do much of the development of their own constitution even before a District Registrar is found.

To accomplish such goals, the CLAs must have the capacity to do the work necessary, including understanding the precepts of the constitution and even having ample logistical necessities to operate. This capacity will have to partially be built by external facilitators such as BUCODO, but it is problematic to expect BUCODO to be able to provide the CLAs with full support, financial and otherwise, for their operations. Some of the CLAs' goals and expectations are loftier than others, but in the current state they do not seem to have the capacity to meet them. The appropriate actors need to be encouraged to solve the external problems, specifically the vacancy for the District Registrar of Titles, but this should not be reason for the CLAs to delay the rest of the internal process.

Limited capacity building has been undertaken thus far to assist the emerging CLAs in management of the forest resources. Apart from the general sensitisation that was undertaken in the course of mobilisation for this initiative, only Village Forest Advisors (VFAs) have received a two-week capacity building course. The VFAs are community workers trained in the management of forests. The VFA training focused on introducing the policies and legal frameworks governing forests and land. In two of the communities visited (Ongo and Ewafala) the trained VFAs were hesitant to admit they had gone through such training and were unable to clearly describe the extent to which they were trained. From those that were able to describe their training, it seemed the information was important and empowering for these individuals in their roles, though the extent to which they were able to transfer this knowledge to the larger community varied. This could relate to the extent of development of the CLA itself, though it is clear huge amounts more

capacity building is needed, not only in organizational management and technical forestry issues, but even work to increase civic participation of individuals.

Boundary disputes or concerns play a significant role in most of the CLA forests, and despite not yet having legal tenure; the communities have intentionally integrated the tentative CLAs with the LC system. Previous to the CLAs, the LC had some level of obligation to protect the forest, and in the current situation can continue to fulfil that role. At least one of the CLAs visited knew of current illegal pit-sawing that was occurring, but no actions were being taken to stop this. The level of dialogue with opponents or violators of the community boundaries did not seem to be adequate, based upon two case studies where the violators felt as if they were being wronged by these organizations and even the facilitator, BUCODO. It is imperative for the future of the CLAs that their forest boundaries are respected; this includes establishing legal boundaries as soon as possible, but also necessitates protection of the forest until then.

The CLAs studied have developed a sense of ownership for their forests, but until they are empowered to fully own and manage them, they do not have true tenancy over the forest resource. While legal recognition plays a very significant role in this empowerment, the communities must also be able to independently identify the management needs and goals of their forest, and with the help of other actors, devise both a constitution and management plan.

4. CONCLUSIONS AND RECOMMENDATIONS

The CLAs of Budongo are the first such institutions in Uganda as provided for under the Land Act and are thus likely to be studied intensively as they develop. Based on the progression up to now, the CLAs have great potential. From this process, there are many lessons that can be implemented in the formation of CLAs elsewhere. Time will tell if the CLAs are successful management organizations, meeting both the needs of the community while also managing the resource for sustainable use, but the Budongo CLAs are an indication that this innovative form of management will serve Uganda and its people well.

4.1 Confronting the Weaknesses of the Budongo CLAs

The CLAs are still developing, and also awaiting the formalization process with the current absence of a District Register of Titles. Apart from this concern, there are a number of internal issues that must be considered for successful formation of the CLAs to be possible.

4.1.1 Challenges of Democratic Development

The level of sensitization also plays into the extent of democratic operation. Learning to operate a democratic institution is a constant and dynamic learning process at any level, and the same holds for the CLAs. The limited development of a management framework is also reflective of the limited institutional development. Each of the CLAs had commitments to pro-active processes towards gender issues, ensuring at least one third of the CLA executive was composed of women. This wasn't the reality for all of the CLAs, and this is one example of an element of democratic participation that should be improved.

The large involvement of the local government structure in the current CLAs has potential to be detrimental to the process of creating an organization that truly represents the community and democratically provides for their needs and protects their rights. This concern must be directly and transparently approached so that communities can take advantages of involving the LCs while still preserving the democratic nature of their organization. One national level key informant said that "LCs have no place in the management of the CLAs;" this concern must be followed up by involved actors and the communities themselves. As this structure stands right now, the communities and the actors must be prepared to develop new leadership to replace the 60% of the committee that will theoretically leave once the CLAs formalize.

