

**THE LAW AND LAND TENURE CONFLICTS IN BUGANDA: A CASE STUDY OF
MUKONO DISTRICT**


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DECLARATION

I, hereby declare that this is my original own work at the best of my knowledge and belief. It has never been produced by any one or institution for any academic award in and outside Kampala International University or other institute of higher learning, except where due acknowledgment has been made in the text.

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APPROVAL BY SUPERVISOR

I certify that I have supervised and read this study and that my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate in scope and quality as a dissertation in partial fulfillment for the award of Degree of Bachelor of Law of Kampala International University.

Signature:.....

Dr. Chima Magnus

Date:.....

DEDICATION

I dedicate this work to my beloved mother Hanifah Namubiru and my Father for their unmeasured support during the period of my study. I thank her for the prayers and words of encouragement.

ACKNOWLEDGEMENT

With excitement, I pass on my sincere gratitude to Allah having provided for me in all ways throughout my research and especially for the blessing me with the gift of my dear parent who has contributed a lot of her time to making sure that I am successful.

I also want to thank my Supervisor, Dr. Chima Magnus for sparing his precious time, his valuable comments and commitment in the process of preparing this paper.

Further special recognition goes to the mothers of my children Sarah Nakigudde, Hanifah Nakayiba, Rehema Najjingo for the support they have extended to me both morally and spiritually. I couldn't have gone far without what they granted me at the time when I needed it most. Not forgetting my brothers Ahmed Muyanja and Moses Bulime who all played a big role in modelling my future.

Lots of gratitude to my course mates Atuhairi, Kanyonyi Moses and the rest of the entire discussion group mates for the love and togetherness we shared.

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ABSTARCT

The topic of research was “The law and land tenure conflicts in Buganda: a case study of Mukono district”. The main aim of the study was to investigate the law and the land tenure conflicts in Buganda.

The research findings were analyzed basing on the specific and a recommendation and conclusion drawn accordingly.

CHAPTER ONE

INTRODUCTION

1.0 General Introduction

Land should not be a problem in Uganda. It is vast. It is productive. It is beautiful and very fertile. And, at least at present, it has not been polluted or defiled beyond the capacity of society to remediate.¹

Statically speaking, 80% of Uganda's land is arable and untouched and almost 30% is covered with water or water related resources such as lakes ,rivers, swamps etc.

Uganda boost with some of the best climatic conditions on the planet which is both equatorial and tropical rain forests coupled with two seasons which are sunny and rainy in a year.

Consequently, Uganda boost of some of the most suitable and favorable seasons for agricultural production/farming.

The “land conflicts” in Uganda deal with the ways in which we are trying to harmonize the traditions of Ugandans and the freehold system brought to us by the British in the far back days of colonialism. Before colonialism, land was available for communal use, held for grazing purposes and small scale subsistence agriculture. No single individual owned land. Land tenure and management was perpetually customary.

Today’s land problems have been shaped by History and the concept of free hold, a system that was appropriate for Great Britain in the 19th Century, but not compatible with the culture and traditions of Uganda and its people at that time. As a result, land reforms in Uganda in the twentieth and twenty first centuries have been targeted to rectify those historical errors.

This piece of writing views, Uganda’s land conflicts especially from Buganda region and mukono district in particular, where most of land conflicts emanate from and from a historical Perspective: from the days of colonialism to the present day.

¹ Incidence and Impact of land conflict in Uganda, World Bank Policy research working paper 3248, March 2004.

BUGANDA REGION

The territorial organisation.

The kingdom of Buganda covers part of the north-western and western Margins of Lake Victoria between the Nile in the East and Lake Albert in the West (1) The total area, excluding open Waters, is given as 17,295 square miles. For administrative purposes the Region is divided into twenty administrative units each of which is called a Saza, translated as "County". Each county is divided into four to fourteen Gombolola or "sub-counties." Below this there are smaller units called Miluka, translated as "parishes." The Central government consists of the Kabaka (the King), the Katikilo (the prime minister) his ministers, and a legislative assembly called the Lukiiko.²

The following are the officially recognized counties (amasaza) of Buganda: Ggomba, Butambala, Kyaddondo, Busiro, Buddu, Bulemeezi, Ssinga, Kyaggwe, Bugerere, Buweekula, Mawogola, Kabula, Mawokota, Kooki, Ssese, Buvuma, Busujju, Buluuli.

Mukono district

Mukono District is a district in the Central Region of Uganda and it is part of buganda region which is located in Kyagwe county. The town of Mukono is the site of the district's headquarters and its main commercial centre.

Mukono District is bordered by Kayunga District to the north, Buikwe District to the east, Tanzania to the south, Kalangala District to the southwest, Wakiso District and Kira Town to the west, and Luweero District to the northwest. The town of Mukono is approximately 27 kilometers (17 mi), by road, east of Kampala, the capital and largest city of Uganda.

1.1 Back ground to the study

Pre-colonial era

Before colonial rule, land tenure in Uganda consisted of a number of customary tenure systems, both sedentary and pastoralist. In general, customary tenure in Sedentary agricultural

² <https://en.m.wikipedia.org/wiki/Buganda> last checked 1st April 2017.

communities revolved around kings and chiefs who allocated land to clans and community households according to customary norms and practices.

Every person and household had the right to access sufficient land for their subsistence; this right came either from the lineage or clan head or from the chief to whom the person pledged allegiance. Transfer (rent, sell, and sometimes inheritance) rights were not granted. Since most lineages in Uganda are patri-lineal, when land was handed down within a family, it passed from father to son.

In the semi-arid regions of the country, where transhumance was practiced, access to land by clans and households was generally based on agreements with other clans that permitted the Movement of households and cattle during the year to areas where pasture and water were available. Thus, households did not seek access to a piece of land in a particular community or lineage on which to build shelter and plant crops, but rather access to land within their cattle corridors.

