

**THE ANALYSIS OF THE EFFECT OF FORCED DISPLACEMENT
OF INTERNALLY DISPLACED PERSONS: CASE
STUDY NORTHERN UGANDA**

BY

**MAJONG KAU DUT
LLB/11752/71/DF**

SUPERVISOR: ANNETTE KARUNGI MUTABINGWA (MRS)

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DECLARATION

I Majong Kau Dut, hereby declare that this dissertation is original and has neither been submitted nor is it being currently submitted for a degree in any other University, college or any educational institution for the purpose of meeting any academic requirement. I also declare that any secondary information used has been duly acknowledged in this dissertation

Student: Majong Kau Dut

Signature: .....

Date: 05/05/09.....

Supervisor: Annette Karungi Mutabingwa (Mrs)

Signature: .....

Date: 5/5/2011.....

DEDICATION

First and foremost; To my father, Kau Dut for the tireless efforts he has made to see me through school; Thank you Dad, I made it; To my ever loving mother Nyanwaal Manguen who has always been there to cheer me on even when I slipped and feel down; to my brothers Warkou, Magok, Monyrel, and my only two sisters Ayol and Yar who always believed in me; and to my Aunt Achot for all the encouragement.

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Last but not least, to all those not mentioned above but contributed a thing or two to the success of this dissertation, I am truly grateful.

LIST OF STATUTES

Regional instruments

- Convention Governing the specific Aspects of Refugee Problems in Africa (OAU refugee Convention, 1969)
- African (Banjul) Charter on Human and People's Rights (1981)
- Protocol to the African Charter on Human and people's Rights on the Right's of Women in Africa (1995)
- African Charter on the Rights and Welfare of the Child (1990)

National law and policy

- Control of Alien Refugees Act (1960)
- Amnesty Act Cap 294
- The Constitution of the Republic of Uganda (1995)
- The Refugees Bill (Draft) (2003)
- National Policy for IDPs-(2004)

Other Relevant Documents

- Universal Declaration of Human Rights (1948)
- The Addis Ababa Document of Refugees and Forced Population Displacements in Africa (1994)
- Guiding Principles on Internal Displacement (1998)
- Rome Statute (1998)
- Cartagena Declaration on Refugees (1984)

LIST OF ACRONYMS

AI:	Amnesty International
ADF:	Allied Democratic Forces
CAO:	Chief Administrative Officer
CADER:	Centre For Arbitration and Dispute Resolution
CDMR:	Commissioner for Disaster Management and Refuges
CSO:	Civil Society Organization
CSOPNU:	Civil Society Organization for Peace in Northern Uganda
CLA:	Communal Land Associations
DANIDA:	Danish Agency for International Development Assistance
DDMC:	District Disaster Management Committee
DDPR:	Department of Disaster Preparedness and Refugees
DISO:	District Internal Security Organization
DRC:	Democratic Republic of Congo (Formerly Zaire)
DSS:	Department of Safety and Security
GoU:	Government of Uganda
GUSCO:	Gulu Save our Children
HRW:	Human Rights Watch
HRPPSC:	Human Rights Protection and Promotion Sub- Committee
HURIPEC:	Human Rights and Peace Centre
HURIFO:	Human Rights Focus
IATC:	Inter- Agency Technical Committee
ICC:	International Criminal Court
ICRC:	International Committee of the Red Cross
IDP:	Internally Displaced Persons
IRIN:	Integrated Regional Information Network
IMPC:	Inter-Ministerial Policy Committee
IRC:	International Rescue Committee
LAP:	Local Administration Police
LC:	Local Council

LDU:	Local Defense Units
LDU:	Local Defense Unit
LRA:	Lord's Resistance Army
NGO:	Non- Governmental Organization
NRC:	Norwegian Refugee Council
OHCHR:	Office of the High Commissioner for Human Rights
OPM:	Office of the Prime Minister
PEAP:	Poverty Eradication Act Plan
PWG:	Protection Working Group
RDC:	Resident District Commissioner
RLP:	Refugee Law Project
RSG:	Representative of the United Nations Secretary- General on Internally Displaced persons
SCDMC:	Sub-County Disaster Management Committee
SGBV:	Sexual and Gender Based Violence
SPLA/M:	Sudan People's Liberation Army/ Movement
UNICEF:	United Nations Children's Fund
UNHCR:	United Nation's High Commissioner for Refugees
UNOCHA:	United Nations Office for the Coordination of Humanitarian Affairs
UHRC:	Uganda Human Rights Commission
Ug Sh:	Ugandan Shillings (approximately US\$1=Ug Sh 1800 as at December 2006)
UN:	United Nations
UNHCR:	United Nations High Commissioner for Refugees
UNICEF:	United Nation's Children's Fund
UNRF I/II:	Uganda National Rescue Front
UPDF:	Uganda People's Defense Forces
WFP:	World Food Programme

CHAPTER ONE

1.0 GENERAL INTRODUCTION

This is a research dissertation on the topic of “The Analysis of the Effect of Forced Displacement of Internally Displaced Persons.” It intends to analyze the issue of land policy in relation to the resettlement of IDPs in Northern Uganda and reintegration into the host communities.

Uganda suffers from three distinct crises of internal displacement¹ (south-western, northern and north-eastern border). However, the crises are interrelated. The influence of regional politics, the disadvantaged economic situation at the periphery of the country and certain historical patterns of abuse of civilian populations are common to all three of them. Conflict and violence have plagued much of Uganda since independence (1962). The most protracted of these conflicts has been the war in I am Uganda, largely in the Acholi region of Gulu, Pader and Kitgum.² The history of war in Northern Uganda is long and complicated, and its root causes are embedded in Uganda’s troubled past. The official starting point, however, is resistance in Northern Uganda to the overthrow of the Government of Tito Okello Lutwa by Museveni’s National Resistance Army in 1986. Since then, the war has undergone several transformations but it has almost exclusively been confined to the Acholi region i.e Gulu, Kitgum and Pader districts.³

¹ Displacement in Karamoja which closely entangled in a history of colonial and post colonial regressive policies and shrinking access to pasture and grazing land for cattle, forcing movements across the border into Turkana Land in Kenya and the resultant repercussions or counter attacks are not included in this review

² *Medicines’ Sans Frontier*, 2004, Life in Northern Uganda, All shades of Grief and Fear

³ Boas and Hatloy, 2005, The Northern Uganda TDP Profiling Study

For generations, the people of the northern region bordering the Sudan, notably the Acholi of the two largest districts Gulu and Kitgum, have had an adversarial relationship with the central powers in Uganda. Populations on both sides of the Sudanese border often have been used in attempts by the respective governments and their allies to destabilize each other. Forced displacement, both across borders and within, is thus a recurring historical phenomenon. Today a complex demographic patchwork exists in the north between Sudanese refugees, IDPs and local residents⁴ (many of whom had been living as refugees in the Sudan during the 80s).

This research paper intends to look at the impending issue of resettlement of former IDPs and how the GOU intends to deal with the issue of land distribution. Since August 30th 2004, the GOU embarked on an ambitious plan that intends to resettle former IDPs in Northern Uganda. The plan is designed to bolster police forces and local administrations, open emergency access roads, purchase 'resettlement kits, rejuvenate judicial services, and provide for the monitoring and mobilizing of IDPs returning to their homes⁵. This forms the basis of the research.

1.2 Background to the Study

Since 1986, Northern Uganda has been ravaged by war, which began with the Holy Spirit Movement of Alice Lakwena and its successor Lord's Resistance Army of Joseph Kony. Since 1996 attacks on civilians led to informal displacement. Actual massive

⁴ 178'000 refugees vs. 463'000 IDPs (September 2000, for the five districts of Adjumani, Arua, Gulu, Kitgum, Moyo)

⁵ Adapted from *The New Vision* Newspaper 3 1st August 2004

displacement of people began with the declaration of protected villages in 2002 when military launched “Operation Iron Fist” to starve Kony of collaborators and informers from communities. The conflict has lasted for over 20 years, and displaced an estimated 2 million people. The prospect of peace and security is now more in sight than ever before, whether people return and are able to reclaim their property is a key sign of peace and normality. In Teso region, resettlement has already happened, in Lango sub-region the process is picking momentum, while in Acholi land the current peace talks in Juba have brought the reality of return closer home⁶.

In all this, it is anticipated that given the centrality of land to livelihoods and poverty reduction, it will inevitably become a centre of dispute and controversy. 5% of Uganda’s population is displaced, 66% of the displaced are below poverty line. Since 1997, the poverty gap between war- affected areas (northern Uganda) and the rest of the country has been widening. In the Poverty Eradication Act Plan (PEAP 2004/08), GOU commits to two actions; finalizing the IDP policy (already done) and implementation of post-conflict plan that respects rights of IDPs - yet to be done, however it is also acknowledged that not all IDP concerns can be resolved through PEAP.

The National Policy on IDPs in Uganda, the first in Africa, aimed at integration and mainstreaming displacement issues in government planning and programming, is a positive response from the government of Uganda but is yet to deliver, because institutions or structures set under it are either under funded or un funded hence lack

⁶ Adapted from a report by the World Bank World Bank, 2003, [Online], [Accessed 21st January 2007], Millennium Development Goals, <www.deve/opinentgoal/s.orgALtout the goals htm>.

capacity and resources to perform. In terms of land issues, this policy fails to address the issue of those who may want to remain in the areas of displacement given the opportunities offered in the new location and advantages of urbanization rather than return home. The IDP policy is a classic case of a policy without legislation to enforce it.

Legislation on land is also short on how the emerging (statutory) institutions in postconflict northern Uganda, will integrate existing traditional ones that have been weakened by war and displacement, yet offer an option for amicable and reconciliatory ways of addressing land disputes and claims. Because within the traditional institutions dispute resolution is not about passing judgment but is a mediation process, within this is the whole question of compensation of communities and individuals who lost land to operations of war such as displacement camps or military operations. The constitutional dispensation in Uganda does not tackle displacement arising out of war (only that attributed to natural hazards), nor does it accord TDPs affirmative action as a marginalized group; however it protects the sanctity of private property and sets coalitions for dispossession which would serve well on matters of compensation in event of loss of rights or interests in land.

Customary tenure is the dominant land holding system for northern Uganda (covering over 90%) it comes with its attendant customary law for administration and dispute resolution, as well as institutions to enforce the customary norms and practices. In the review of various studies undertaken in Northern Uganda, it is acknowledged that glory of traditional institutions is long past in the wake of displacement and return; not only are

they weakened, grappling and struggling for survival, but majority of the custodians of their norms or practice have vanished with the war: living behind a legacy of unwritten folklore and norms to fight for survival against statutory law enforced by modern institutions entrenched in law and policy. Attempts have been made (unsuccessfully) in law to codify the incidents of customary tenure; its sets and subsets of secondary interests are not captured yet they are the source of claims / counter claims and disputes in post conflict situations. Legislation has gaps that must be dealt with for effective delivery of rights and administration on land.⁷

Where displacement has gone on for a long time, resettlement will be constrained by complexities and social frictions especially in circumstances where the elderly people have died and young or vulnerable claimants cannot adequately defend their land rights in their places of origin. The rights of vulnerable groups such as widows, children Persons Living with HIV/AIDS and Persons with Disability, are under threat by the powerful and well to do especially in the circumstances of weakened grassroots, governance or clan systems. Long periods of displacement will inevitably affect people's property rights; causing clashes and conflict. While the clan used to effectively control access to and occupation of arable land, on return from the camps, the clan authority will be disrupted and will not have the same authority, effective cohesion, power and instrumentality.

⁷ Adapted from Kigula John and Nuwagaba Augustus, The integration of traditional land administration Institutions in the Land Act and the management of common property Resources in Uganda: a study for the Ministry of Water, Lands and Environment , Reeve Consult International.

When responding to needs of institutional frameworks, in post conflict land administration, it will be important, that a blend where feasible be allowed to emerge, producing a system that embraces the traditional clan system, accords statutory powers and functions of modern institutions such as Local Councils or Area Land Committees to the emerging blend. This not only recognizes the new changes brought by war but also the fact that the erstwhile clan bonds and traditional land authority systems may be mal-functional or dysfunctional, despite the fact that it may still have measurable influence in relation to socio-cultural functions, though not as an authority system over land resource use. It is expected that on return, resettlement will not be based on clan loyalties; given 'a much younger generation and diminished clan authority.'⁸

It is also a fact that formal institutions for control and management of resources are ill-equipped and incapable of recognizing intricate needs of particular grassroots communities. On the one hand formal procedures are too involving and require literacy to be accessed and effectively used by the rights seeking public. On the other hand, the cultural context in Northern Uganda has invariably changed in irrevocable ways, since the establishment of camps and many ingrained norms of behavior have been destroyed. A number of threats to indigenous customary interests are evident (illegal occupation and logging by army, investors and government schemes) more so for the weak groups, fear of a scheme to grab Acholi land and land grabbing by neighbors and relatives is likely to intensify, the protection of the weak will decline. Risk of loss of land under

⁸ Margaret Rugadya, 'What went wrong?' Women's 'and rights not delivered in Uganda, Occasional paper, Associates for Development.

customary-tenure is high because of lack of documentation and distress sales due to poverty.

There is recognition that land in post-conflict is often tackled in an *ad hoc* manner rather than systematically using agreed guidelines and normative frameworks-policy. The relationship between land conflict and internal displacement is extraordinarily complex especially the cluster of secondary conflict which is an indirect result of primary conflict, these are exacerbated by: lack of a land policy, a dysfunctional land administration system and land grabbing invasions. Henceforth, land is a critical element in peace building and economic reconstruction in post conflict situations; relevant issues must be understood and given appropriate priority for stabilization. In re-building functioning land administration systems, one of the main challenges to create institutions that meet claims for property restitution (from returning people, acquired un displacement and those that lost land), and the establishment of certainty of such claims. Insecurity arises when there are competing claims over the same piece of land (uncertainties, inequalities and disputes often arise), these are recognized as grievances. Competing claims are often characterized by a degree of conflict supported by government or perceived to support one claim over another. Disputes also arise when other individuals occupy properties of returning populations.