The limited development of a management framework indicates a need for more empowerment of these pilot CLAs to make their own decisions on how to manage their resource. The communities must not only be able to take on the powers of running a CLA but also the responsibilities. BUCODO is successful thus far in sensitizing the communities on such issues and must continue to be vigilant in their development of community participation and decision making.

Based on the communities responses, there is still a significant need for general sensitization of communities on CLA operations, the distribution of rights both individual and communal, basic principles of organisational development and governance, records management, information sharing and networking, participatory planning and decision making processes, integration of indigenous knowledge and development of forest management plans. BUCODO is rightfully pursuing capturing indigenous knowledge and helping the communities, particularly the VFAs, have to learn how to reapply it. The limited amount of capacity building has been productive, and the discrete amount cannot be blamed on any one actor; as one national key informant pointed out, "capacity building is expensive." Capacity building is also a constant process; capacity issues cannot be solved in a single workshop. Both the leaders and the needs of the CLAs will change and the appropriate actors need to be dynamic and ready to respond to such capacity needs.

4.1.2 Protecting the Resource

Most of the CLA forests are experiencing severe degradation and abuse, so issues of ecological conservation are certainly secondary. Currently the CLAs do not have the legal power to patrol their forest yet daily both the resource and the land are being robbed from the community. As none of the CLAs are official, the true ability of these CLAs to effectively and legally control their resource is unclear, but given the local and national support, it seems likely that once they are official they will have the power available to protect the resource. Priority must be put on establishing protective powers by the CLA and stopping the destruction of the resource now.

4.2 Drawing on the Strengths of the Budongo CLAs

The greatest strength of the fledgling CLAs is the enthusiasm of the communities to the idea. This is indicative of the value of the idea, successful sensitization by BUCODO, and the seriousness of the communities concerns

for their forest resource. The value of community based management seems to be very clear in Budongo.

4.2.1 Strong Involvement of Civil Society

One of the major sources of strength of the CLAs is the accomplished CSO, BUCODO, working with the communities to develop these organizations. They were integral in bringing the concept of CLAs as Community Forests to national attention in Uganda and have maintained that role as an innovative leader with the CLAs. BUCODO seems to be developing the CLAs with a holistic approach from the technical aspects to the aspects of civil engagement. Unlike processes, the replication of a strong and dynamic grassroots CSO to another area is something that can't easily be intentionally formed, for while government and national CSOs can provide capacity building and leadership training, there must already be energy and desire for such a local CSO to form.

There are some risks to having such high levels of involvement by an actor external to the community, as it could theoretically cause the communities to be overly dependant on the outside guidance, restricting internal leadership development and developing an organization to truly meet community needs. All participating actors in the development process of the CLAs should be conscious of this issue.

As is noted, BUCODO has been central throughout the formation process of the CLAs thus far. It also is unlikely that these needs could be fulfilled just by local and regional government, as their obligations include far more than just the establishment of CLAs. However, the dependence on CSOs is not a negative element as CLAs are community driven processes and naturally should be involved with other community organizations. The difficulty is finding a BUCODO for every area that is to develop CLAs.

4.2.2 Value of Participatory Processes

The Kimanya Hill Community cited positive examples of CLAs elsewhere in the area as one of the reasons for their desire to develop the idea. According to multiple district level key informants, communities elsewhere have requested or expressed desire for aid in forming a CLA. The executive secretary of BUCODO said that they are often approached by communities who want to form their own CLA to protect their local resource. This is suggestive of the community-level sensitization approach, and also represents

a desire by the communities to take control of their local resources. CLAs are by definition community-driven organizations; it is necessary the sensitization and formation process involves and empowers the community.

There is not only a need for protection of the forests but there is also a need for greater protection and recognition of individual rights of those within and out of the community that dissent to the idea of the CLA. BUCODO seems to have done a good job thus far communicating with individuals in conflict, but the communities and CLA themselves must be able to approach and deal with these issues. For example, BUCODO has facilitated discussions between the CLAs and others bordering the forest on determining boundary issues, and encouraged compromises. This process is good, though the best situation is as in one of the case studies where the individual was willing to become a member of the CLA himself. If the boundaries of the community forests are not ascertained fairly, the CLA will almost certainly face conflict later on.