1.1.1 Land tenure in colonial and post colonial Uganda

The emergence of new tenure systems:

One of the influences that impacted on the customary system of land holding was the introduction of new systems of land holding after colonialism. These are covered below:

The colonial state in Uganda was built on the official philosophy of protectorate and indirect rule rather than colony, territory or direct rule. The Colonial state didn't introduce radical changes in the system of customary tenure in Uganda. The dominant economic structure chosen for Uganda was one of small peasant agriculture under the prevailing customary tenure. However, other land policies which could accommodate customary tenure were introduced to appease the local chiefs and get local political allies in the effective administration of the country. The colonial administration thus introduced policies which could accommodate customary tenure.

Mailo Tenure

This system is not a traditional system of land holding in Uganda and is founded on English feudal systems. It was established under the 1900 Buganda Agreement. It was born out of the settlement between the protectorate administration represented by Sir Harry Johnston on the one hand, and the existing leadership in Buganda (at the time) represented by elders and chiefs – on the other hand.

This was the Uganda Agreement of 1900. It was later changed to read: ‘Buganda Agreement’ by legal notice of 1908.

The agreement granted square miles of land to Chiefs and private land owners hence the term ‘mailo’ deriving from the English length-unit (mile) which was the basis of measurement in land allocations. The agreement divided the land among the crown (Queen’s government), the Uganda Protectorate Administration, the Kabaka, his Chiefs and missionary societies. The total land under the Protectorate Government was 10,550 sq. Miles and came to be known as ‘Crown land’.

There were two categories of Mailo which were divided thus:

(a) Official Mailo

These were grants of land attached to specific offices in the Buganda Local Government. They could neither be sub-divided or sold and instead passed intact from the original land holder to his successor. This official Mailo was defined in sec. 6 (a) & (c) of the Buganda Possession of Land law:

The holder of an official estate could not sell that estate but he was capable of leasing the same in accordance with the Official Estates Ordinance/Act of 1918 (Cap. 203 of the 1964 ed. Laws of Uganda). This applied also to the grounds of official estates of Toro and Ankole Agreements. So here, one held land by virtue of his chieftainship (office), thus it was not private property. Under the agreement, it was clear that the 350 square miles given to the Kabaka was to be Kabaka-ship Mailo, i.e. it was not private property. Official Mailo was abolished in 1967 and these estates became public land.

(b) Private Mailo

In such estates, some 1000 chiefs and private land owners were allocated 8,000 square miles of land under the 1900 Buganda Agreement.

The Mailo land owner held rights in his land akin to those of free hold. He was free to sell all or part of his holding and to pass it to his successors either under customary inheritance procedures or through a will.

Approximately half of Buganda (more than 8,000 square miles) became formally privatized, despite the fact that these Mailo estates were already settled by small holders under customary tenure, whose usufruct (land use) rights were not legally recognized.

Clauses 15 to 18 of the 1900 Buganda Agreement dealt with the issue of land. The essence of this settlement was that approximately one half of Buganda became crown land and was vested in the Protectorate government. This is what was referred to as Public Land. The other half was widely distributed in the form of freehold estates ('mailo') to the Kabaka, his relatives, Senior chiefs, one thousand other chiefs and private land owners. These people got square miles of land among themselves. Historical records show that the first Mailo title was issued on the 2nd of January 1909 though by 1964, the total number of titles issued was 48,519 (forty eight thousand five hundred nineteen). These grants under the Buganda Possession of land law, 1908, were in the nature of freehold. The new system thus cemented individual title ownership.

The 1900 Agreement, however, did not define the nature of the estate (tenure) that had been granted to the Kabaka, Chiefs, etc. It was not mentioned in the agreement as to what was the character of the grant. The agreement was pre-occupied with the question of acreage. It was not until 1908 that Mailo tenure was actually defined in the Buganda Possession of Land law, 1908. Under Section 2 thereof, for the first time the word 'mailo' which is derived from the English word 'mile' was coined (out of a corruption of the English word) to refer to land which the government had surveyed and recognized as belonging to someone.

In further criticism, allocation of the original Mailo holdings in the early part of the century was made without regard to pre-existing rights of occupancy and ignored the presence of peasant

cultivators whose tenancy rights were recognized under customary system of land tenure. These people, who had been occupying the land in different capacities, i.e. as Bibanja holders at the King's pleasure; as Chiefs (Butongole); as part of Butaka (clan) land, now had to adapt to a new system where they had a land lord directly over them and possessing title to the land. They therefore could no longer hold their land as they traditionally did but under the dictates of the new Mailo system.

Other persons who wanted to settle on mailo land had to approach the mailo owner and get permission to occupy a specific piece of land on terms agreed with the land lord. Initially, most tenants paid little or no rent and labour services, particularly on large estates. Mailo owners were considered lords of their area and their tenants were their servants. Even though Mailo owners permitted peasants to retain possession of the land (called Kibanja) they were occupying, this effectively converted them from customary land users into legal tenants on private property. This fact alone laid the ground for the genesis of multiple rights on the same piece of land, which is a defining characteristic of land disputes and relations as evidenced by evictions and a land use impasse between land lords and tenants in contemporary Uganda.

The first sign of discontent in the relationship between Mailo owners and tenants which brought about conflicts in the Mailo system led to the enactment of the Busuulu and Envujjo law of 1928 which provided the tenant cultivators with security on land and set a limit on the fees which they were required to pay to the Mailo owner. This law was instrumental in preventing the development of a landless peasant class. It was enacted as a result of complaints from tenants over the land lord's increase in the rate of Busuulu and Envujjo (rent) payable. Under this law, the rates were standardized and restricted and the peasants could not be forced off their Bibanja without an order of Court. [For further information on this interesting piece of legislation, refer to notes on Busuulu and Envujjo law.

The new system with its change in ownership was particularly profound for those who held land as Bibanja holdings. They remained as such on Mailo but on top of being subjected to Customary obligations, also had to conform to the Busuulu and Envujjo law of 1928.³

³ www.lawschoolguide.blogspot.com last checked 1st April 2017.

The Land Transfer Act, No. 33 of 1970 barred a Non- African from acquiring any interest in land owned by an African without consent of the Minister.