In post conflict land policy three factors are of importance: tenure security, access and unequal distribution. Tenure insecurity is often addressed through clarifications, titling and registration initiatives, sometimes initiatives to demarcate and record tenure rights

without granting title can improve security of tenure for customary and indigenous rights holders. Such approaches need to incorporate dispute mitigation and consensus-building measures. The nature of mediation and dispute resolution mechanisms are important. Experience has shown that many types of land disputes are best managed outside courts; since court's capacity to process claims efficiently and transparently is often constrained (mediation and arbitration are particularly useful in customary and community based mechanisms). Investment in agricultural infrastructure, technical assistance and creation of markets can compliment land policy approaches. Lack of knowledge on law and options available for redress creates tensions. Activities that focus primarily on strengthening the justice system and rule of law are relevant.

1.3 Statement of the Problem

The questions that this study intends to have addressed then revolve around whether Northern Uganda needs peculiar land law and policy, recognizing special effects of war and displacement or affirmative action. How to streamline statutory and customary systems in land policy; How to allow emergence of dispute resolution based on mediation and close gap left by inefficiency of the tribunals. Modification may be necessary to effectively deliver land administration functions clarifications, titling and registration initiatives, or demarcation and recording of tenure rights.

Different options and frameworks will be suggested or will emerge in consultation with displaced communities in northern Uganda, the determinant factors will be capacity,

resources and appropriateness of the systems or options evolved in address the land needs on return and resettlement.

1.4 Scope of the Study

My study will cover the areas of Kitgum, Gulu, Pader, and Adjumani. The period of study is between 2005 to 2010; the period during which the GOU started the resettlement of former IDPs.

1.5 Definition of Key Terms

Internally Displaced Person (IDP): someone who has been forced to leave their home for reasons such as religious or political persecution or war, but has not crossed an international border;

Protected Villages: Areas/Camps set aside by the GoU for I DPs to stay during the duration of the Northern conflict;

Host Communities: Communities where the IDP protected camps were situated;

Policy: States' and customary authorities' intentions on land tenure, land use and land administration;

Reform: Major changes in the legal and institutional framework governing land tenure. This includes state-led, market-oriented or hybrid models of land reforms.

1.6 Objectives of the Study

The main objective of this study is to make a case for adequate distribution of land during the resettlement and reintegration of former IDPs as the most viable option for the protection of former IDPs in Uganda.

Other objectives include:

- I. To at look at the steps that the, government is taking in trying to resettle these former IDPs and reintegrate them as well as the problems and hindrances that these efforts are of facing.
- II. To establish whether the issue of Land that was previously owned by the former IDPs is properly dealt with.
- III. To demonstrate that the Ugandan government have largely failed to resettle former IDPs.
- IV. To asses the adequacy of the existing international legal regime in the protection of former IDPs.

1.7 Literature Review

Due to the scale of the problem, the international protection of IDPs is an issue that has of recent drawn the attention of many writers. Uganda and Sudan in particular have been the focus of many writers, however much of the writings have taken the form of reports, with no emphasis on international human rights protection as the way forward. Nevertheless, available literature on internal displacement as a whole cannot completely be ignored if a meaningful study of the problem of IDPs in Uganda is to be made. Hence following is a study of some of there viewed literature.

Francis Mading Deng makes a very important contribution to the study of internal displacement in the form of Guiding Principles on Internal Displacement (1998),’ which apart from being the most comprehensive document on the normative framework on internal displacement provide the definition of IDPs as seen earlier.⁹

Roberta Cohen is of the view that though not a legally binding document. The Guiding Principles reflect and are consistent with existing international human rights and humanitarian law, and that in restating existing norms; they also seek to address grey areas and gaps.¹⁰

Walter Kahn argues first that, the preparation of a treaty or even a General Assembly Declaration would not have been a realistic option when it came to protecting IDPs, Second, that despite their non-binding character, the Guiding Principles are not without legal significance.¹¹

Cohen and Deng together provide a comprehensive analysis of the causes, and consequences of internal displacement, and the current legal and institutional framework for addressing the problem of internal displacement. While discussing the legal framework, they particularly point to that although IDPs are entitled to the protection provided by international human rights and Humanitarian law, it is often difficult for governments, organisations and the displaced themselves to identify’ the guarantees that apply in specific situations. Most importantly, the study defines

⁹ http://en.wikipedia.org/wiki/Internally_displaced_person

¹⁰ CSOPNU, December 2004. p1 Land Matters, CSOPNU December 2004. P.6. “No where to hide”; HRW, September 2005. P.10

¹¹ CSOPNU, December 2004, p.0, “Nowhere to hide”

“Protection” to mean taking measures to ensure respect for the basic human rights of the IDPs, particularly their safety and dignity.¹²

Oloka Onyango also recognizes that internal displacement has for long been an issue of particular conceptual and practical difficulty for the international community. He adds that in the African context, when married to the serious issues of human rights violations, state sovereignty and the process of nation state transformation, the issue gains in magnitude.¹³ However his article concentrates on internally displaced women, though in the African context.

Since 30 October 2005 the government has taken bold steps aimed at trying to resettle the former IDPs. A report by Reuters stated that Ugandan President Yoweri Museveni declared that all internally displaced persons (IDPs) in Northern Uganda would return home by 31 December, and that all IDP camps would be closed. Twenty-nine resettlement officers had been recruited, Museveni said, and money had been set aside for resettlement costs. The government also asked the **UN High Commissioner for Refugees (UNHCR)** to assist in planning for return. UNHCR agreed to conduct joint security assessments and to provide motorbikes and fuel to begin local assessments, with the understanding that freedom of movement would be respected and that all return would be voluntary, following these assessments, the government was expected to designate areas where security could be provided to returnees.

¹² CSOPNU. December 2004, p.2, “**Nowhere to hide**”; PIP, December 2004, p.25

¹³

A report by the **Office of the Prime Minister** states Uganda as one of the first few countries in the world to institute a National Policy specifically targeted at Internally Displaced Persons. This is an integral tool in efforts to tackle the varied and devastating effects of displacement. It seeks to establish principles which will serve as a guide to Government institutions, humanitarian and development agencies while providing assistance and protection to IDPs in Uganda. This will then ensure that the various needs of the internally displaced are addressed in a significant and effective manner and that IDPs shall enjoy the same rights and freedoms under the Constitution and all other laws, as do all other persons in Uganda'¹⁴.

However while the formulation of the National Policy is a significant step forward, its benefits will only be achieved by its successful implementation and its ability to make a real and meaningful impact on the many men, women and children who are currently displaced¹⁵.

Within the Land sector, Land Sector Strategic Plan 2001-2011: which was never designed to address IDPs needs avails opportunities by embracing the framework for decentralized land administration and dispute resolution hinging upon devolution of power and enabling communities to participate in policy processes especially the

¹⁴Adapted from Operationalising the National Policy for IDPS; report prepared by the office of the prime minister department of disaster management and the refugees.

¹⁵ A major benefit of current policy is that it provides a clear structure and operationalising process for implementing its objectives and achieving its aims. Rather than constructing alternate mechanisms, the National Policy seeks to draw on existing agencies and resources and coordinate and integrate their efforts. It establishes an institutional framework that draws together the various relevant actors at all levels of government and promotes cooperation and a concerted approach. The Policy also both clearly and comprehensively, details and delineates the responsibilities and obligations charged to relevant stakeholders.

formulation of the National Land Policy for Uganda. Currently at draft level, the National Land Policy principles recognize the need to place the land sector at its appropriate macro and micro economic level allowing for the separation of the function of land ownership, land use planning and land development. Within this the rights of IDPs to land are recognized as a factor that contributes to abandonment of production activities hence, a worsening poverty situation for the displaced population in Northern Uganda. This raises the need to restore stability in land relations and the resumption of livelihood activities, which the land policy can make better or worse, particularly the safeguarding of customary rights, law and institutions on land.

John Kigula and Augustus Nuwagabu assert that the formal procedure concerning the formation is operations of the Communal Land Associations which were under **Sec. 15 Land Act** have not been embraced except in isolated cases in Masindi but not for the rest of Northern Uganda. These procedures are too involving, and require a reasonable degree of literacy and “external” assistance in terms of provision of information and guidance. Thus, the CLA provisions of the law have not been taken advantage of virtually anywhere in the country.

1.8 Hypothesis

In writing this dissertation; the following assumptions have been proposed namely, that: -
The GoU is not doing enough to prevent the continued abuse of land rights of the IDPs by both the state and other groups such as the LRA, UPDF and INGOS:
The role of the International community and other humanitarian agencies is at crossroads

because of the different approaches and agendas in ending the conflict; The involvement of the ICC has thrown the peace talks into confusion and disarray and as such contributed to the problem of resettlement.

1.9 Justification

The study is aimed at contributing to the IDP crisis in Uganda which is seemingly forgotten. I say ‘forgotten’ because little is known of this crisis to the outside world. The study intends to help the general public, the GoU as well as International state actors to understand the effect of displacement on the persons affected and the importance of peaceful resettlement and equitable distribution of land resources.

Suffice to note here, is that the IDPs face resentment as well having to grapple with the effects of conflict and a host of other human rights abuses and it is only right that to end the trauma they peacefully resettled.

The study also intends to expose the ineptness of the structures put in place that are expected to help in the reintegration of IDPs. The government, policy on IDPs will be analyzed vis-à-vis the ‘actual situation on the ground. The study is intended to help the government to help realize the importance of dealing with the situation of landlessness as well the impact it has on the International level.

1.10 Chapterization

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

Chapter One contains the general introduction, which will incorporate the background, problem statement, objectives, hypothesis, literature review, limitations and methodology used for the study.

Chapter Two gives an overview of the legal framework and policy that govern land use and ownership in Uganda today. It involves an analysis of the legal regime on IDPs like the Poverty Eradication Plan (PEAP). The chapter also explores the existing legal provisions in the 1995 Uganda Constitution and the **Land Act Cap.227** on Land administration and adjudication, the Draft National Policy, the National Policy for IDPs (which is incidentally, a first in Africa) that seeks to ensure that former IDPs can also enjoy the same rights and freedoms under the constitution like other Ugandans.

Chapter Three contains an appraisal of the studies undertaken in Uganda on land matters and displacement or post conflict land administration. It highlights the policy issues and recommendations proposed under each of the studies as well as the ‘and administration issues that are of relevance in assessing means and ways of delivering land justice in post conflict situations.

Chapter Four gives short and long term recommendations on the way forward for the issue of land distribution drawing experiences from other countries that have had to deal with resettlement of former IDPs. This chapter will explore the prospects of access to land, security and distribution of land among other pertinent issues. Countries in focus within the Great Lakes region will include Rwanda Burundi and the DRC, Key insights

and lessons to be learned from these countries will be addressed and those viable options will be recommended.

Chapter Five contains the conclusions of the study, based on the research findings.

1.11 Research Methodology

Heavy reliance has been placed on the library and desk research methodology in accomplishing this study. This' has entailed use of primary and secondary sources of information. The primary sources include international conventions and other instruments relevant to IDPs, where as the secondary sources include textbooks, journals, available statistics on IDPs and Internet research.

1.12 Anticipated Constraints and Ethical Considerations

I expect to experience sore problems in accessing information since the issue is politically sensitive.

b) The study of the human rights protection and resettlement of IDPs is a very wide and current one encompassing a wide range of issues that would require extensive research and analysis, which could not be done due to the limitation in the number of words for the dissertation. Therefore the study only highlights the most important issues on the need for international human rights protection for the IDPs without exhausting all the details.

CHAPTER TWO

POLICY AND LAWS ON IDPS AND LAND IN UGANDA

2.1 Introduction

The centrality of land in the country's political economy is supported by a complex legal profile consists of an elaborate constitutional dispensation as well as a comprehensive regulatory work.¹⁶ This chapter reviews relevant existing legal and policy provisions on displacement and issues in Uganda, pointing out the inadequacies and gaps that will have to be addressed for effective post conflict policy and land administration in Northern Uganda.

Uganda's legislation is both varied and specialized. **Article 274** of the 1995 Uganda Constitution J defines the sources of law applicable by the courts as the Constitution, Statutory law, customary law, equity, common law, and statutes of general application in force in England before 1902. These in the Constitution are termed "*existing law*", which should be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution'.¹⁷ It should be noted from the start that the laws relating to land do not expressly tackle rights to land of IDPs.

¹⁶ MWLE, Issues paper for the National Land Policy of Uganda 2005.

¹⁷Rugadya Margaret, 2006, what went wrong? Women's land rights not delivered in Uganda. Occasional paper, Associates for Development.

Patrick McAuslan¹⁸ reminds us that “land laws have been first and foremost the products of politics, not of ‘objective’ considerations of what is best for economic or social or sustainable development.” Land laws are, frequently, from a normative or aesthetic point of view, messy, incoherent, schizophrenic messes, because they are usually the result of intense political negotiation and tradeoffs and conceal hidden agendas. Given this, one is often led to wonder if there is anything one can say meaningfully from a technical point of view about land law. After all, where a law has “defects” it not safe to assume that this is not an accident, that there are vested interests behind each one of those defects? The unifying theme is the importance of grounding law in reality, a point that seems obvious that it should not need to be made, but in practice is often ignored. It is equally obvious to the world is littered, today and throughout history, with the corpses of unimplemented or partially implemented laws.