This issue relates to concern over the involvement of LCs, who as individuals who have the power to intervene and resolve in some land disputes should not be involved with the management of the CLAs, though they of course can and should be members. The CLAs also need to have their own integral conflict resolution methods, but they also must interact well with other community and district-level conflict resolution mechanisms.

4.3 Needs for Further Study

This study did not investigate the ecological sustainability of the CLA management regime of the community forests outside of the perception of the communities and the assumption that for any management regime to be sustainable ecologically, it must first be sustainable democratically and institutionally. However, the ecological impact of the CLAs as they start operating officially should be explored. In these cases, the central premise of the CLA is sustainable management and use, not conservation. Conservation areas are not a priority for marginalized communities that are facing livelihood challenges, e.g. food production. Which tenure system is best suited for conservation or sustainable use? How do you find the appropriate balance between development and conservation? Such concerns must be considered in the promotion of this form of management.

As the development of the CLAs progresses, an in-depth study should also

investigate the strength of the national and local laws in fulfilling the needs of the CLAs. This is of course constantly done by the Ministry and other affiliated government agencies, but should also be pursued by external civil society actors. Does the law grant adequate powers to the CLAs? Does it also protect the rights of those around the CLA? Do the CLAs face competition from private landholders in gaining rights to the forests? How well does the creation of CLAs fit into the Systematic Demarcation process as it expands to more districts?

Given the concerns about the democratic development of these organizations, the completeness of the expected changes and reforms to the structures should be investigated and completion of organizational development encouraged. Has participation of women continued to be encouraged? Are the organizations meeting the needs of the entire community? These issues must be considered throughout the process to create a successful and sustainable management structure.

4.4 Integral Theoretical Needs of the CLAs

As cited in international examples of the final section¹, from India's long experience with community forests, Nayak² creates a list of essential needs of community forest organization. From that list, four seem especially pertinent for the community forests of Uganda: there is significant monitoring and sanctions for rule breakers; there are mechanisms for conflict management; the organization should be a locally designed organization; and that there is an independent rule making system. On these last two, the means to reach such a community-centred democratic organization should be emphasized: proper civic education and empowerment.

Of course it is important for a District Registrar of Titles to be found and CLAs formalized, but there are many other steps still to be taken before completion of this process. The national government and other participating agencies should be commended for their innovative development of this form of resource management, and the local CSO, BUCODO has done a tremendous job thus far sensitizing the communities and helping them establish the CLAs. However, just as a district level key informant noted that good resource management must be a dynamic system, so must the creation of these CLAs. Energy, support, and constant analysis must continue to be part of this process for the success of the CLAs and consequently, the development of the community.

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ENDNOTES

¹ Liz Wily and Sue Mbaya, *Land, People and Forests*, (IUCN: 2001) p23.

² *The 1975 Land Decree of Uganda*

³ *National Forest Policy 2001, Ministry of Water, Lands, and Environment (MWLE). Republic of Uganda*

⁴ *The National Forest Plan 2002, MWLE, Republic of Uganda, p4*

⁵ *National Forests and Tree Planting Act 2003 and the National Forest Policy*

⁶ *The Land Act 1998 (cap 227) of Uganda*

⁷ *Ibid.*

⁸ *Forest Plan, p41.*

⁹ *Land Act, Sec. 3.*

¹⁰ *Ibid, Section 16 (1).*

¹¹ C.B. McPherson, Ed. *Property: Mainstream and Critical Positions*, Toronto University Press: Toronto, 1978) p58.

¹² Bryan Radolf Bruns and Ruth S. Meinzen-Dick, Eds. *Negotiating Water Rights*, (International Food Policy Research Institute, Vistaar Publications: New Delhi, 2000) p 28.

¹³ Abwoli Y. Banana & P.G Turiho-Habwe, "Participation in Use and Management of Forest Resources in Uganda", in Clark Gibson, Abwooli Y. Banana, and John Ntambirweki, *Common Property Resources Management in East Africa* (Makerere Institute of Social Research: Kampala, 1996) p143.