1.2 Statement of the problem

Presently, Mukono district is the centre of conflicts when it comes to land disputes with a reported figure of 236 cases of land disputes in the high court of Jinja alone, to other forms of violence and reported cases on land disputes at police level with Mukono police station.

An un estimated cases of land disputes at local council level in the whole district of Mukono is a matter which requires to be addressed with maximum effort.

The reported cases of mob violence (justice) at Mukono police station is another issue which further emphasize the growing conflicts on land in Mukono.

The above land conflicts are as a result of the bridge between land owners and the Bibanja holders and which in most cases are driven by politicians who confuse the land owners and the Bibanja holders.

1.3 Purpose of the study.

The major objective of this research paper is to critically examine land conflicts in Mukono district under the multiple land tenure systems in Uganda and their evolution.

To analyze the causes of land conflicts in Mukono district and establish the weaknesses in the present laws available concerning land matters and recognizing the past too, where the problem originated.

To evaluate how the law protects all the available occupants on land which is lawful and bonafide occupants and expedience in resolving these disputes by the courts of law.

The study also aims to find solutions and recommendations and harmonize the conflicts on land and suggest practical ways on how this sensitive issue can be addressed by all the stake holders.

1.4 Objectives of the study

- 1) To examine the various laws governing Land in Uganda.
- 2) To examine the land tenure systems in Buganda region Mukono district.
- 3) To examine the major causes of Land conflict in Mukono District of Uganda.

1.5 Research question.

- 1) How is Land law currently regulated in Uganda?
- 2) What are the major causes of land conflicts in Mukono District of Uganda?
- 3) What are the land tenure systems in Buganda region Mukono district?

1.6 Scope of the study

The study is restricted to Mukono district although reference is made to some other areas in Buganda region and Uganda as a whole for the sake of comparative analysis.

Focus will be put on different legal regimes and how land has evolved over time ranging from pre-colonial, colonial, post-colonial and the present era.

Specific reference is made to the legal effect on lawful and bonafide occupants and other forms of land ownership which influences socio-economic development.

1.7 Methodology

To achieve the objectives of this study several methods will be used to collect and analyze data collected so as to make a conclusion on the findings. This is primarily a literature study, which will examine the law and Land tenure conflicts in Buganda.

The study is a doctrinal research which asks what the law is on particular issues. It is also concerned with analysis of the legal doctrine, legal framework, case laws, and how it has been developed and applied.

In order to achieve the objective of the study successfully, the researcher employed the review of different resources doing library research on various written texts on the subject of the law and Land tenure conflicts in Buganda. These involve reports, journals, articles and seminar papers for the legal opinion.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

Land tenure systems have had different impacts emanating from different kinds of conflicts in Buganda region depending on the different legal regimes operating at any particular time.

In a nut shell, to appreciate the factors and forces behind the conflicts in Buganda and Mukono district in particular, it is imperative to analyze the historical aspects pertaining to the present conflicts on land and their hindrances on economic development as a whole.

2.1 Pre-Colonial Era

Buganda region

In pre-colonial Buganda, most land was nominally controlled by the Kabaka while individual plots were conferred upon peasants by local chiefs. The Kabaka could also assign land in each county, yet, like chiefs, he could neither mortgage nor sell land.

However, his symbolic power was much greater than his overt political or legal rights, and thus the Kabaka was a 'symbol of order and meaning' for the Baganda.

The Kabaka was the source of the whole system of authority on which the political structure of Buganda rested. He was the ultimate sanction for the legal rights of every section of the community and preserved the balance between them. The prosperity and general well being of the country, as well as its prestige in the eyes of neighboring peoples, was thought to be due to him.

The only parts of Buganda not controlled by the Kabaka were the lands owned by the 52 clans of Buganda, each of which 'claimed as its own the hill on which its original ancestor was believed to have settled; this was the residence of the head of the clan (Mutaka; plural Bataka) and its members could claim the right of burial there. Indeed, the Luganda word for land is ttaka while the traditional second name for the Kabaka is Ssabataka (leader of the clans), indicating the antiquity of the link between clans, the Kabaka and land ownership and – in as

much as clan identity is the most important social means of ethnic identification for the Baganda – between ethnic identity and land as well.

There were at least four categories of rights of control over land in Buganda and these include the following:

Clan rights (Obutaka)

These were rights exercised by clan and sub-clan heads known as “Bataka”. Obutaka were rights over land which comprised of ancestral grounds and was not alienable to strangers. They had a right to settle or reside on the land. Other members of the clan (Ekika) to which land belonged had a right to be buried on this land upon death.

Butaka holding was somewhat a unique one. It was a communal form of tenure, and neither was it full private ownership. It could only pass onto a male heir of deceased clan head.

Obutongole (rights of the kabaka and the chiefs)

The kabaka who held paramount title to all land in Buganda and could grant land to his chiefs as he pleases.

This was a kind of land granted to the chiefs (Bakungu) or the lesser chiefs (Batongole) by the kabaka for services rendered or for another reason of favouritism.

This kind of tenure terminated on the death of the grantee or loss of office since it was attached to the office, the tenure could not pass onto the heir of the grantee.

Obwesengezze (individual hereditary rights)

These were claims based on either long occupation on one particular holding confirmed by the king or an original grant of one holding or small estate to an individual chief or peasant by the king himself. These would claim permanent occupation of the particular piece involved which was inheritable.

Ebibanja (peasant right of occupation)

These were rights of the peasants as long as they fulfilled their obligations to the king. They had to respect and obey the kabaka’s chief in return and enjoy an undisturbed

possession on the land. They could cultivate crops and upon death the kibanja could pass onto the heir.

2.1.1 The Colonial Period (1900-1962)

In 1900 the British signed an agreement, thereafter known as the 1900 Agreement, in which they gave 8958 sq. miles to the Kabaka, the royal family and several thousand top Baganda chiefs as freehold – known in Buganda as Mailo (from the word ‘mile’) – and allocated the rest, or 9000sq. miles of ‘waste and uncultivated land,’ to the Protectorate as Crown land.