2.2 THE POVERTY ERADICATION ACTION PLAN

Poverty Eradication Action Plan (PEAP 2004/2008) is accepted as Uganda Poverty Reduction Strategy Paper (PRSP) developed as a national strategy for reducing poverty and placing poverty at centre of the development agenda. Uganda’s broad development goals are laid out in the PEAP 2004, which establishes the need to eliminate mass poverty, targeting a reduction of mass poverty to 10% the total population by 2017. The Plan influences resource allocation and mobilization, and aims to transform Uganda into a middle-income country. The plight of IDPs is dealt with in Chapter 5 under Security, Conflict Resolution and Disaster Management. In this chapter, the PEAP acknowledges

¹⁸ Denninger, *Land Policies for Growth and Poverty Reduction*, Washington, D.C., World Bank and Oxford University Press. 2003, pp.239.

that Uganda continues to be severely affected by disasters and conflicts, much as disaster management and post conflict management is a precondition for improved human welfare necessary for achieving national development goals. It is also acknowledged that the widening poverty inequality since 1997 and the increase in poverty since 2000 are partly the result of persistent insecurity, in parts of the North and East Uganda.¹⁹

Nationally, over 5% of the population has been displaced and the effects on poverty spread beyond the distress suffered by the displaced. The persistent phenomenon of displacement implies that Uganda's disaster-management policy must be closely linked to issues of security and conflict resolution, these require strengthened interventions as one of the key ways to reduce poverty among the most disadvantaged and vulnerable populations²⁰, especially the conditions of life of internally displaced people need to be addressed both in the short run (while they are still displaced) and in the long run (by successful reintegration into normal life, including psychological recovery) it is currently estimated that 66% of the displaced persons live below the poverty line.²¹

The Finalized IDP policy ensures freedom of movement for IDPs, as well as the delivery of basic services, and specifies entitlements to such items as food, shelter and clothing. For whatever choice they make whether to return to their previous places of residence or migrate permanently. Government is charged with the responsibility of ensuring that post-conflict plan which respects IDPs rights to security, livelihood, services and participation in decision making including measures to facilitate resettlement and

¹⁹ MFED, 2004 Chapter 2

²⁰ MFED, 2004, PEAP 2004 - 2008

²¹ UNHCR, Northern Uganda: the current humanitarian situation, response and future scenarios 2005.

rehabilitation of the IDPs are in place. The development of concrete plans to implement the IDP policy, in cooperation with key stakeholders including donors and civil society. Where appropriate, increased flexibility may be given to distressed districts to divert money from activities that are currently impractical to meeting the immediate needs of the IDPs. Better monitoring and improvement of conditions in the IDP camps is a key priority, with a particular focus on sanitation. Through stakeholder consultations, Government will implement appropriate long term measures to deal with the challenge of IDPs in the country.

In the PEAP, IDP issues are not recognized as priority issues, thus the allocation of resources to IDP matters is also affected in the same breadth, it should however be appreciated that not all IDPs can be resolved by the PEAP alone, other processes, particularly in the political arena need to complement all efforts geared towards conflict resolution in the affected areas. Besides, communities should not only be seen as passive recipients of agreed policy actions but rather should be facilitated to become active participants in peace and disaster preparedness.²²

2.3 THE LAND SECTOR STRATEGIC PLAN

The Land Sector Strategic Plan 2001-2011 is the operational, institutional and financial framework for the implementation of sector wide reforms and land management including the implementation of the Land Act²³. It is intended to guide government, the private sector and civil society in the management and use of Uganda's land resources. It

²² In the New Vision June 20, 2006: The Government of Uganda Plans to spend \$10million to resettle IDPs in Northern Uganda. When presenting the country's 2006/7 budget estimates to parliament. The issue is to find out, whether such an allocation in any way tackles the issue of land for northern Uganda.

²³ MWLE, Draft II, National Land Policy, 2006.

is an integrated approach to the land sector, and is linked, among others, to the Poverty Eradication Action Plan, and the Plan for Modernization of Agriculture.

LSSP is designed to remove barriers to increased land utilization, created by unequal distribution of land access and ownership. The underlying principle is the realization that tenure insecurity and uncertainty of land rights among the vulnerable groups, including the IDPs affects productivity and use of land. It holds that the poorest groups in society are also the most insecure in their land rights.²⁴ LSSP further acknowledges that accessible and fair land dispute resolution is critical to tenure Security especially for poor and vulnerable groups.

In the positive sense, LSSP lays down the framework for the development of land policy and legal framework, which addresses three main elements: tenure policy, land use policy and land laws. This , the framework within which land issues of IDPs can be addressed. In terms of service delivery, LSSP facilitates the decentralization of land services, the devolution of land management, and empowering communities and districts to make better use of their land resources²⁵, a system and principle that is ideal in delivering at lower levels of administration where the internally displaced are likely to approach for service.

Within the LSSP, the dispute resolution is system based on local courts at the lower level to improve the transparency and fairness of their decisions, with an upper tier of impartial

²⁴ MWLE, Issues paper for the National Land Policy of Uganda, 2005.

²⁵ Ibid

appointed Tribunals set aside to consider high value cases and appeals. This strategy appears to be spot on in terms of the roles of local councils as emerging power institutions in dispute resolution despite their lack of sufficient and appropriate knowledge of the legal dispensation on land both in statutory and customary terms. Besides by taking this avenue, traditional institutions and systems of land administration appear to be technically thrown out or ignored at best. It is apparent, that the design of the LSSP preferred to leave matters of IDPs to be dealt with under rights of marginalized groups (including women, children, tenants and pastoralists) emphasizing tenure security, access and use of land for productivity.

2.4 THE DRAFT NATIONAL LAND POLICY

In Uganda the centrality of land in the economy; the political ambiguity on the land question; the social and cultural complexity of the land question, particularly the fact that for many communities land relations are also social relations and the overall governance framework in which land issues are played out and resolved is important. Secondly, account must be taken of other macro and micro- economic policies impinging on the land sector, these include policies on agriculture, poverty reduction, industrialization, the environment, infrastructural development and urbanization²⁶. Land policy can make things worse or better but it is only exceptionally a critical factor of conflict, even in

²⁶ MWLE, Issues paper for the National Land Policy of Uganda, 2005.

countries and societies where the vast majority of the population depends on agriculture for its survival, and even in countries coming out of war²⁷.

The overall goal of land policy development is to agree on a framework which will ensure the sustainable utilization of Uganda's land resources for poverty eradication²⁸. In summary, the ultimate purpose of land policy development in Uganda is to provide: a permanent agenda for development and change in the land sector guidance for land governance an integrating mechanism for all land related sectors, and a framework for sustainable land use.

In the proposed National Land Policy²⁹, the land rights of IDPs are upheld under the principle of enhanced equity and social justice in society, committing the government of Uganda to: eliminate all discriminatory practices in the manner in which access, control and transmission of land rights are determined; ensure equity in the distribution of land through a system of land ceilings appropriate to deferent land use and ecological circumstances; ensure that public land resources, commons, and heritage sites, are not appropriated by the political class; recognize and strengthen the land rights of minorities and marginalized communities under their own indigenous property systems; and provide avenues for the speedy resolution of land disputes at all levels of social organization.

²⁷ Deninger, "Causes and Consequences of Civil Strife: Micro-Level Evidence from Uganda", Working Paper, World Bank, Washington, DC, 2003.

²⁸ Deininger, K., Land Policies for Growth and Poverty Reduction, pp.239, Washington, D.C., World Bank and Oxford University Press. 2003.

²⁹ Draft to be used in country wide consultations commencing in September 2006

In terms of specificity of policy statements and strategy under the theme of “Land, Peace and Security”, the policy recognizes that competition over land, caused, among others, by population growth, resource depletion, and scarcity is the cause of conflict, insecurity and environmental stress in many parts of Uganda, this is exacerbated by trans-boundary conflict.

An important consequence of conflict is increased poverty due to abandonment of agricultural and livestock activities, quite apparent in Northern Uganda, making the need for restoring stability in land relations and the resumption of sustainable livelihood activities, a critical component of the national land policy of Uganda³⁰. It is proposed that this may be achieved by: striving towards the speedy resolutions of conflict with her neighbors; protecting all land owning communities from external and internal encroachment, seizures and other forms of invasion by hostile agencies; promoting residential harmony between and prevent ethnic cleansing among various land communities; resettling all IDPs in their areas of origin and guarantee their security of tenure; investigating and resolving all historical land injustices, establishing people based institutions for the management of land resources in post-conflict situations.

For all intent and purpose, the policy sets the framework for tackling land issues in displacement under the them of “*Land, Peace and Security*”, without necessarily focusing on the post conflict ‘era, rather it addresses land in emergency situations, it will be important to draw clarity for the minds of policy implementers and writers of law, who

³⁰ MWLE, Draft II, National Land Policy 2006 MWLE, 2006.

eventually deliver the intent of the policy to the IDPs to consider both emergency and post conflict era.

The policy's emphasis is on resettling IDPs in their areas of origin, this fails to address the desire of those who may prefer to remain in camps or areas where camps have previously been established. This is because the areas where camps are located have over the years become urbanized and currently offer opportunities, (which may not readily be available in the places of origin) to certain classes of people (especially the youth).

In terms of land administration, the only envisaged institution mechanisms seem to focus on dispute resolution and does not address the rather important aspect of delivery of land services and ascertainment of rights, 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.

Just as the LSSP, the draft Land Policy also fails to address the role of traditional land administration systems and how they will relate with statutory mechanisms put in place. It is not clear how and where the two will meet and how they will meet (the terms or conditions). It is imperative that such overtones are dealt with to avoid redundant policy or shelved policy.

2.5 THE NATIONAL POLICY FOR IDPS

Uganda launched Africa's first national policy to improve the lives of approximately two million IDPs, intended to ensure that they enjoy the same rights and freedoms under the constitution, as all other Ugandans. The national policy for IDPs claims to promote integrated and coordinated response mechanisms to address the effects of internal displacement through cooperation between relevant government institutions and development and humanitarian agencies and other stakeholders.

It also aims to assist in the safe and voluntary return of IDPs and to develop sectoral programs for rehabilitation and reconstruction of infrastructure and support sustainable livelihood projects³¹. To meet its objective, the IDP Policy attempts to mainstream IDP issues into all aspects of government planning and programming. While the adoption of the IDPs Policy is considered a positive achievement, it has yet to succeed in improving situations endured by IDPs because of a number of issues elaborated below:

2.5.1 Resources and Capacity at National and District Level

Generally, the institutions and structures are generally under (or un) funded, lack resources and capacity to perform their tasks, they do not meet on a regular basis and consequently have achieved little. The Government of Uganda has primary responsibility to provide the necessary resources to implement its national IDP policy, the resources needed to operationalizes the IDP Policy are considerable³² these resources are yet to materialize in the affected districts. Donors ought to explore how budget support can be used to encourage the GoU to fulfill its obligations. At the district level, the policy

³¹ People's Daily on Line, February 25, 2005.

³² Government of Uganda, , Operationalizing the National Policy for IDPs April 2005; p.7

mandates that District Disaster Management Committees (DDMC) act as the lead agencies in responding to and providing for the needs of displaced persons. Yet the Committees, constituted by all relevant heads of local government as well as humanitarian actors, do not have the resources or the capacity to implement the IDP Policy and thus have been unsuccessful in ensuring that displaced persons are able to fully exercise both their social and livelihood-related rights.³³

2.5.2 Integration with District Operations

While the IDP Policy mandates the DDMC to establish a district disaster management fund, in Katakwi district for example, local authorities have received no instructions from the central government as to where and how they were expected to find the resources to enable them to implement the many activities mandated by the IDP Policy³⁴. The IDP policy does make provision for disaster-prone districts to recruit a full time District Disaster Preparedness Coordinator, many of whom have already been recruited and are operational in the affected districts. However because the Coordinators are funded by an outside agency, research in the Teso region has shown that many within the local government were confused about the Coordinator's role in relation to the rest of the district structure³⁵. Anecdotal evidence also indicates that Coordinators are not integral

³³ UNHCR, Northern Uganda: the current humanitarian situation, response and future scenarios October 2005.

³⁴ Danish International Development Agency (DANIDA), The Implementation of the National Policy for IDPs in Teso August, 2005.

³⁵ Danish International Development Agency (DANIDA), The Implementation of the National Policy for IDPs in Teso August, 2005.

members of the local government and lack authority and credibility to make decisions³⁶.

2.5.3 Collaboration with Central Government

Another concern relates to government's participation in implementing the Policy in Lira district for example, for three months government representatives failed to attend the District Disaster Management Committee meetings.³⁷ The highest level committee, the Inter-Ministerial Policy Committee consisting of various government ministers, which is mandated to meet in Kampala as needed, is non-functional as it has yet to convene its first meeting.³⁸

2.5.4 Policy without Legislation is Ineffective

The development of the IDP policy has been an extremely positive step on the part of the GoU, as the immediacy, scale and horror of the situation of internal displacement in northern Uganda clearly requires an effective, functioning and practicable government strategy for alleviating the effects of displacement as quickly as possible. Unfortunately however, being only a policy, the provisions of the NPIDP are rather toothless given the absence of enabling legislation³⁹.

³⁶ UNHCR, Northern Uganda: the current humanitarian situation, response and future scenarios October 2005. October 2005, p.2.

³⁷ Ibid. p.1

³⁸ Ibid

³⁹ CSOPNU, Civil Society Organizations for Peace in Northern Uganda, 10 December 2004, Nowhere to Hide. 10 December 2004, p.43

2.5.5 Long term Solutions and Compensation

The current policy, which has drawn extensively on the Guiding Principles for Internal Displacement, meets most of the requirements that a national policy should include. One area where it could be strengthened is with respect to the search for, and implementation of durable solutions is more comprehensively dealt with in the policy⁴⁰. Secondly, the policy does not address a number of pertinent issues such as compensation to the host communities for the damage to their land or acknowledgement of their contribution; there is no systematic policy on access to land for all IDPs while they are in camps. Unfortunately this policy makes people even more suspicious of the government's intentions and is not sustainable.⁴¹

2.6 THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995

Objective XIV⁴² of the National Objectives and Directive Principles of State Policy, stated in the Constitution of Uganda, reflect the pledge to endeavor and fulfill the fundamental rights of Ugandans to social justice and economic development by ensuring maximum social and cultural well being, the recognition, even if the specific pledge to protect rights of IDPs is as well articulated as that of women and persons with disability.⁴³ This oversight is appropriately covered under **Article 45**, which explicitly makes it clear that non-mention is not exclusion for those not mentioned to enjoying the rights, duties, declarations and guarantees relating to human rights in **Article 20**. The oversight aside, **Objective XXIII**, limits itself to natural disasters and obliges the state to

⁴⁰ UN OCHA, Civil Society Organizations for Peace in Northern Uganda, Land matters in displacement, 31 December 2004.