¹⁴*Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Arthur Okoth-Owiro and Calestous Juma, "Property Rights, Medicinal plants and Indigenous Knowledge" in Calestous Juma and J.B Ojwang, eds. *In Land We Trust: Environment, Private Property and Constitutional Change* (Initiatives Publishers: Nairobi, 1996) p286.

¹⁸ Owen J. Lynch and Kirk Talbott, *Balancing Acts: Community-based Forests Management and National Law in Asia and the Pacific* (World Resources Institute: 1995) p24

¹⁹ *Ibid.*

²⁰ Alison Field-Juma, "Governance and Sustainable Development" in Juma and Ojwang, *In Land We Trust*, p18.

²¹ *Ibid.* p23.

²² John Ntambirweki "African Customary Law, Common Property, and Enhancing Environmental Law in Uganda" in Stephano Nesper, ed., *A World Survey of Environmental Law, 1986-1996*, *Rivista Guiridica Dell' Ambeitte*, p595.

²³ Alison Field-Juma, "Governance," p18.

²⁴ *Ibid.* p33.

²⁵ Lynch, O.J, and J.B. Alcorn. 1994 "Tenurial Rights and Community-based Conservation." in Juma and Ojwang, *In Land We Trust*, p94.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Keijiro Otsuka and Frank Place, ed., (2001) *Land Tenure and Natural Resource Management: A Comparative Study of Agrarian Communities in Asia and Africa*, (Review).

²⁹ Catherine M. Tucker, "Private Versus Common Property Forests: Forest Conditions and Tenure in a Honduran Community," *Human Ecology* 27 (1999) Iss. 2: p201.

³⁰ Allison Goebel, "Then it's clear who owns the trees: common property and private

control in the social forest in a Zimbabwean Resettlement Area," *Rural Sociology* 64 (1999) Iss. 4: p624.

³¹ Nayak, "Community-based Forest Management in India," p16.

³² F. Karanja, Y. Tessema and E. Barrow, "Equity in the Loita/Purko Naimina Enkiyio Forest in Kenya: Securing Maasai Rights and Responsibilities for the Forest." IUCN Eastern Africa Programme: *Forest and Social Perspectives in Conservation* (2002) Iss. 11.

³³ Su Yufang, "Building Collective Tenure for Sustainable Forest Management in a Multi-ethnic community: A Case Study in Taohua Administrative Village of Lijiang, Yunnan Province, China."

³⁴ Nayak, "Community-based Forest Management in India."

³⁵ Tucker, "Private Versus Common Property Forests, p201.

³⁶ Margaret Rugadya and Harriet Busingye, "Gender Perspectives in the Land Reform Process in Uganda," *Uganda Land Alliance* 2002.

³⁷ Godber W. Tumushabe, "Fisheries Resources Management in Uganda" in H.W.O. Okoth-Ogendo and Godber W. Tumushabe, eds. *Governing the Environment*, ACTS, Nairobi, 1999 p243.

³⁸ Bruns and. Meinzen-Dick, *Negotiating Water Rights*, p28.

³⁹ See Annex B.

⁴⁰ See Annex C.

⁴¹ BUCODO.

⁴² 2002 Census, Uganda Bureau of Statistics.

⁴³ Krassowska was then a Masters Student, doing a thesis on the theme *Community Management of Private and Customary Forests*; 6th September 2002. Through her work she brought the innovation of applying CLA in forestry to the attention of the Secretariat.

⁴⁴ Refer to Table 3.1 Column 2: Origins

⁴⁵ An earlier study conducted by the Uganda Land Alliance (Kellen Namusisi, "Monitoring the Implementation of The Land Act: A Perspective of Five District Land Boards in Eastern Uganda," 2002) found that there are significant capacity weaknesses in the current DLB operations with regard to interpreting the Land Act.

⁴⁶ See Section 5, p25.

⁴⁷ Prateep Nayak (2002). "Community-based Forest Management in India: The issue of tenurial significance. 9th Biennial Conference of the International Association for the Study of Common Property.