The size of the Mailo land grants were ‘unequal and reflected the relative status of the allottees’ (Marcus 1978, 513): the Kabaka received 350 square miles of land while ‘some twenty chiefs were granted twelve square miles or over, and another 150 persons became entitled to between eight and twelve square miles. The great majority of allottees however, received one or two square miles each’ (Thomas 1928, 240).

As all this newly allocated land became legally inheritable as well, the 1900 Agreement thereby created a ‘hereditary ruling class’ in Buganda (Richards 1963, 273). However, over the next two decades these chiefs increased Busuulu (land rents) and Envujjo (commodity rents) on their rural tenants to unreasonable levels.

The British therefore, forced the Lukiiko (Buganda Parliament) to pass the Busuulu and Envujjo reform law of 1927, which, by establishing a Busuulu of 10 Shillings or one month’s labour plus a merely nominal Envujjo of 4 Shillings per acre of coffee or cotton, ‘virtually eliminated’ the peasants’ grievances against the landlords (Apter 1967, 186-187). Yet the law did not grant tenants outright ownership: landlords remained landlords, and tenants, regardless of how little rent they paid.

Indeed, as the Ugandan economy grew after World War II, however, a growing middle class in Buganda grew increasingly dissatisfied with the power wielded by this new aristocracy, which

became the focus of 'increasing and overtly expressed resentment' from all parts of Buganda (Marcus 1978, 523-524).

Many were especially angry at landlords who rented land to non-Baganda, especially Alur, Banyarwanda and Barundi tenants (Edel 1965, Gutkind 1963). While much of this anger can be explained by the fact that landlords preferred to rent land non-Baganda as they were easier to exploit, Richards (1954, 173) argues that much of the xenophobia in Buganda at the time was due to a strong ethnic attachment to land.

Despite the changes in land tenure wrought since 1900, the fiction that land is the gift of the Kabaka still remains. Heirs to estates must be formally presented to him in open court and make obeisance to him.

Disputes over land inheritance are heard by a special Kabaka's court. All these factors account for the emotional attitude of the Ganda towards the very idea of an outsider buying land. The small number of foreigners who have succeeded in doing so shows the strength of this sentiment.

Mailo Tenure

This system is not a traditional system of land holding in Uganda and is founded on English feudal systems. It was established under the 1900 Buganda Agreement. It was born out of the settlement between the protectorate administration represented by Sir Harry Johnston on the one hand, and the existing leadership in Buganda (at the time) represented by elders and chiefs – on the other hand.

In 1900, Sir Harry Johnston, as Her Majesty's Special Commissioner in Uganda, entered into a historic agreement with the Kabaka's regents (Stanislaus Mugwanya, Zakaria Kisingiri and Apollo Kagwa), and Chiefs of Buganda. This agreement was to establish clearly the powers of the Kabaka's government vis-à-vis the protecting power and the limits of those powers and,

paramount of all, to effect a land settlement which, by giving security of tenure, would lay the foundation for the economic growth of the Kingdom.

This was the Uganda Agreement of 1900. It was later changed to read: 'Buganda Agreement' by legal notice of 1908.

The agreement granted square miles of land to Chiefs and private land owners hence the term 'mailo' deriving from the English length-unit (mile) which was the basis of measurement in land allocations. The agreement divided the land among the crown (Queen's government), the Uganda Protectorate Administration, the Kabaka, his Chiefs and missionary societies. The total land under the Protectorate Government was 10,550 sq. Miles and came to be known as 'Crown land'.

Partly, owing to the fact that more land was found to be available than was originally assessed, considerably more land was, after negotiation, allotted as private estates than the agreement provided for. Furthermore, owing to an interpretation by the Baganda that "1000 Chiefs and private land owners" meant "1000 chiefs and, in addition, land owners", thus the number of allottees under this section was, in fact, nearly 4000.

There were two categories of Mailo which were divided thus:

(a) Official Mailo

These were grants of land attached to specific offices in the Buganda Local Government. They could neither be sub-divided or sold and instead passed intact from the original land holder to his successor. This official Mailo was defined in sec. 6 (a) & (c) of the Buganda Possession of Land law:

Section 6 "Every man who has land for his chieftainship shall hold it as follows –

- (a) For all the time that he holds his chieftainship he will be allowed to take all the profits from the land which he has, except as written in the words below. . . .
- (b) To hold land in this manner will be called to hold "official Mailo" and shall be governed as directed above . . ."

The holder of an official estate could not sell that estate but he was capable of leasing the same in accordance with the Official Estates Ordinance/Act of 1918 (Cap. 203 of the 1964 ed. Laws of Uganda). This applied also to the grounds of official estates of Toro and Ankole Agreements. So here, one held land by virtue of his chieftainship (office), thus it was not private property. Under the agreement, it was clear that the 350 square miles given to the Kabaka was to be Kabaka-ship Mailo, ie it was not private property. Official Mailo was abolished in 1967 and these estates became public land.

(b) Private Mailo

In such estates, some 1000 chiefs and private land owners were allocated 8,000 square miles of land under the 1900 Buganda Agreement.

The Mailo land owner held rights in his land akin to those of free hold. He was free to sell all or part of his holding and to pass it to his successors either under customary inheritance procedures or through a will.

Approximately half of Buganda (more than 8,000 square miles) became formally privatized, despite the fact that these mailo estates were already settled by small holders under customary tenure, whose usufruct (land use) rights were not legally recognized.

Under sub sec. (a) of section 2 (Buganda Possession of Land law), there was a prohibition from owning more than 30 square miles of Mailo land, whether by one self directly or by others for someone, except with the approval in writing of the Governor and the Lukiiko (Buganda Parliament). Therefore individual holdings of Mailo were not to exceed 30 square miles. The Buganda Possession of Land law 1908 prohibited a Mailo owner from transferring land to a person who was not of Ugandan origin without prior consent of the Governor and the Lukiiko.