⁴¹ Ibid.

⁴² Constitution of the Republic of Uganda, 1995.

⁴³ In the subsequent objectives XV and XVI, of the Constitution

unleash its machinery to deal with such hazards, including general displacement of people or serious disruption of normal life⁴⁴ once again putting aside persons internally displaced due to war as is the case in Northern Uganda.

In **Articles 26(1) and 26(2)**⁴⁵, the fundamental right of every person to own property individually or in association with others, in addition to protecting the right of every person not to be deprived of personal property without compensation is guaranteed. The guarantee is without bias to persons displaced since all persons are equal before and under the law. In view of this Constitutional right, no enabling legislation under this Constitution should deprive a proprietor or owner of land of his/her interest in the property. These articles provide the major premise under which the loss of property and in this case land could be addressed in post conflict land administration, though no affirmative actions or treatment is offered to IDP as one would have expected. This therefore implies that there is no legal compulsion for the law to explicitly tackle land issues for IDPs, except out of political will, or as a socially and economically defined problem.

However, under **Article 32(1)**⁴⁶ the State is obliged to take affirmative action in favor of marginalized groups based on gender or other reason created by history, tradition or custom, for the purpose of redressing existing imbalances. The imbalance in this case would be defined in terms of deprivation of rights of ownership, access and use of land by IDP, under the circumstances of war. The limiting factor here is that in the subsequent

⁴⁴ Supra at 30

⁴⁵ Article 26 of the Constitution provides that every person has a right to own property, either individually or in association with others.

⁴⁶ Supra at 30

articles (32 1-6, 33, 34, 35, 36) the marginalized L. groups are described or given face, without any room for distortion. Certainly Internal displacement war such as in Northern Uganda does not appear to be part of the equation at the moment.

The Constitution of Uganda under **Article 237** (and **Sec. 2** of the **Land Act Cap. 227**) vests all land in Uganda in its Citizens under four tenure systems; freehold, leasehold, mailo and customary tenure. The significance of this article is in its recognition of customary tenure as a legal tenure for the first time, since the constitutional dispensation on land emerged in Uganda. However, the shortcoming arises in the **Land Act Cap. 227**, which attempts to codify tenure by describing its incidents though they are not static in time or space, but change or respond to changes in the environment, a factor that allow it to continue its evolution un-abated in practice, developing sets and sub sets that the law is unable to tackle and inevitably presents practitioners with a clash of statutory and customary law.⁴⁷ In codifying the customary tenure, its resilience and its ability to mutate in different conditions and circumstance is overlooked, a factor that has over the year worked the minds of legislators, scholars and policy analysts alike and is still problematic today. This factor will definitely re-surface in identifying claims and defining land rights of IDPs.

In terms of land administration and institutions, the Constitution under **Article 238-240** establishes the land institutions, thus the Uganda Land Commission and the District Land Boards. It also prescribes the functions for each of these institutions. While the

⁴⁷ Rugadya Margaret, Module II: Natural Resource Policy in East Africa: Decentralization in Uganda, 2005.

Constitution prescribes the membership, procedure and terms of service of the Uganda Land Commission, it gives Parliament power to enact legislation prescribing the same for the District Land Boards. **Article 243** provides for the establishment of Land Tribunals and streamlines the jurisdiction of these tribunals to be the determination of land disputes relating to the grant, lease, repossession, transfer or acquisition of land .by individuals, the Uganda Land Commission or other authority with responsibility relating to land. The jurisdiction also includes the determination of any disputes relating to the amount of compensation to be paid for land acquired⁴⁸. These in terms of statutory requirements provide a sufficient framework for delivery services in post conflict administration. However the issue of how they are resourced and their technical and human capacity to deliver must be dealt with, given the fact that they are non-functional in most parts of Northern Uganda.

2.7 THE LAND ACT CAP 227 AMENDED BY (AMENDMENT) ACT 2004

The parameters of the Act are defined within the Constitution, which set the mandate for its, holding it to defining tenure regimes especially customary tenure, recognizing the variant ways of handling it and providing for management of communal rights and resources. The Land Act defines the incidents of customary land tenure to include its territorial or clan nature, existence of rules and regulations governing community, family and individual access to land, and perpetuate ownership of land. The Act also provides that customary land tenure may be converted to freehold by individuals, families or communities on application to a district land board. These incidents however, do not

⁴⁸ Rugadya Margaret what went wrong? Women's land rights not delivered in Uganda. Occasional paper, Associates for Development, 2006.

clearly define the essential characteristics of customary tenure, namely, that access rights to land is a function of community, lineages and family membership; that such access is specific to a function or group of functions; that allocation of and control of its use are parcel and parcel of community governance; and that trans-generational rights to land are protected.⁴⁹

It establishes Certificates of Customary Ownership (CCOs) which is proof of ownership, however these not yet being issued, weakening people's ability to protect their land; and the conversion of CCOs into freehold titles, this does not recognize the difficulties of converting concepts of customary ownership into modern titles and the financial and cultural barriers that exist. The Land Act provides for the establishment and management of Communal Land Associations (CLA)⁵⁰. The CLA provisions have not been embraced except in isolated cases in Masindi but not for the rest of Northern Uganda. The formal procedures concerning the formation and operations of the CLA are too involved, and require a reasonable degree of literacy and "external" assistance in terms of provision of information and guidance. Thus, the CLA provisions of the law have not been taken advantage of virtually anywhere in the country⁵¹. This is followed through by the accusation that, although the **Land Act Cap. 227** recognizes customary tenure, it goes

⁴⁹ MWLE, 2006 Draft Land Policy

⁵⁰ By any group of persons who wish (**Sec.15**). The purpose for such a CLA would be connected with communal ownership and management of land, whether under customary law or otherwise. The district registrar of titles is meant to keep a public register of associations, and to exercise a broad and general supervision over administration of the associations within the district (**Sec.15 (3)**). He or she can from time to time give directions to any officers of an association. There is in the land act an elaborate procedure of "incorporation" of the CLAs, determination of the group, and reaching a constitution to govern members (**Sec.16-18**).

⁵¹ John Kigula and Augustus Nuwagaba The integration of traditional land administration Institutions in the Land Act and the management of common property Resources in Uganda: a study for the Ministry of Water, Lands and Environment, Reevu Consult International, 2005.

ahead to establish state institutions to manage customary land thereby undermining the clan institution to hear cases of land conflict.

At a broader level, the threat to people's land rights stems from the fact that the laws governing customary tenure remain unwritten and so changes taking place are not recognized, debated and changed. For example, the clan's role in protecting land from sale and protecting the rights of women and children is weakening and has not been effectively replaced by state laws. Those most vulnerable to the changes are women and children. Vulnerability of peoples' rights will stem from the attitude of policy makers wishing to convert customary tenure from a system of land rights and responsibility shared within the household to that of an individual owner of land. This is proposed through the acquisition or the issuing of a title to "the head of the family". The risk is for the male head of the family taking the land as his sole property and selling it. There is also a risk from IDPs occupying other people's land and assuming ownership and selling it when the people with the land rights are way in other camps.

When people ran into camps they did so "sequentially" with people from the more rural areas moving and settling on land nearer urban centres. Some of these people now misinterpret a section of the current land law to say that if they live on someone else land for more than 12 years, they become the owners of the land. This is likely to lead to conflict. Children born in camps and are orphans will rely on the good will of their older relatives to show them their father's land. With the level of poverty and the weakening of the clan, it is possible that the very people to protect the orphans will be the people to

grab their land. Widows who are not “inherited” by husband’s relatives or who have no children or male children will be vulnerable to land grabs especially now that clan protection has weakened.

However, the formal land administration and dispute management institutions under the Land Act, 1998 do not integrate the existing traditional land administration institutions and this constitutes the major lacuna in administration. Most land rights administration services are spread over some sixteen departments and offices of the Ministry of Lands, Water and Environment, the Ministry of Justice and Constitutional Affairs and in regional and district offices. The main institutions for the administration of the land are District Land Boards⁵² and the Sub-County/Division I and Committees. Each district is required to have a District Land Office, which provides technical services, with its own staff, or arrange for external consultants to the District Land Board⁵³. On the other hand, there is the Sub-county/Division Land Committee, whose functions in relation to land include determining, verifying and adjusting on the boundaries of the land⁵⁴. Such functions are carried out by the Committee before forwarding to the Recorder⁵⁵ an application for the grant of a certificate of customary ownership.

⁵² The functions of the District Land Board include: Holding and allocation of land *in* the district which is not owned by any person or authority; facilitating the registration and transfer of interests in land; causing surveys, plans, maps, drawings and estimates to be made by or through its officers and agents; compiling and maintaining a list of rates of compensation payable in respect of crops, buildings of a non permanent nature and any other thing that may be prescribed; reviewing every year the list of rates of compensation, dealing with any other matter which is incidental or connected to any of the above functions.

⁵³ The District Land Office is made up the district physical planner, the district land officer, the district valuer, the district surveyor and the district registrar of titles.

⁵⁴ The Sub-county/Division Land Committee assists the land District Land Board in an advisory capacity on matters relating to land, including ascertaining rights in land, and performing any other functions conferred on it by the land act or any other law. The committee may, act as a mediator, and has all the functions of a mediator as set out in the Land Act.

⁵⁵ For issuing certificates of occupancy and certificates of customary ownership, the Recorder is at the sub-county, each gazetted urban area or division of a city. The Recorder in a rural area is the sub-county chief,

The Land Act established the land dispute settlement institutions, which are: the District Land Tribunal,⁵⁶ the Parish/Ward, and sub-county/ Division Executive Committee Courts (LC II & LC III courts). There is also an established position of the mediator for each district. The lowest courts to hear land matters are the Parish or ward executive committee courts. A ward in an urban council is the equivalent of a parish in a district council. The parish or Ward executive committee courts are ordinarily referred to as “LC II Courts”. An appeal lies from the LC II court to the LC III court (the sub-county or division executive committee court). From the LC III court an appeal lies to the District Land Tribunal, and from this tribunal to the High Court. Land Tribunals are under funded and not very effective, there will therefore be a vacuum within which conflict and land rights abuse is flourishing.⁵⁷

2.8 DECENTRALIZATION OF LAND

Decentralization in Uganda is based on a four-tier structure of elected local government, the most significant being at district and sub-county level. Fiscal decentralization is critical to its success. However, the ability of the Districts to sustain themselves through fees and personal taxation has proved impossible.⁵⁸ The Land Sector Strategic Plan links improvements in land administration and management to the potential to increase in local

while for a gazetted urban area the Town Clerk is the Recorder; and for a division of a city, it is the Division Assistant Town Clerk. The recorder is responsible for keeping records relating to those certificates.

⁵⁶ For each district the Act established a District Tribunal, Consisting of chairperson and two other members. An appeal lies from the decision of a District Land Tribunal to the High Court. The Magistrates Courts do not have jurisdiction over land matters.

⁵⁷ CSOPNU, Civil Society Organizations for Peace in Northern Uganda, 10 December, Nowhere to Hide, 2004.

⁵⁸ Rugadya Margaret, 2006, what went wrong? Women’s land rights not delivered in Uganda. Occasional paper, Associates for Development.

government revenue and therefore, contribute to empowering communities to make choices concerning improvements in land management in their areas, by shifting locus of decision making away from individuals to local elected bodies.

The constitution decentralizes the land administration function as detailed in the Land Act above. The lead ministry for the delivery of land services is the Ministry of Lands, Housing and Urban Development, through the Directorate of Lands. The ministry remains with the functions of quality assurance, policy formulation and offering of technical assistance.⁵⁹ As pointed out under Constitution, decentralization and subsidiary, in land policy as in other areas of public policies, are no mere technical processes. They have political consequences and the latter must be factored in if one is to assess the equity and conflict outcome of any given policy.

⁵⁹ Ibid

CHAPTER THREE

INEFFICIENCY ON EXISTING LAND LAWS

3.1 INTRODUCTION

This part of the study critically reviews studies undertaken in Uganda on land matters and displacement or post conflict land administration. It highlights the policy issues and recommendations proposed under each of the studies as well as the land administration issues that are of relevance in assessing means and ways of delivering land justice in post conflict situations.

3.2 LAND MATTERS IN DISPLACEMENT

3.2.1 Land Ownership

The vast majority of land in Acholi land is owned through customary tenure, with rules that have developed over generations. Nearly all cultivated and falls under private ownership at family or household level. There are large areas of land which are used for purposes other than cultivation and are managed for the benefit of all clan members. Land is for the benefit of the wider family or clan and therefore transfers of ownership either through inheritance, redistribution among family members, 'loaning' land to outsiders or sales of land have to be carried out with that interest in mind and with the approval of the clan elders.⁶⁰ There is widespread belief that land is held communally in Acholiland. However the vast majority of families own their farmland either in extended family units or at the household (nuclear family). Women may not fully participate in

⁶⁰ Rugadya Margaret, *What went wrong? Women's land rights not delivered in Uganda*, pp 34

these benefits as members of a household if they do not share formal property rights over the land; only independent or joint ownership can ensure that women have access to control over land-based earnings. Formal rights to land for women can have an impact on intra household decision making, income pooling, and women's overall role in the household economy. But and is a particularly critical resource for a woman when the household breaks down that is for example, in the event of male migration, abandonment, divorce, polygamous relationships, or death.⁶¹

3.2.2 Loss of Land

There are a number of threats to land such as illegal occupation and logging particularly by army officers or private investors and government schemes such as security through Production Programme.⁶² The other threat is land grabbing by neighbors and relatives, particularly of land belonging to widows and orphans and encroachment by sub-county offices. Land grabbing by relatives and neighbors is likely to intensify and protection for the weak (mainly orphans and widows) will no doubt decline.