Clauses 15 to 18 of the 1900 Buganda Agreement dealt with the issue of land. The essence of this settlement was that approximately one half of Buganda became crown land and was vested in the Protectorate government. This is what was referred to as Public Land. The other half was widely distributed in the form of freehold estates ('mailo') to the Kabaka, his relatives, Senior chiefs, one thousand other chiefs and private land owners. These people got square miles of

land among themselves. Historical records show that the first mailo title was issued on the 2nd of January 1909 though by 1964, the total number of titles issued was 48,519 (forty eight thousand five hundred nineteen). These grants under the Buganda Possession of land law, 1908, were in the nature of freehold. The new system thus cemented individual title ownership.

The 1900 Agreement, however, did not define the nature of the estate (tenure) that had been granted to the Kabaka, Chiefs, etc. It was not mentioned in the agreement as to what was the character of the grant. The agreement was pre-occupied with the question of acreage. It was not until 1908 that Mailo tenure was actually defined in the Buganda Possession of Land law, 1908. Under Section 2 thereof, for the first time the word 'mailo' which is derived from the English word 'mile' was coined (out of a corruption of the English word) to refer to land which the government had surveyed and recognized as belonging to someone.

In further criticism, allocation of the original mailo holdings in the early part of the century was made without regard to pre-existing rights of occupancy and ignored the presence of peasant cultivators whose tenancy rights were recognized under customary system of land tenure. These people, who had been occupying the land in different capacities, i.e. as bibanja holders at the King's pleasure; as Chiefs (Butongole); as part of Butaka (clan) land, now had to adapt to a new system where they had a land lord directly over them and possessing title to the land. They therefore could no longer hold their land as they traditionally did but under the dictates of the new Mailo system.

2.2 Land Policy during the 1962-1971 period

A Clash of Interests:

Milton Obote's first government, 1962-1971, was characterized by political upheaval and economic uncertainty. Obote's socialist policies, outlined in his Common Man's Charter and ensuing documents, did not spill over into his land policy: Obote ensured private land ownership for most citizens. However, Obote did attack a symbol of unity for the Buganda kingdom the Kabaka and claimed the kingdom's historic territory for the states.

He further undermined property rights by nationalizing successful commercial and industrial interests. In this way, Obote's regime offers two important lessons for land law. First, land is a unifying issue among the Baganda. Seizing the land of traditional kingdom will have both political and economic consequences. Secondly, in secure property rights will drive away foreign investment and will lead to economic decline.

The period began, however, with the transfer upon independence of all Crown land in Buganda to the control of the new Buganda Land Board (BLB), located in the kingdom capital of Mengo. After the 1966 coup, when Kabaka Mutesa was forced into exile while Obote took over the position of President and officially abolished all kingdoms in Uganda, the government disbanded the BLB and took all of its land (Fortt 1973). Yet the government did not forcibly acquire private land in Buganda, leaving 'the land tenure system in Buganda basically unaltered,' in West (1972, viii)'s words, through the end of the decade.

2.2.1 Strategies in Obote's Land Policy

Directly after Milton Obote's government removed Kabaka Mutesa II from his palace in 1966, Obote abolished the Buganda kingdom's land privileges and redistributed its holdings.

The distribution of this land and the UPC government's decision to focus on group agriculture schemes were political tactics to satisfy two groups: nationalist Baganda and UPC party constituents (Young 1966, Segal 1968). A major part of Obote's agricultural policy involved 74 clearing land in northern Uganda for cotton cultivation. This region was Obote's homeland, and much of his opposition viewed this as regional bias (Segal 1968, 84).

2.2.2 Land policy between 1971-1979.

Immediately after coming to power, Amin suspended the 1967 Constitution. He made some conciliatory gestures to the Buganda kingdom, e.g. offering to repatriate the remains of the deceased Kabaka Mutesa II.

However, he rejected the Baganda elders' petition to restore the traditional kingdoms. Generally, Amin failed to forge alliances with ethnic groups outside of the Kakwa, his mother's ethnic group from the West Nile District in Northern Uganda.

Instead, Amin's land policies are best understood by two laws that affect land tenure in Uganda. First, Amin expelled the Asians, a name generally given to anyone of Indian descent, nominally to Africanize the economy and redistribute their holdings.

Amin's regime announced that Asians (both naturalized Ugandans and noncitizens, nearly 80,000 people) were no longer welcome in Uganda. Amin proclaimed that the Asians must leave within three months of his August 7th announcement.

The property that the Asians left reverted to the state, and Amin's administration allotted or sold the Asian's former possessions.

The second, sweeping land reform change that Amin brought to Uganda was to nationalize all land. That is, all freehold land and mailo land became vested in the state. The state would issue leases for property owners, but the title belonged to the state.

Amin's 1975 Decree 79 caused further concern in an already troubled economy.

While Idi Amin's initial land policy did not differ from Obote, his Land Reform Decree (LRD) of 1975 turned all private land in Uganda into leasehold property, supposedly to spur the capitalist use of land. However, in reality its intentions were as obscure as its advantages were small.

While some have argued that the LRD allowed beneficiaries of the Amin regime the opportunity to grab land (Mamdani 1983, Nabudere 1980), there is scant evidence that any of this actually happened, as several case studies from the 1980s onwards show that the local landlords did not acquire their land under Amin (Bikaako 1994, Muhereza 1998, Ssenkumba 1993).

Similarly little activity took place in the seven years between the fall of Amin and Museveni's accession to power, mostly due to the civil war in Buganda and continued economic collapse.

2.2.3 Land Policy 1986 – present.

Early Efforts at Reform 1986-1995

Despite the abolition of the kingdom in 1966 and the LRD in 1975, landlords continued to maintain their place in Buganda society by educating their children while also leasing land out to poorer tenants for specified periods of time in an informal manner (Karlström 1999, 151-155).

As Ssenkumba (1993, 19) notes, this system of ‘borrowing’ constituted ‘the main source of income for the landlord since the abolition of rent in the LRD.’ Thus, to earn a profit on their land, many landlords would evict long-standing tenants in favour of those who borrow land and therefore pay for it– reminiscent, of course, of the similar conflicts in the 1950s described above. Naturally, this system led to ‘a lot of tension’ and made the ‘land question very sensitive,’ according to the then Professor (and former Prime Minister) Apolo Nsibambi.

Ironically, the end of the civil war in 1986 meant that absentee landlords were now able to go back to property they had not seen in two decades and attempt to collect rent. For instance, in one village in Mpigi district, ‘the first time the landlords introduced themselves and declared their interest in their land was when they issued 30 households with an eviction notice on 10 August 1988’ (Bikaako 1994, 40).

Thus it was inevitable that, upon taking power in 1986, Yoweri Museveni and his National Resistance Movement (NRM) government had a good amount of dissention within its ranks about what system of land policy the government should adopt.

For the first decade of its existence the NRM was quite broad-based, with Marxists like Chango Machyo (Minister of Rehabilitation) and Mahmood Mamdani (Chair of the 1986/87 Commission of Inquiry into the Local Government System) occupying key positions alongside Buganda monarchists. Machyo and others argued against the continuation of the Mailo land system, advocating communal ownership of land and claiming that those Baganda tenants who were against abolishing Mailo land were misled by their landlords. Thus, according to President Museveni, ‘the peasants in Buganda, as elsewhere in Uganda, may not have discovered their own interests.’

In other words, Museveni claimed that the struggle over land is a class struggle hidden by ethnic identity, writing that 'Baganda peasants have suffered as much injustice at the hands of their Baganda elite as at the hands of elements of the elite from other areas.' He claimed to be committed to the elimination of the Mailo land system, which 'robbed the Baganda and non-Baganda of the 'lands of their birth... I will not rest until this injustice is resolved.'

It is therefore no surprise in this context that 'landlords were jittery about the NRM and assumed that the NRM was "communist" (Nyangabyaki 1997, 197).

However, as the NRM cabinet also included such stalwart monarchists and landlords as former and future Buganda Katikkiro (Prime Minister) J. Mayanja-Nkangi (the then Minister of Education) while Apolo Nsibambi, a Bugandan landlord and future Prime Minister, was appointed a member of the Commission on Local Government chaired by Mamdani. This diversity of appointments plus the already extant tension between landlords and tenants was enough to scare off the government from enacting comprehensive reforms before it began deliberations over a new constitution in the mid-1990s. However, delegates to the Constituent Assembly assigned to discuss the constitution were also unable to agree on a land policy for the Country and therefore agreed to delay debate for a new land law to be tabled within two years of the enactment of the 1995 constitution.

2.3 The constitution of Uganda 1995

The 1995 constitution of Uganda under Article 237 (1), stipulates that land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this constitution.

The constitution further provides for the establishment of the Uganda land commission under Article 238, the district land boards under Article 240, Land tribunals Article 243 and minerals under Article 244.

2.4 The Land Act (1996-1998)

If the government's motive in putting off the debate on land was a hope that the issue would somehow resolve itself in the meantime, it was a complete failure: the debate over the Land Act

turned out to be one of the most difficult political struggles of the NRM's first fifteen years in government.

Not only was there serious opposition to the Act in the Parliament and within the NRM, but the Buganda government, restored in 1993 but purely as a cultural institution, was able to mobilize large numbers of people against the perceived faults of the Act.

While the government was nonetheless able to pass the Land Act after a brief debate in June 1998, the Act's unpopularity has led both to repeated calls for its amendment as well as an increase in the popularity of reviving the federal state of Buganda that existed between 1962 and 1966.

The Land Act was designed, above all, to provide security of tenure for those whom the government called 'bona fide' occupants who had been living on a plot of land for at least 12 years without paying rent. It proposed to require both illegal occupants and legal renters to pay landlords 1000 Ush (\$0.58) per year as a nominal fee in order to obtain a certificate of occupancy.

Public land (formerly Crown land) would be controlled by District Land Boards at the district level of local government, rather than in Kampala by the Uganda Land Commission as they had been in the past.

It was hoped that the Land Act would thus help to further spur a market in land throughout the country, reduce poverty and, through newly created Land Tribunals at the sub-county and district levels, alleviate conflict over land.

Much has already been written on the failures of the government to achieve these objectives, most notably due to the lack of funds: as Bosworth (2002, 21) writes, 'the Land Act was enacted essentially without aforethought concerning the funding and human resource requirements for executing the wide-ranging tenure and institutional reforms that it proposed.' However, it is doubtful that the Act would have been successful had it received adequate funding for the simple fact that it was, and continues to be, unpopular in Buganda.

Despite the fact that the Act was partially designed to support Bugandan tenants against their landlords, the NRM government has nonetheless failed both to acknowledge ethnic attachment to land in Buganda and negate the perception that the central government is ethnically biased towards western Ugandans.

2.4.1 The land (amendment) Act 2004

The land amendment Act of 2004 was intended to effect some amendments in the land Act cap 227 and to provide other related and incidental matters concerning land conflicts.

The amendments however, did less to help solve conflicts on land for instance the amendment to section 31 of the Act.

Section 31 of the Act is amended— (a) by substituting for subsection (3) the following—

“(3) The tenant by occupancy shall pay to the registered owner an annual nominal ground rent as shall, with the approval of the Minister, be determined by the Board.

(3c) For purposes of this section, nominal ground rent shall mean reasonable ground rent.

The amendment talks about ‘nominal’ which literary means little or reasonable as the case may be but we all know that the annual ground rent is supposed to be 1,000 Ugshs and the researcher wonders how that is reasonable.

In a nutshell, the land lords feel so aggrieved to be paid a thousand shillings annually as fees for the Bibanja holders to utilize their land.

2.4.2 The land Amendment Act of 2010

This Amendment was intended to enhance the security of occupancy to the lawful and bonafide occupants on land which still was intended to resolve conflicts on land.

More specifically section 32 of the parent Act where it is stipulated that the lawful and bonafide occupants may only be evicted on land in default of nonpayment of ground rent and can only be through a court order.

But still there are massive evictions from land without court orders all over the country and Mukono in particular and this has brought about tensions on land.