There are real fears that the war is being used to disenfranchise the Acholi people of their land. Communal land is most at risk as it consists of large tracts of land not physically occupied but communally owned. There is a particular risk of expropriation of the hunting grounds and grazing lands, which are communally owned by clans or sub-clans.

⁶¹ **Gender Issues and Best Practices in Land Administration Projects A Synthesis Report** lane 2005 Prepared for Gender and Rural Development Thematic Group (PREM/ARD) and the Land Policy and Administration Thematic Group (ARD) of the World Bank pp 4

⁶² In most cases this uncultivated land is used for mechanized farming

Many communities have lost the use of their land: either because it has been occupied by defense forces or IDP camps or they have been forcibly displaced.⁶³

People who hold their land by customary tenure, without documentation, risk losing their land permanently in many different ways and for a number of reasons:-

- For 'development', mostly of schools and Hospitals
- For trading centers: because many camps were established around existing trading centers, new trading centers have emerged in the sites of other camps often close to sub-county headquarters to make up for the other centers lost.
- Through gazettement. There is a threat of degazetting the vast Lipon hunting grounds which the local people consider the private property of several clans
- Leases given to investors as private grazing and hunting grounds by both the GoU and Local councils.
- Through fraud.
- To relatives and neighbors
- Some land owners will voluntarily sell their land because of the high levels of poverty experienced
- Some will be in conflict between customary and state legal systems: there is a risk that those with better access to titling will take over land from those holding land under customary tenure either with no documents or with certificates of customary ownership.⁶⁴

⁶³ Bainomugisha A, Tushabe G, The 'Torturous Peace Process' in Northern Uganda, MACOMBA Policy and Academic Research Series No. 1, 2005. pp 13

⁶⁴ Supra note 1.

3.2.3 Land Administration

The cultural context has changed irrevocably, with clan influence weakening⁶⁵, but more significantly since everyone was put in camps. Social displacement, increasing individualism, and a desire for money as a form of wealth, will have combined to destroy many ingrained norms of behaviour (respect for clan elders, protection of widows, respect for neighbors' boundaries). The social breakdown, caused by displacement to camps, has almost certainly weakened the clan's ability to enforce its traditional rules of protection. The LCs, at all levels, do not know what the land law says or their roles in the land judicial process⁶⁶. The LCI was given no legal authority over land matters, though he or she is taken by most people to have higher authority than the customary legal system. In practice the LC2 and LC3 Courts are not handling land matters. The interface between the modern and traditional customary systems of land tenure needs to be clarified and streamlined.⁶⁷

3.2.4 Dispute Resolution

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. Dispute resolution in the traditional system is based on mediation rather than passing judgment by local leaders who bring to bear a wide range of information on the context of land disputes. People do not know their rights to land and they are often frightened to claim them and are distrustful of the justice systems. Laws for protection of people's land rights do exist, but

⁶⁵ This has been the case effectively since 1986 after the Northern Crisis Intensified.

⁶⁶ Kigula, John, Land disputes in Uganda: an overview of the types of land disputes and the dispute settlement fora. Pp41

⁶⁷ Ibid

the machinery for implementing them is lacking. Access to the justice system is difficult and at the lower ends is poorly equipped to deliver and enforce justice.⁶⁸

3.2.5 Displacement and Return

Most IDPs have been placed in camps which are less than 5-10 kilometers from their land and their return is likely to be straight forward. However, almost half of IDPs expressed fear about their ability to regain their land. A major vulnerability which will be faced by many returnees (particularly orphans and widows) will be the loss of their land through illegal land grabbing.

Although boundaries will be easy to recognize, conflicts over land are likely to be many and serious, because of a combination of factors such as greed, poverty and the destruction of the social system that used to regulate relationships between people.⁶⁹

Another long-term potential cause of landlessness is likely to be the increase of land sales due to poverty.

3.3 THE RESETTLEMENT OF LANDLESS IDPS IN UGANDA

Large communities in Northern Uganda live in overcrowded camps as result of repeated and protracted forced displacements. By the end of July 2005, the IDP population receiving WFP assistance was of 462,580 in 53 camps in Gulu, 350,828 IDPs in 25 rural and 18 urban camps in Lira, 310,111 IDPs in 22 camps in Kitgum and 319,506 IDPs in

⁶⁸ Civil Society Organizations for Peace in Northern Uganda, Land matters in displacement

⁶⁹ UN Office for the Coordination of Humanitarian Affairs (UN OCHA), 21 April 2005, Humanitarian Update, March 2005 Volume VII, Issue III

30 camps in Pader.⁷⁰ In addition, approximately 300,000 IDPs some of them in resettlement process, are still conducting an inadequate existence in Adjumani, Yumbe, Katakwi, Soroti, Kaberamaido and Apac districts.

In an effort to address the negative effects of the displacement, the GoU, in August 2004, approved the National Policy for IDPs to ensure adequate assistance to and protection of IDPs in Uganda. The policy defines both the assistance and protection areas of concern for the IDPs and the coordination mechanisms to ensure a collaborative approach in the implementation of the response to those concerns.⁷¹

One of the major objectives concerning the resettlement of the IDPs is the issue of land. Kigula argues that women often have more children in order to produce more sons which would improve their access to land. This results in even higher population pressures and intra-familial land disputes.⁷²

A study carried out in four districts of Kibaale, Kyenjonjo, Gulu and Nakasongola by REEV Consult International (December 2005) for the Ministry of Water, Lands and Environment, the following were findings were reported;

⁷⁰ figures from WFP revalidation exercise, July 2005

⁷¹ **Operationalizing The National Policy On Internally Displaced Persons** Framework Paper For The IDP Camp Decongestion Working Group Of The National Policy On IDPs 31 August 2005, Kampala Uganda pp2.

⁷² Kigula 1993, The integration of traditional land administration Institutions in the Land Act and the management of common property Resources in Uganda: a study for the Ministry of Water, Lands and Environment, Reev Consult International, 2005 pp 46, 50.

3.3.1 Loss of Land

Lack of effective land policies and inadequate regulatory frameworks and weak enforcement are major factors accounting for clashes, conflicts and tensions on land in Uganda. Displacement of people has been massive, and gone on for so long, the resettlement back home would present such complexities and social frictions and clashes that would further adversely affect people's lives and property, particularly land ownerships and occupancies. Some persons now do not remember where they came from because the elders (parents) have died or disappeared as a result of the war and the young ones do not know where they came from. Therefore some people who have never owned land are likely to claim such vulnerable people's land and cause more conflict and clashes over land. Boundary land conflicts are likely to intensify as a result of people forgetting to locate their land pieces and boundaries.

Regarding land rights and resettlement on return by IDPs there is fear of a situation whereby the vulnerable people; widows, children, people living with HI V/AIDS and the disabled, might be taken advantage of by the relatively powerful and well-to-do, who might dislodge their land claims. This is the more so in the weak grassroots LCs and a disrupted clan system on account of war and displacement.⁷³

3.3.2 The IDP Policy

The IDP Policy provides an appropriate institutional framework to handle IDPs situations in the places to which people are displaced and on return to home areas. However, it lacks an enabling policy for resettlement in Uganda i.e. there is no clear guidelines on

⁷³ Supra note 7

and identification, management and resettlement procedures. Among these unclear guidelines include the following;

▪ **Land Administration and Dispute Resolution**

At the Local-level and district-level land administration and dispute resolution institutions⁷⁴ there is a dire need for strengthened and reinforced response to the demands of the individual land consumers in order to increase their individual rights to land. The strengthening would include a special recruitment drive to fill vacant positions; logistical support; bicycles, motorcycles; vehicles; equipment; home radio sets on which awareness information will be relayed infrastructural development (land office, land tribunals, sub-county, and village council buildings) and financial enablements to personnel in the respective institutions.⁷⁵

▪ **Compensation**

Persons whose lands were used by Government to establish IDPs camps should be compensated. Their lands have been utilized for developmental purposes like school construction, health centers and water sources. In most cases however the government has been reluctant to compensate the affected people due to their ignorance as well as the 'Traditional Systems.

⁷⁴ Norwegian Refugee Council (NRC), 9 October 2002, Security Report for September 2002 from Gulu.

⁷⁵ Rugadya Margaret, Rugadya Margaret 2006, what went wrong? Women's land rights not delivered in Uganda. Occasional paper, Associates for Development, 2006.

▪ **Traditional Systems**

While the clan system used to effectively control access to and occupation of arable land, on return from IDP camps the clan authority system that could have been disrupted by the war and displacement of people, will not have the same effective cohesion, power and instrumentality to superintend over arable land. Likewise, hitherto communal natural resource areas: wetlands, forests, common lands, streams and rivers, whose access and utilization used to be controlled by the clan authority system are likely to be subjected to open access situations, with a “no man’s land” mentality.

3.4 TRADITIONAL LAND ADMINISTRATION INSTITUTIONS IN THE LAND ACT AND MANAGEMENT OF CPRs IN UGANDA

3.4.1 Ownership and Management of CPRs

Findings⁷⁶ about the existing nature of community-accessed land/resources (Common Property Resources) in the North & Eastern Uganda are that communal access and use falls into 2 broad categories:

- (1) Clan-controlled arable land, to which individual families have rights of occupation and use, with the overall superintendence of the clan leadership, particularly in terms of settling land disputes and allocation of land. It is family-

⁷⁶ A study was carried out by REEV Consult International (December 2005) for the Ministry of Water, Lands and Environment, as one of the studies to fill information gaps in the drafting of the national land policy. This study was carried out in four districts of Mbarara, Masindi, Gulu and Arua. In the northern Uganda cluster it covered the districts of Arua and Soroti. The study had the following key findings:

owned land falling in the traditional administrative zone' of a particular village, corresponding to a clan territory.

(2) Areas of un-gazetted forest, swamp-land, and hill tops are held by the village as a whole.

This study identified no particular traditional authority system for the management and control of common pool resources; un-gazetted forests; hill tops; wetlands, valley bottom land, wetlands: river/stream bank wetlands, lake-shore swamps, and the pastoral corners. The community accessed and utilized natural resource endowments are now virtually under the deleterious open access situation, as there are no location-specific authority-systems to enforce rule-driven common property arrangements over the resources. In the absence of a defined authority system as a "repository" and oracle; of the rules of access and use of the CPRs, they have been subject to deleterious exploitation and are increasingly under the threat of total individualization.⁷⁷

In the past the clan leadership, the chief and the community as a whole enforced rules of access and utilization of CPRs. In the past generation (last 35 years or so). a range of factors:- high population pressure; market economy impacts; political unrest, even education have served to erode the in-built structure and rules of the local communities for the sustainable and effective management of CPRs. CPRs require a well-defined user-group; community consensus about the use of the common resource; an institutional structure to manage the CPRs; a set of rules to regulate resource use; user knowledge of

⁷⁷ Kigula, John, Land disputes in Uganda: an overview of the types of land disputes and the dispute settlement fora. Pp 63

the rules and their rights in the resources; a well defined dispute resolution process to regulate and enforce their rights; and a means to enforce sanctions for violation of the rules.

3.4.2 Land Administration

War conditions have brought about new changes and challenges to clan control over arable land as clan customary land. As a great many clan leaders and former neighbors might have died during the war, and many may re-locate to other areas, the erstwhile clan bonds and authority- systems may be malfunctional or dysfunctional. The study identified only a moribund clan system that is indeed dysfunctional, as the traditional land administration institution that used to manage and control and access, land use, and occupation, particularly in Arua and Soroti. The day-to-day superintendence over land allocation, use and occupation of Arabic land has not been subject to clan authority in Arua and Soroti, in the past decade or so. The young generation that has acquired land through inheritance and purchase, has no reverence for the erstwhile clan authority in relation to land.

In Arua and Soroti, it was found that the clan head and clan leadership may still have measurable influence in relation to other socio-culture functions, but they are now dysfunctional as an authority-system in the superintendence over arable land; land access and use allocation; regulation of use, and settlement of land-related conflicts. The evolutionary winds of change, characterized by high population pressure, market economy impacts; education; and intermittent war conditions, have rendered the clan

system a moribund institution in the control and management of land and the related resources.⁷⁸

3.4.3 The Law vis-à-vis Land Policy

CPR malfunctions and disputes are all-too-often caused by poor design of the very laws, rules, institutions, and procedures that are intended to regulate CPR. Hastily, ill-informed design of these is detrimental. The provisions in the Land Act on communal land Associations are not fully appreciated by the communities, and indeed by the members of the DLBs themselves. The formal procedures concerning the formation and operations of the CLA are too involved, and require a reasonable degree of literacy and “external” assistance in terms of provision of information and guidance.⁷⁹ Thus the CLA provisions of the law have not been taken advantage of, virtually anywhere in the country.

3.4.4 IDPs Returns and Resettlement

In the areas with war conditions, Gulu, Pader, Kitgum, Lira and Apac it is expected that on return from the IDP camps, the peoples’ resettlement will not be based on clan loyalties, and in the resettlement of quite strange neighbors and quite a young people, the erstwhile clan bonds and clan authority system might be malfunctioning or dysfunctional. In Northern and Eastern Uganda, where the traditional clan authority system; has had supervisory, allocative, and land conflict resolution functions regarding family arable land; and used to control and regulate access to and use of common property

⁷⁸ Supra note 17.