CHAPTER THREE

THE LAND TENURE SYSTEMS IN BUGANDA REGION

3.0 Introduction

There are basically four major land tenure systems that exist in Uganda and Buganda region in particular, which are both recognized by the 1995 constitution of the republic of Uganda and the land Act cap 227.

The four systems include customary, mailo, freehold and lease hold. In addition to these forms of tenure, there is a unique form of land occupancy provided for under the 1995 constitution and the Land Act cap 227.

It is in accordance with these land tenure systems that land is owned, occupied, utilized, cultivated, abused and alienated and therefore, this necessitates a discussion of all these tenure systems one by one and their impacts on individual rights that has brought about conflicts all over the region and mukono district in particular.

3.1 Freehold tenure

The Land Act 1998 defines freehold tenure as a tenure that bestows upon someone ownership of registered land in eternity –which means “owning the land forever,” this type of tenure was set up by the 1900 agreement between Buganda and the British colonial government.

Most owners of land under this tenure acquired it as grants from the colonial government before independence and from the Uganda Lands Commission after independence –with only a few having bought it mostly from government.

The Land Act specifies that the holder of land in freehold has full power of ownership, which means they can use it for any lawful purpose and sell, rent, lease, dispose of it by will. The Act also decrees that only citizens of Uganda are entitled to own land under freehold tenure, with non-citizens allowed only the alternative of leasing it for a period of up to 99 years.

About obtaining certificates of title under this tenure, tenure is pursued directly through the government authorities where the Sub-county land office, the district land office and the zonal office of the Ministry of Lands are all involved.

3.1.1 Freehold tenure in Mukono district

Freehold land was given as a grant to the citizens of Uganda and existing institutions (religious organizations, educational institutions and other big corporate bodies) by the colonial government before independence in 1962.

It is a classic, individualized type of land tenure which reduces community control over land significantly.

The Public Lands Act of 1962 provided for the conversion of freehold into public lands and the implementation of leasehold tenure throughout the country (Batungi 2008: 76). In 1975, with the Land Reform Decree, all land previously held by title was declared public land; the decree abolished all freehold interests and vested the land in the state. Freehold tenure was converted into leaseholds for 199 years for public bodies and 99 years for individuals (Batungi 2008: 77). All this changed with the 1995 Constitution, although freehold still has a limited distribution in Uganda.

Consequently, this type of land tenure was restricted to certain ownerships and interests as witnessed above and it's a rare form of ownership in Mukono district.

3.2 Mailo Tenure system

3.2.1 The incidents of mailo tenure

Yusuf Nsibambi, a lawyer, says this type of tenure is predominantly in Buganda, with some minimal parts of Ankole, Bunyoro and Tooro sub-regions having it. He describes Mailo tenure as one where permanent ownership of a large plot of land belongs to landlords who acquired it through the 1900 Buganda agreement, while at the same time tenants on the land are recognised and they also have rights to live on and utilise the land. Nsibambi explains, "Under Mailo land tenure, owners have perpetual ownership and are free to sell or pass on their rights to their heirs. On the side of selling, many mailo holders have since 1900 sold off their holdings, to such an extent that the Ministry of Lands puts the number of

owners to have risen to more than 200,000 today courtesy of so many having inherited or bought parts of what was previously one piece of land, thereby causing its subdivision,” the lawyer says.

On the side of the constitution, it states that mailo land owners are not allowed to use their powers against the interests of customary tenants, bona fide or lawful occupants. This provision was introduced in 1998 and revised further in 2010 with the aim of inhibiting the possible eviction by landlords of people occupying mailo land as customary tenants or squatters.

3.2.2 Legal recognition of Mailo tenure

Under the Land Act cap 227, Mailo land tenure means holding of land registered in perpetuity and having its roots in the allotment of land pursuant to the 1900 Buganda agreement and subject to statutory qualifications, the incidents of which are described in the Act itself.

Like all the other tenure systems, Mailo too derives its legality from the 1995 constitution of the republic of Uganda. The tenure had been abolished under the Land reform decree 1975 and whatever land had been held as mailo land became leasehold on conversion. However, the 1995 constitution revives mailo as one of the land tenure systems and its incidents are derived from written law.

3.2.3 The Existence of Mailo land tenure in Mukono district.

As the researcher has discussed above, this is one of the commonest forms of tenure in Buganda region and mukono district in particular.

The mailo system was introduced by the colonial authorities in mutual agreement with the Buganda Kingdom in 1900.

3.3 Customary tenure system

3.3.1 The incidents of customary tenure system

With the exception of Buganda, which is mainly held under Mailo, land in other parts of Uganda is held mostly under the customary tenure. The Land Act and the Constitution describes this tenure as one where land is owned communally, by a clan, or a tribe, among others. There are different forms in which customary land tenure exists in different parts of

Uganda. “In some places the land is held communally, in some it belongs to a particular clan while in others, it is held by individuals.

The rules of customary law also vary in different parts of the country. The Land Act 1998 states that customary land tenure shall be governed by rules generally accepted as binding by the particular community, and anyone who acquires land in that community shall also be bound by the same rules.” says Obbo.

He adds that with customary tenure, obtaining of a private certificate of title is possible for individuals, whereby they simply have to agree with the community that owns the land (the clan or tribal chiefs), then the Sub-county and government land boards take up the process of issuing the title. The constitution also provides for turning of an individual on communal tenure into one on freehold, and lease hold can also be issued by owners to tenants under this tenure.

3.3.2 Legal recognition of customary tenure system

The 1975 Land Reform Decree attempted to phase out customary land tenure gradually.

Under the decree, it was provided that a customary tenant was a mere tenant at sufferance and could be evicted by a statutory lesser upon compensation. But in practice, the customary tenants on public land were never evicted even where the land was leased out by the Uganda Land Commission, because the committees which were meant to assess compensation were never set up.

The tenure is now legally recognized under the 1995 constitution of the republic of Uganda as one of the major land tenure systems in which land can be owned.