⁷⁹ Margaret Rugadya, 2006, what went wrong? Women’s land rights not delivered in Uganda. Occasional paper, Associates for Development.

land/resources, such as hill tops, forest land, swamps, policy and legal provisions should be made to re-vest the powers and functions of the Sub-county land committees to the traditional clan authority system.

The Land Act should be amended to clarify and make specific the powers of the DLBs, the Land Committees, the Recorder and the LCs in relation to specified categories of the CPRs. The Land Act, the Local Governments Act, the National Environment Act be revisited to purposely and pronouncedly provide for the creation of CPRs involving the resource user-communities of categorized types of resource. District Councils should promulgate relevant bye-laws concerning general categories of CPRs, and assigning specific CPR custodianship and superintendence functions to the already existing LCs in the localities. As it is right now their functions are not specific.

3.5 THE SOCIAL PROFILE OF THE ECONOMIC ASPECTS OF THE LIVES OF IDPS

3.5.1 Land Ownership

Currently, the Acholis have not only been forced to abandon their land, and have lost most of their cattle, their social institutions are also endangered. Prior to the war, the Acholi people were organized in chiefdoms. A chief, called *rwot* headed each chiefdom. The *rwot* was the *won lobo*, the ‘father of the land’ in its territorial aspect. In most villages this figure of authority co-existed with the *won ngom*, the ‘father of the soil’. The meaning of the ‘soil’ is here first and foremost as a source of food, but connected to it is

also a series of rites, both concerning passage and healing. The *rwot* and *won ngom* therefore had important social duties. They were responsible for the welfare of people and nature, for fertility and above all for rain. Together they formed a ritual wholeness. They guaranteed the fertility and well-being of their area, and in doing so they also purified the chiefdom of witchcraft and sorcery.⁸⁰

Most land in Gulu, Kitgum and Pader is held under customary tenure. People own land simply because they have always lived on it and therefore have been regarded as the 'owners' of their land. They have no official papers proving that they own the land. Local rules governing and have never been written down, probably as these rules were constantly changing as they adapted to new circumstances. These rules were developed under conditions which were very different from those prevailing today. First, until one or two generations ago, a person could 'claim' land as his own by settling and using free virgin land. Many villages were established as little as 50 years ago when groups of people settled in forested areas and became the owners of sometimes- large holdings of land.⁸¹

3.5.2 Loss of Land

Today, there are reasons to believe that there is in fact very little free land left in Gulu, Kitgum and Pader. This would not always be obvious as all land owned by someone was not cultivated in all seasons. Prior to the displacement, land was used for grazing, some

⁸⁰ Adapted from "Operationalising the National Policy for IDPs, a study was carried out under the auspices of the Office of the Prime Minister, Department of Disaster Preparedness and Refugees supported by UNDP. It was conducted in Acholiland covering the districts of Gulu, Kitgum and Pader.

⁸¹ Ibid

kept as forest (eg. as hunting grounds and for the collection of forest products), and yet other pieces of land would be kept fallow in a system of shifting cultivation and rotational cropping. People, however, know very well who owned what land. In a village, boundaries were known as they were agreed upon by owners of neighboring fields, using a mixture of natural border posts such as trees and edges of swamps, and border signs developed over time, such as the lines of field refuse (*kingingi*) which develops into durable borders. The problem is that the longer people have been kept away from their land, the less relevant such practices will be. Border signposts such as the *kingingi* will have disappeared, and the fact that the field will mostly be completely overgrown will also make it hard to recognize natural border posts between different pieces of land owned by different people and families. Some people will simply have forgotten the actual borders; some will be too young to remember and some will try to take advantage of the confusion of the matter to try to enlarge their property.⁸²

3.5.3 Land Administration and Women's Rights

In the past, the local leader, the *Rwot Kweri* would have been called upon to solve border disputes. This institution will also be important in the case of a return situation, but leaving this issue only to local institutions may be a recipe for heated land controversies as the old order will not re-establish itself quickly, if at all. The Acholi population coming out of the camps will be a different population than the one who went into the camps. This will particularly be the case for those who have spent the longest time in the camp while simultaneously being kept away from their land for a long time.⁸³

⁸² Civil Society Organizations for Peace in Northern Uganda, Land matters in displacement.

⁸³ Supra note 20

Finding pragmatic solutions to these challenges is important both for men and women, but the situation may be more difficult for female-headed households than for households which include a man as the head of the household. Traditionally, land was allocated and managed by the *grandfather* who provided plots to each male family member according to the need and the perceived ability to use the land. Men controlled the land, but women also had rights. A woman had rights to use the land of her parents, prior to marriage, and after marriage, her husband's land. No husband had the right to prevent his wife from using his land, and if he died, his wife still had user rights to his land: she could use it as she saw fit and pass it on to her children. If somebody tried to take this right away from her, she could appeal to the elders who then could intervene on her side in the dispute. If she remarried she had the right to her new husband's land, but she relinquished user rights to her departed husband's land as she only belonged to the clan by marriage.⁸⁴

This means that prior to the displacement in Acholiland the family structure protected wives, widows and their children against attempts to interfere with their right to use land. The question is if this tradition will be able to protect them in a chaotic return situation. The materials of this research do not provide an answer to this question but, given the levels of widow-hood, it is of huge importance that this is considered now and not later. At the very least, it points to the importance of trying to organize an orderly and well-planned return in a gradual manner.

In conclusion therefore, land is survival (i.e. the living), land is the future (i.e. the generations to follow) and land is the past (i.e. the dead). These three core elements must

⁸⁴ Supra note 7

stay connected and interrelated to each other if harmony and tranquilly are to be preserved. However, all stakeholders⁸⁵ should be aware that such a long lasting camp experience has forever changed Acholi society. When peace returns to Northern Uganda, nothing will be the same as prior to the war.

⁸⁵ This will include the GoU, INGOs, the International Community, the affected persons (formers IDPs and their leaders)

CHAPTER FOUR

4.0 EXAMPLES DRAWN FROM COUNTRIES FACING SIMILAR PROBLEMS IN RESOLVING THE LAND CRISIS IN POST CONFLICT NORTHERN UGANDA

This part of the study explores the land conflict in Northern Uganda drawing experiences from other countries that have had to deal with resettlement of former IDPs. This chapter will explore the prospects of access to land, security and distribution of land among other pertinent issues. Countries in focus within the Great Lakes region will include Rwanda, Burundi and the DRC. Key insights and lessons to be learned from these countries will be addressed and those viable options will be recommended.

4.1 INTRODUCTION

The relationship between land conflict and internal displacement is extraordinarily complex. As in other conflict dynamics, land is tied to a complex network of issues ranging from power relationships to economics and from symbolic attachments to systemic inequities. According to Dan Lewis⁸⁶, housing, land and property rights (HLP) are sources of conflict because of the effects of:

- (a) Displacements and return of populations,
- (b) Perceptions of ‘victors and victims’ and the changed access to HLP,
- (c) Human rights issues, and
- (d) Minor issues which surround this highly intricate cluster of problems.

⁸⁶ Chief of UNHabitats Disaster, Post-Conflict and Safety Unit

He has identified the important concept of 'secondary conflict', which arises as an indirect result of the impacts of the primary conflict.

Factors which typically aggravate secondary conflict include:

- Lack of a land policy
- A dysfunctional land administration system
- Land grabbing/invasions
- General breakdown in law and order (including land use planning)
- Overlapping rights and claims to HLP
- Destruction of houses
- Ambiguous laws.⁸⁷

The linkage between land and conflict cannot be ignored although peace-making often still fails to grasp the centrality of conflict over land in civil war, or at least to ensure that routes to remedy are explicitly laid down in peace agreements.⁸⁸ This visibility hampers both post-conflict resolution and reconciliation, which is currently the case in Sudan. Predictably, conflicts simmer and may help restart war at the slightest provocation.⁸⁹ It is fair to assert that land policy, as an element of peace-building missions, tends to be

⁸⁷ Zimmermann, Willi, Land in Conflict and Post-Conflict Situations: Comments, 2003; Rugandya, what went wrong? Women's land rights not delivered in Uganda. Occasional paper, Associates for Development, 2006.

⁸⁸ Huggins Chris, et al, Conflict in the Great Lakes region: How is it linked with land and migration? 2005.

⁸⁹ This is currently the case in Afghanistan, Zimbabwe, Burundi and the Democratic Republic of Congo

under-rated and has received little attention in the literature.⁹⁰ Yet land policy clearly plays a fundamental role in recovering from conflict, and ensuring that further conflict does not follow.

In the first instance, land policy must deal with the immediate chaos of property destruction and population displacement caused by conflict. Returning populations require shelter and incentives to return to their original areas. Disputes over land need to be minimized. A functioning system of land administration needs to be re-built.

Secondly land policy must work to create institutions and laws to meet claims for property restitution. Such claims will come from returning people, those who acquired land during displacement, and those who lost lands during displacement. Establishing certainty of claims will require resolution of these claims. Without that certainty, investment will be deterred, reconstruction slowed, and social and political stability put at risk.

Thirdly, land policy fundamentally shapes future social and economic structures. This is the long-term aspect of land policy.

It is important to recognize that, unless immediate issues of property destruction and refugee return are handled well, resolution of more long-term issues relating to property restitution and land administration in general will be greatly hampered.⁹¹ Land

⁹⁰ Conflict through Improved Policies and Land [I Tenure, Natural Resource Rights, and Migration in the Great Lakes Region', *Eco-Conflicts* 2 (1): 1-4. ACTS, Nairobi, January 2004.

⁹¹ *Ibid*

administration as an operational and institutional tool in post conflict societies is considered a major component in reconstruction and underpins human settlement and home security; resource and infrastructure planning; market development; and eventually government capacity for raising revenue⁹²

4.2 KEY ISSUES AND LESSONS LEARNT FROM OTHER COUNTRIES

Conflict and access to land are linked in two main ways; control over land and natural resources may constitute ‘a key factor underlying conflict; conversely, conflict may severely affect land tenure or access. Where rapid demographic growth is not accompanied by increases in productivity or by new opportunities to acquire income from non-agricultural activities, competition over land increases, and may be manipulated by elites to gain or maintain power. Thus, competition over scarce land, together with lack of off-farm opportunities, frustration and lack of hope for the youth, may create a context of instability where other trigger factors such as politically manipulated class or ethnic tension can subsequently lead to violent conflict.⁹³

In Rwanda, for instance, unequal access to land was one of the structural causes of poverty which was exploited by the organizers of the genocide, during which violence was directed not just at Tutsi, but also at Hutu involved in land disputes.⁹⁴ Issues of access to land may also feed conflict in countries with a history of very unequal land

⁹² IFAD, Rural Poverty Report 2001: The Challenge of Ending Rural Poverty, Oxford, Oxford University Press, 2001.

⁹³ FAO, Land Tenure and Rural Development, Rome, Food and Agricultural Organization of the United Nations, 2000.

⁹⁴ Huggins et al. 2005 Huggins Chris, et al, Conflict in the Great Lakes region: How is it linked with land and migration? 2005

distribution.⁹⁵ In Guatemala, a lengthy civil war erupted in 1954, after previous attempts to redistribute land were reversed. Similarly, in Colombia, conflicts over land are among the root causes of the violence that affected the country in the second half of the 20th century. In post conflict situations, the following issues and lessons are of significance:

4.2.1 Formalization of Occupancy / Tenure

Identification, classification and securitization of tenure are necessary if access to land and investment incentives for the poor, as a poverty reduction strategy, are to be achieved through land administration tools. Secure tenure in land and resources is achieved if a persons' interest in land can be successfully defended when challenged. This includes protection against risks, particularly eviction, and not living in fear or threat of having claims denied⁹⁶ or loss of and under government pressure or under pressure of elites with both economic and political power.

Focus on land policy development and institutional strengthening has improved land administration model designs in post conflict situations. In the past, policy tools were rights centric and relied heavily on instrumental legal order, delivering selective registration and issuing formal individually recognized land ownership titles. Land policy now is more reflective of existing tenure arrangements, provides more sustainable direction and should steer towards formalization strategies rather than impose them.⁹⁷

Land policy that is increasingly more sensitive to existing land arrangements, provides

⁹⁵ Deininger Causes and Consequences of Civil Strife: Micro-Level Evidence from Uganda", Working Paper, World Bank, Washington, DC, 2003.

⁹⁶ Augustinus, M, Strategic Action Planning in Post Conflict Societies, Symposium on Land Administration in Post Conflict Areas, Geneva, Switzerland, April 29-30. 2004.

⁹⁷ Moyo, S, The Land Acquisition Process in Zimbabwe (1997/8), UNDP Resource Centre, Harare 1998.

more sustainable directions and guides formalization strategies rather than imposing them. Land tenure, has to be freed from its property rights focus and opened to a more comprehensive understanding of land tenure practices in the social context of informal and formal arrangements.⁹⁸ Tools with a social component are often difficult to accommodate within rigid formal systems because of diverse and dynamic arrangements, biased interpretations and limited availability of innovative devices that might avoid the crude assimilation of tenure systems and culture.

The political implications of the formalization of tenure are just as ambiguous as its economic impact. Formalization can lessen access to land by depriving some social categories of property rights.⁹⁹ It can weaken security by introducing legal pluralism or challenging the legitimacy of customary arrangements without offering effective alternatives. Finally, it can lock in an unequal distribution of land holdings.

4.2.2 The Context of the Conflict

Conflicts have major implications for land tenure systems. First, the chaos generated by wars may weaken the customary or local institutions managing and administering land rights, thereby generating widespread tenure insecurity, fostering land disputes, and enabling elites to grab land. Secondly, wars leave a legacy of landmines preventing productive use of substantial areas of land for many years after the end of hostilities. In many countries, protracted conflict has significantly reduced the performance of the

⁹⁸ Ibid.

⁹⁹ Daudelian, Austinus, C., Ed. Handbook on Best Practices Security of Tenure and Access to Land, Nairobi, UN-Habitat, 2003.

agricultural sector and of the economy as a whole.¹⁰⁰ Thirdly, armed conflicts create large numbers of refugees and displaced persons, with little or no access to land in the areas to which they flee. After the end of the armed conflict, competing land claims by returnees and by new occupants may generate further disputes.

Land policy is embedded in specific political, social, cultural and ecological contexts that condition the nature of its outcomes, be they economic, environmental or conflict-related. This embeddedness needs to be factored in the design and implementation of policy and considered at various levels, from the national to the regional and the local. This does not imply that land policy and administration is best designed and implemented at the local level or national level, only that the specific outcomes of a given measure at each level must be considered. To give an example here, it might well be the case that fair gender outcomes are more likely, in a given country, with centralized conflict-resolution mechanisms instead of local ones. Decentralization and subsidiarity in land policy as in other areas of public policies are in other words no mere technical process. They have political consequences and the latter must be factored in if one is to assess the equity and conflict outcome of any given policy.

4.2.3 The Political Nature of Land Policy in Weak States

Land policy is a political issue. It is not possible to disentangle its determinants and impact from the material and political interests of the individuals and groups involved.

¹⁰⁰ Deininger, *Land Policies for Growth and Poverty Reduction*, pp.239, Washington, D.C., World Bank and Oxford University Press, 2003.

Politics needs to be factored in from the start.¹⁰¹ Informal politics, corruption and administrative inefficiencies are factors of tenure insecurity and, as a result and in themselves, they leave much space for highly unequal access to national land and concentration of land holdings. Land titling programs by weak states contaminate customary systems and result in the in-formalization of land tenure and deepening tenure security, which impacts on concentration'.¹⁰² Approaches that develop relevant, appropriate and, preferably sustainable job or livelihood opportunities can significantly diminish pressures related to land inequities (e.g. investing in agricultural infrastructure and micro-finance initiatives)

4.2.4 Restitution and Compensation

Addressing access to land issues is a key step towards the consolidation of peace¹⁰³, This may include the regularization of existing land occupation and use. It may also include securing access to land for demobilized soldiers and for displaced populations, adjudicating amongst overlapping land claims of different groups, and re-establishing effective land institutions and land information systems. In Burundi, the **2000 Peace Accords** guaranteed returnees access to their property or adequate compensation.¹⁰⁴ Similarly, the **Dayton Peace** Agreement signed in 1995 for Bosnia and Herzegovina

¹⁰¹ Daudelian Huggins, Chris 'Preventing Conflict through Improved Policies and Land Tenure, Natural Resource Rights, and Migration in the Great Lakes Region', *Eco-Conflicts* 2 (1): 1-4. ACTS, Nairobi, January 2003.

¹⁰² Ibid

¹⁰³ Wily Lind, J. & Sturman, K. (eds) *Scarcity and Surfeit: the Ecology of Africa's Conflicts*. Nairobi/Pretoria: African Centre for Technology Studies/Institute of Security Studies. Republic of Rwanda, *A Profile of Poverty in Rwanda*, 2002.

¹⁰⁴ Huggin et al, Huggins Chris, et al, *Conflict in the Great Lakes region: How is it linked with land and migration?* 2005.

provided for the return of refugees and for the restitution of property'¹⁰⁵. On the other hand, the peace accords agreed upon for Rwanda in 1993 stated that only those who had been out of the country for less than ten years could claim land'.¹⁰⁶

Tensions may arise between restitution of property and achieving peace. Returnees may find that their land is occupied by others and recovering their property may entail displacing the existing occupants.'¹⁰⁷ Disputes typically appear when other individuals or groups are found occupying the properties of a returning population (e.g. Rwanda and Burundi)¹⁰⁸. In such cases, the returning population may be forced to occupy alternative properties that are not actually theirs which can instigate another set of dispute and secondary complications. This may slow the pace of return, as evidenced by the experience of the former Yugoslavia. There, competing claims on residential property have made their way to international human rights institutions (e.g. the case *Blecic v. Croatia*, decided by the European Court of Human Rights). Addressing the underlying land- access factors that contributed to conflict is essential if long-term peace is to be achieved. In Guatemala, the peace accords required land distribution as a critical element of the post-conflict strategy, though progress with implementation has been limited'¹⁰⁹. Special attention must be paid to the needs of female-headed households, widows and

¹⁰⁵ FAO 2002, Land Tenure and Rural Development, Rome, Food and Agricultural Organization of the United Nations.

¹⁰⁶ Huggins et al, Conflict in the Great Lakes region: How is it linked with land and migration? 2005.

¹⁰⁷ FAO, 2002, Land Tenure and Rural Development, Rome, Food and Agricultural Organization of the United Nations.

¹⁰⁸ Huggins et al, Conflict in the Great Lakes region: How is it linked with land and migration? 2005.

¹⁰⁹ Deininger, Land Policies for Growth and Poverty Reduction, pp.239, Washington, D.C., World Bank and Oxford University Press, 2003.

orphans particularly vulnerable groups that can be very numerous in post-conflict situations.’¹¹⁰

4.2.5 Management of Disputes and Claims

In many cases, land disputes while not the primary source of conflict are among the many factors that lead to an escalation of violence. In Eastern DRC (Democratic Republic of Congo, formerly Zaire), for instance, conflict has numerous sources. Among these, access to land is an important factor. Here, the deep causes of conflict include massive immigration by different ethnic groups seeking land; the dispossession of increasing numbers of small farmers as a result of land sales by chiefs; uncertainty and confusion over whether migrants would be given the status of citizens of the DRC; and political manipulation by rival parties and personalities.¹¹¹ Conflicting claims commonly emerge over time as a result of contradictions, gaps, and uncertainties in a country’s land law and policy regime. It is important to keep in mind that there are nearly always multiple sides in a conflict situation, often with different perspectives and wielding what they believe to be legitimate claims’¹¹². Care must be taken to approach interventions with neutrality and not to “demonize” or “sympathize” with one party or another, risking a politicized process.

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

¹¹⁰ Deininger 2003 Land Policies for Growth and Poverty Reduction, pp.239, Washington, D.C., World Bank and Oxford University Press, 2003; Higgins et al. Conflict in the Great Lakes region: How is it linked with land and migration? 2005.

¹¹¹ Higgins et al, Conflict in the Great Lakes region: How is it linked with land and migration? 2005.

¹¹² World Bank, World Development Report: Making Services Work for the Poor, Washington, D.C., The World Bank and Oxford University Press, 2003.

as partial or ineffective, violence is likely.¹¹³ 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.¹¹⁴ In post-conflict settings, investment in agricultural infrastructure, technical assistance, and the creation of market linkages can complement land policy approaches by creating and supporting new income- generating opportunities.

Lack of knowledge or understanding about the law and land rights (frequently a problem in poor communities) can also contribute to tension and conflict. Community-based legal assistance, advice, and orientation initiative that work with local people and organizations can be effective in addressing these problems. Building the capacity of local communities or civil society organizations can help people participate more effectively in local decision-making and planning process relevant to land.

Linking legal advice and orientation to processes that will protect land rights or resolve land conflicts is extremely important and is often done in conjunction with public information and education campaign. Activities that focus primarily on strengthening the justice system and rule of law may have relevance to land issues, such as targeted institutional strengthening or capacity building to promote more efficient handling of

¹¹³ Deininger, *Land Policies for Growth and Poverty Reduction*, pp.239, Washington, D.C., World Bank and Oxford University Press, 2003.

¹¹⁴ Experience in East Timor and Kyrgyztan shows that building on socially legitimate informal institutions was an effective way of managing a large number of post-conflict land disputes

land disputes.¹¹⁵ Initiatives and other support could focus on the formal justice or on non-judicial conflict-resolution mechanisms.

4.2.6 The Political Sustainability of Inequity

The relative autonomy of conflict *and especially of "peace"* in relation to grievances has a massive implication for conflict- or peace-oriented policies: inequity is politically sustainable. The cases reviewed and much of the literature shows that most land-related inequities are unlikely to lead to significant conflict. This is spectacularly the case with gender in general, but also with ethnic groups, both cases in which the number of people affected and their proportion of the population are extremely large. The need to prevent conflict, in other words, is not a sound political basis on which to base reforms aiming for broad access, secure tenure and fair distribution of land holdings. Broad access, secure tenure and fair distribution must be valued independently of their possible-albeit unreliable-impact on the probability of conflict.

Specific difficulties often encountered in post-conflict situations include: the inequities faced by women (particularly those widowed or separated from husbands) and orphaned children who are denied inheritance rights; the return of refugees and internally displaced people, often without titles or other proof of ownership; the status of environmentally sensitive areas, especially where there is land pressure due to sudden refugee returns; and the need for management of local inter-communal relations where civilian populations have often been the victims of violence, and where land claims have an inherently

¹¹⁵ UN Office for the Coordination of Humanitarian Affairs (UN OCHA), 21 April 2005, Humanitarian Update, March 2005 Volume VII, Issue III.

‘communal’ nature.¹¹⁶ It is often desirable to implement rapidly some elements of post conflict land reform in order to avoid problematic issues ‘festering’ over time and triggering more conflict at a later date, and activities such as information-gathering, training and identification of relevant personnel can be done even in the emergency phase. However, the process of land reform is time-consuming, partly because countries frequently lack an effective legal framework in respect of tenure, and systems for participatory policy- development.¹¹⁷

4.3 CONCLUSION

The context of land policy is time sensitive, i.e. it has to be responsive to changes, a policy that claims conflict-awareness needs to constantly monitor the political impact of land policies as mediated by their contexts. This calls for the establishment of mechanisms especially devoted to doing that in the agencies responsible for the design and implementation of land policy and/or in the agencies that finance and support the latter.

Land policy can make things worse or better but it is only exceptionally a critical factor of conflict, even in countries and societies where the vast majority of the population depends on agriculture for its survival, and even in countries coming out of war. There is clearly no blueprint for an effective and efficient land administration system that nations

¹¹⁶ UN Office for the Coordination of Humanitarian Affairs (UN OCHA), 21 April 2005, Humanitarian Update, March 2005 Volume VII, Issue III.

¹¹⁷ Lind, J. & Sturman, K. (eds) Scarcity and Surfeit: the Ecology of Africa’s Conflicts. Nairobi/Pretoria: African Centre for Technology Studies/Institute of Security Studies. Republic of Rwanda A Profile of Poverty in Rwanda. (2002)

policy makers can ‘pull down and use’. As with any business proposal, any specific solution must be molded to meet the needs of its beneficiaries and work within the capacity and limitations of the local institutional and social environment. This message is now built into the revised land policy agenda where more weight is given to multi-disciplinary approaches to designing systems for administration and management of land and natural resources.’¹¹⁸

Every change regarding property interests or *defacto* use of property (purchases, gifts, exchanges of privatized apartments, houses or land and claims for restitution) complicates the situation further and makes it even more difficult to achieve certainty about the property title. The incomplete and incompatible registers today cannot meet the demands of a modern and changing society. Economic progress will be obstructed until it becomes possible legally and *defacto* to own property. Not to mention the stability that clear ownership gives the thousands of households who do not know where they are going to live tomorrow”¹¹⁹. Therefore it is crucial that the necessary changes are made. Even if adapting the registration systems now seems costly, the costs of not doing so would be far greater.

¹¹⁸ USAID, 2005 Land and Conflict: Toolkit for Interventions

¹¹⁹Uvin, P. Aiding Violence: The Development Enterprise in Rwanda. West Hartford: Kumarian Press 1998.

CHAPTER FIVE

5.0 RECOMMENDATIONS FOR THE POST CONFLICT LAND POLICY DURING THE RESETTLEMENT OF IDPS IN UGANDA AND SEARCH FOR VIABLE LAW

5.1 Introduction

This study has revealed that Land is often a significant factor in widespread violence and is also a critical element in peace-building and economic reconstruction in post-conflict situations.¹²⁰ This is because it is a wealth and survival asset and a central element in the varied and most basic aspect of subsistence for many, particularly the poor in societies characterized by complex social relations of production.¹²¹ Klaus Deninger points out that as countries emerge from armed conflict; they face multiple land-related challenges associated with post-conflict reconstruction and peace consolidation. Relevant land issues must be clearly understood and given appropriate priority because successful management of these issues can be critical to stabilization efforts.¹²²

5.2 Problems to be addressed

The importance of land issues in post-conflict reconstruction and peace consolidation is often not recognized early enough and, even when it is recognized, it is often politically or practically unfeasible to effectively address those issues in the immediate post-conflict

¹²⁰ USAID, Land and Conflict: Toolkit for Interventions, 2005.

¹²¹ Jooma Mariam Bibi, May 2005 "We can't eat the constitution" Transformation and the socioeconomic reconstruction of Burundi, Occasional Paper 106

¹²² Deninger, , Land Policies for Growth and Poverty Reduction, pp.239, Washington, D.C, World Bank and Oxford University Press, 2003.

period. Conflict over housing and land policy can be prevented by thinking ahead and preparing for problems in advance (e.g. when the 'primary conflict' is still going on), planning strategically, integrating short-term measures into long-term objectives in order to demonstrate immediate impact, and identifying the true dimensions of activities needed and appropriate resources for the task.

5.2.1 Awareness on Land Rights

People need to be helped to assert their rights to their land by increasing their awareness on land law and abilities to seek justice. People may be unaware of their rights or are frightened (or intimidated) from claiming them and may not have access to the legal system because they cannot afford the costs. Civil Society Organizations (CSOs) should carry out mass education campaigns on land rights, compensation and processes of law. CSOs and NGOs should take up land right cases directly because of people's lack of access to the judicial system. This will set precedents both in law and as examples to others, who will then be encouraged to take action to claim their rights.

5.2.2 Land Administration and Dispute Resolution

The traditional land tenure administration systems need to be supported so that they can implement the law and protect people's rights. This study therefore recommends that the land law be amended to recognize traditional institutions as authority actors on matters of adjudication for land held under customary tenure except where there are instances of customary rules being unconstitutional. The Land Act stipulates clearly that land held under customary tenure is subject to the rules and procedures as laid down by each tribe

or clan, however it does not allow for the traditional authorities refer to, to take charge of land, instead institutes statutory institutions at the expense of the traditional ones. Local governments & Ministry of Lands need to actively promote implementation of the Land Act, supporting the institutions of customary tenure and ensuring that judicial process works to protect people's rights. CSOs need to engage in advocacy to resolve some of the inconsistencies in the land law e.g. inclusion of traditional institutions. Prioritize support to institutions of customary law and emphasize their role in solving land disputes, particularly as they deal with the majority of land disputes.

Clarify the role of village councils in administering customary land sales and establish the necessary court system (LC2 & LC3 courts) and train the local councils in land and clarify their roles. And the systems and procedures need to be instituted for the registration of Communal Land Associations to protect ownership of communal land. Compile a public register of all publicly owned land in each district in order to alleviate people's fears that their land could be considered as vacant, and therefore vested in the District Land Boards (DLB).

5.2.3 Tilting the Codification

This study strongly advances the case for registered customary rights, by recommending the insurance of Certificates of Customary Ownership (CCOs) to protect people's land rights. It also acknowledges the need for codification of customary land law as a way of assisting traditional leaders (especially the *Rwoti Kweri* and clan elders) in upholding

customary law, by giving them principles, rules and precedent on which to rely in decision making and delivery of justice.

5.2.4 Loss of Land

The people need to be reassured that rumors about land expropriation are unfounded through unequivocal statements at the highest level. Ensure that the civilian population has access to land to secure their livelihoods and that their rights to their original lands are protected. Make unequivocal statements at the highest level on some of the misunderstandings and rumors that *abound, such a making it clear that* the war is not being used to disenfranchise the Acholi people of their land. Pay compensation to those people who have lost their access to land through war. The status of de-gazetted land should be clarified: once the State relinquishes the hold on land in trust for the people in the public good (e.g. as a national park), it ceases to have rights over the land and the land should return to its original customary owners from the time of gazetting, or, if there are none, it should be vested in the District Land Board.

5.3 ISSUES TO ADDRESS IN LAND AND CONFLICT RESOLUTION

The core issues in relation to conflict and land are: “security of tenure”, “access to land” and “equitable distribution of land”¹²³. These core issues are not objectively given, universal, or independent from one another. They are socially constructed and framed; their meaning changes according to the social, geographic and historical context, and they are inter-related, It goes without saying that the accuity of these problems and their very

¹²³ Visaounlad, Ensuring Land Access in Post-Conflict situations: Comments 2003

existence implies that they' be socially recognized and framed as realities and issues in a given social context'.¹²⁴

5.3.1 Security of Tenure

Land tenure insecurity has many faces - from the returning refugee widow who is unable to wrestle her husband's land from his family; to the community evicted by a land-hungry warlord, to the drought-defeated smallholder who has sold his last plot for food and cannot find a landlord willing to enter a sharecrop arrangement. It may also be a case of clan heads carving up local pasture for new cultivation, land that poorer villagers thought was theirs to share, that, the government thought was its own to distribute, that visiting nomads thought was theirs to graze -and often have documents to "prove" it - documents that may conflict with others issued at different times,' with the law, or with human rights and justice norms. At this point in time, multiple claims, each with its own historical legitimacy, may exist over the same land. The law, and the documents or testimony it generates, is plural, complex, uncertain, incomplete and currently unenforceable. At every turn, there is a need to rethink norms for a sustainable future while reconciling with the past'.¹²⁵

Interrogation of the causes of tenure insecurity is imperative not just for peace but for fighting poverty. While assurance of stable access to land is clearly not a sufficient route out of poverty on its own, insufficient land to live on and insecure access or rights over

¹²⁴ Deninger, *Land Policies for Growth and Poverty Reduction*, pp.239, Washington, D.C, World Bank and Oxford University Press, 2003.

¹²⁵ Wily Liz Alden, 2003, *Land Rights in Crisis: Restoring Tenure Security in Afghanistan*

land are well-recognized factors in sustaining poverty.¹²⁶ Insecure tenure or access probably afflicts millions of people - and for reasons that are largely avoidable, since tenure insecurity is first and foremost a sociopolitical condition that grows from chronic to severe and may eventuate into outright dispossession in the face of changing policies.

The issue of embeddedness is inherent to the question of security of tenure, for the latter results from its inscription into a sound and reliable institutional context. It is related in other words to social and political regulation or, as current fashion would have it, to governance.¹²⁷ . Tenure security is critical for a number of reasons; among many others, it may for instance have an impact on investments, which are often discouraged by insecurity, access to credit, which is facilitated by sound titles, incentives for resource conservation, which grow with security, as well as crop selection, which are constrained by insecure tenure, institutions matter here perhaps more than in any other area of land policy.

While generalization on this scale is no doubt risky, tenure is possibly becoming less secure than ever before. It finds itself caught between the common-but not universal-breakdown of customary systems and attempts by weak national states, to replace or do away with them. The situation is difficult in poor transition countries, such as Cambodia, where the basis of traditional systems has been broken and new legal regimes are

¹²⁶ FAO, Land Tenure and Rural Development, Rome, Food and Agricultural Organization of the United Nations, 2002.

¹²⁷ Lavigne Delville, P., 2002, Towards an Articulation of Land Regulation Modes? Recent Progress and Issues at Stake, Regional meeting on land issues, Kampala, April 29th - May 2nd.

shaky'¹²⁸. It appears, however to be most critical in Africa, where “the laws and customs which have in the past assured farmers’ land rights are under pressure, while the states that claim to replace them rarely have enough administrative capacity¹²⁹ to replace them, when they are not simply “failed,” or “informal”. In many instances, moreover, it is state actions themselves that create insecurity by instituting a legal pluralism that enable some to challenge customary systems by resorting to state authorities’¹³⁰.

The OECD DAC Guidelines on *‘Helping Prevent Violent Conflict’* refer to land issues as a root cause of conflict; USAID’s guidelines on Conducting of A Conflict Assessment note that land is an important tool in violent political struggles between elites; and UN-HABITAT and *FAQ* have both started to develop conceptual frameworks for understanding the impacts of conflict on land administration, and addressing these impacts in the post-conflict context.’¹³¹

Tenure insecurity also arises in post-conflict situations where people have competing claims to the same plot of land. Well-designed post-conflict activities can help resolve this type of tenure insecurity. Land can also be a proximate cause of conflict: e.g. when land disputes, tenure insecurity or inequality in land access is recognized as grievances, which (often in combination with other factors) can motivate violence. Tenure insecurity is generally addressed through tenure clarification, land titling and registration initiatives.

¹²⁸ Ibid Deininger, K. et al The Evolution of the World Bank’s Land Policy. Principles, Experience and Future Challenges, The World Bank Observer, 14(2) pp.247-276. 1999.

¹²⁹ Ibid

¹³⁰ Lavigne Delville, P, Towards an Articulation of Land Regulation Modes? Recent Progress and Issues at Stake, Regional meeting on land issues, Kampala, April 29th - May 2nd. 2002.

¹³¹ IFAD, Rural Poverty Report 2001: The Challenge of Ending Rural Poverty, Oxford, Oxford University Press, 2001.

Depending on the circumstances, initiatives that demarcate and record land tenure without as far as granting formal titles can improve tenure security for customary or indigenous rights holders. Approaches that incorporate dispute mitigation and consensus-building measures and that work to clarify rights by legal reforms are needed.¹³²

5.3.2 Access to Land and Lack thereof

There has been increasing interest in recent years in the possible links between land access issues and violent conflicts, Access to land has a number of meanings. In its most basic form, it points to the ability of willing farmers or breeders to obtain land on which to plant and harvest or pasture on which to graze their herds. Defined as such, lack of, or inadequate access to land is a very common problem. Demographic and natural factors play a role in limiting access, but social and political dynamics are also very important¹³³.

Access should not be thought of as strictly related to ownership per Se, as it covers the whole range of property rights and arrangements, from grazing rights, share cropping, usufruct, and all possible forms and modalities of leasing. Some degree of conflict typically characterizes a situation involving competing claims to the ownership or use of the same piece of land. In some cases, government involvement that supports (or is perceived to support) one side over another can significantly increase tensions (e.g. Rwanda and Burundi). In Uganda and Kenya, warring clans of pastoralists facing resource scarcity kill each other during cattle raids as they search for productive grazing

¹³² Associates for Development/ Rugandya , 2006. what went wrong? Women's land rights not delivered in Uganda. Occasional paper, Associates for Development

¹³³ Zimmermann Willi and HUBner-Schmid Katharina, Land Tenure Issues in Post-Conflict Countries the Case of Bosnia and Herzegovina, Division 4500 Rural Development, 2000.

land and reliable water sources. In Mozambique, land disputes between immigrant charcoal burners, local farmers and grazers have caused violence and property damage. Many of these disputes result in forced displacement, destruction of property and loss of life. Competition and conflict can also occur when people are resettled into an area already held or occupied by others¹³⁴.

Today, a “menu” of approaches helps facilitate broader access to land and engender greater equality in economic opportunity. Increasingly, market mediated and community-managed efforts are being explored including land rental market facilitation¹³⁵. Another variation in approach to improving land access is the allocation of immediately available or accessible state-owned land.

5.3.3 Distribution of Land

The likelihood of violent conflict increases substantially when gross inequities characterize land holding patterns, particularly when a large landless or land-poor population has limited livelihood opportunities¹³⁶. Land-holding inequities, combined with other drivers of violence, have been critical elements in many conflicts throughout history. Examples include the Mexican Revolution of 1912, the Spanish Civil War in 1936-1939, Chinese revolution that brought the Communists to power in 1949, Cuban revolution in 1959, Vietnam conflict that ended for the US in 1975, and the civil war in

¹³⁴ Zimmermann Willi and HUBner-Schmid Katharina, Land Tenure Issues in Post-Conflict Countries the Case of Bosnia and Herzegovina, Division 4500 Rural Development, 2000.

¹³⁵ Zimmermann Willi and HUBner-Schmid Katharina, Land Tenure Issues in Post-Conflict Countries the Case of Bosnia and Herzegovina, Division 4500 Rural Development, 2000.

¹³⁶ Uganda should take serious lessons here. It is not uncommon to find individuals involved, such as conflict entrepreneurs, who manipulate a disgruntled population to achieve personal political or material gain (as the cases of Rwanda and Burundi).

El Salvador in the 1980s. Land-holding inequities also represent an underlying factor in the violence that has occurred more recently in countries such as Zimbabwe, Brazil, Nepal, Guatemala and Venezuela; and could potentially impact the situation in South Africa. Land scarcity, in the absence of off-farm livelihood options, is often a structural cause of conflict in parts of Africa.

Unequal distribution is the most traditional topic in the debate about land and violence and it is the issue that has driven most attempts at land reform. This problem is central to the discussion of land in the Americas but it is also acute in Southern Africa, particularly in Zimbabwe and South Africa, where a small minority of people still control most of the land that is proper for agriculture. Collective property, in particular state farms and state-sponsored cooperatives, used to be a significant component of the discussion of distribution, but market mechanisms now universally dominate policy initiatives and attention is now focused on the impact of liberalization on the distribution of land between small and large land owners¹³⁷.

Beyond the basic construct of access, security and distribution, the rest is very much context dependent. The three issues are often profoundly inter-related: Weak tenure security often feeds concentration, environmental degradation and thus often leads to landlessness or confinement to land of poor quality. Debate on the latter; however,

¹³⁷ Zimmermann Willi and HUBner-Schmid Katharina, 2000 Land Tenure Issues in Post-Conflict Countries the Case of Bosnia and Herzegovina, Division 4500 Rural Development

suggests that such inter-relations are possibly case-specific and that they need to be verified empirically in each case¹³⁸.

5.4 GENERAL CONCLUSION

Uganda is still a growing democracy and many of the political decisions are still dependant on the politically correct/elite. This is however not good for the minority of the population that lives in Northern Uganda. The situation is fluid and the ceasefire/peace process fragile. Instances of spontaneous return and a reduction in the number of attacks on civilians by the Lord's Resistance (LRA) suggest hope for the tenure, but effective protection mechanisms must be put in place. However, despite nearly 20 years of war, the government has yet to commit adequate resources to protect or assist IDPs, and serious human rights abuses by the Ugandan army have continued virtually unchecked. The rule of law does not exist in the north due to a lack of police officers, judges and court personnel. While this could be explained in large part by the violent environment caused by rebel attacks, neglect by the central government also plays a major role. Major towns in the north, although relatively safe, have no means of support due to the crumbling of the district tax base, and corruption is rampant. Funds donated in Kampala rarely make it to the districts.

Many IDPs have found the courage to return, and as the number of returnees grows, so will the confidence of others to make an attempt to return. It is important to remember that, even if the current peace talks (currently being held between Nairobi and Juba) fail again, the past several years have demonstrated that people may be better off at home

¹³⁸ Ibid

than in the camps. But they will need the help of their government, the humanitarian and development community, and the support of donors and diplomatic representatives to ensure that they have the secure environment and the tools necessary to rebuild their homes and their lives.

Over 80% of land in Uganda (more than 90% in northern Uganda) is held on customary tenure, this situation is unlikely to change in the foreseeable future. For IDPs, two distinct problems arise: access to land in displacement for their survival and livelihoods; and potential future problems on their return in relation to definition and allocation of rights in land as well as use of land as a resource. Suffice to note here is that the GOU then has to come up with an elaborate plan to distribute the land in order to avoid more conflict. There is a dire need to bridge the gap between the rhetoric of good governance reform and implementation of sound land policies in post-conflict situations.

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