Therefore, for the first time in Uganda’s history, the customary tenant can register his or her interest and acquire a legal title to such land in form of a certificate of customary ownership and such registration is supposed to be done in accordance with such a manner prescribed by parliament. However, the constitution provides for some sort of manner through which the customary tenure may disappear giving way to freehold. The constitution provides for the conversion of customary tenure to freehold land ownership by registration.

The Land Act cap.227, provides for the procedure to be followed in registering customary tenure as to get a certificate of ownership into freehold. Under the Act, a certificate of customary ownership may be acquired by a person, family member, or community holding customary tenure on former public land. This implies that there is now recognition of both individual and communal ownership of land under customary land tenure.

Customary tenure is regulated by customary rules which are limited in their operation to a particular description or class of persons. This is because: Each community has its own rules that regulate customary tenure, however, the Land Act cap.227 provides for specific incidents of customary tenure as a system of land holding.

3.4 Recognition by the community

An important source for security of tenure is the community itself: When the community recognizes and enforces a person's land rights, that person's land tenure is increased.

In a nutshell, the incidences of customary ownership can be summarized in terms of communal ownership punctuated by individual ownership of smaller parcels of subdivided land, perpetual ownership of land, while alienation can only be in accordance with customary practices of community owing the land basically with prior consent of the family or clan members in case it is family land or clan respectively.

3.5 Rights of a holder of a certificate of customary ownership

A certificate of customary ownership confers upon the holder of the same certain rights in relation to his or her customary land. These rights either flow from the inherent tenure of customary tenure as recognized by customary law of a given community or are expressly specified in the certificate of customary ownership.

These rights are enshrined under the Land Act and they include:

-The right to lease

-The right to permit Usufructuary rights and,

The right to mortgage or pledge.

3.6 Lease hold

The 1998 Constitution describes leasehold tenure as one where one party grants to another the right to exclusive possession of land for a specified period, usually in exchange for the payment of rent. Under this type, a land owner (whether through freehold, (Mailo or customary tenure) grants a lease to another person. Obbo says in practice, much of the land that is leased was previously owned by government bodies, particularly the Land Commission and the District Land Board, and normally this comes with some development conditions imposed on the land's subsequent use by those to whom it is leased.

CHAPTER FOUR

THE CAUSES OF LAND CONFLICT IN MUKONO DISTRICT OF UGANDA

4.0 Introduction

According to Advocates Coalition for Development and Environment (2009)⁴, land conflicts will escalate in at least 30 districts in Uganda unless urgent measures are taken to resolve them. The conflicts include border disputes with neighboring countries⁵, inter-district border disputes, wrangles between landlords and tenants⁶, and tenants resisting acquisition of land by investors⁷. For many years numerous land conflicts and disputes have left parties dead or at least vowing to kill each other.

The causes of land conflict in mukono District of Uganda therefore are as follows;

4.1 Deficit in Dispute Resolution

A governance deficit manifests itself in variety of ways such as absence or weak central authority to enforce law and order, control by interest groups and biased policy, absence of transparent rules of law and enforcement, inadequate institutional and legal framework, and deficiency in capacity (i.e., manpower, finance and broad-based political support), where there is potential or actual conflict, there is governance deficit. There are two parallel legal and judicial systems in place for dealing with land issues, that of customary tenure and that of the state administration.

Although the latter recognizes the former, there are unresolved contradictions in the way in which it has co-opted it, which could be a potential source of conflict over land in the future

⁴ By Lydia Namubiru, Uganda: Land Wars threaten 30 Districts in the New Vision Newspaper 24th April 2009.

⁵ Examples include; Migingo Island in Lake Victoria pitting Uganda against Kenya, a 9 km stretch in Yumbe between Uganda and Sudan, the Katuna border area with Rwanda, the Mutukula border area with Tanzania, and Rukwanzi Island in Lake Albert, Semliki, Medigo area in Pakwach and Vurra border area in Arua.

⁶ Disputes over district borders exist between Moroto and Katakwi, Sironko and Kapchorwa, Bundibujjo and Kabarole, Moroto and Lira, Tororo and Butaleja, Butaleja and Budaka and over Namatala swamp between Mbale and Budaka districts.

⁷ In Buganda region, conflicts are expected to worsen between land owners and tenants, the latter increasingly facing eviction as land becomes scarce and its value goes up. Violent evictions have pervaded the area in recent years.

and are likely to give the more powerful an advantage in land disputes. The nature of mediation and dispute resolution mechanisms are important factors in determining whether parties involved in a conflict will resort to violence: if they are seen as partial or ineffective, violence is likely.

Formal tenure covers significantly less than 20% of the area, implying that more than 80% of land is held under forms of customary tenure which de facto falls outside the realm of the law statutory law⁸. This has led to a situation where, instead of complementing each other, “traditional” and “modern” systems compete, giving those who are affected by conflicts an opportunity to resort to “institutional shopping”, i.e. pursue conflicts in parallel through a variety of channels. There is a multiplicity of land dispute resolution institutions⁹ working in parallel, which many times leads to “forum shopping” by aggrieved parties, without a clear hierarchy – this has created overlaps and conflicts in land disputes processing.

It is also common for dispute resolution to be undertaken by the President’s Officer (Director for

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

In the absence of formal government structures, access to the justice system is difficult and at the lower ends is poorly equipped to deliver and enforce justice. Experience has shown that many types of land disputes are best managed outside the courts. Limited court capacity to process land claims efficiently and transparently is a serious constraint in many places. Thus,

⁸ Rugadya, 2008.

⁹ According to the LCCs/Legal Aid Baseline Survey (2006), the mechanisms for access to justice in Uganda include the formal justice system, the informal system with the LCCs, and the non-Government system involving legal aid service provision. The LCCs operate in 953 sub-counties, 5225 parishes and 44,402 villages.

alternative dispute resolution processes, especially mediation and arbitration, can be useful, while customary and community-based mechanisms for conflict resolution may be relevant in some cases, given the fact that dispute resolution in customary tenure is based more on mediation than upon passing judgment in favor of one party or another¹⁰.

The framework of laws for administration of land justice exists however, the efficacy of the institutions is well below the expected standards, so in practice one can hardly speak of meaningful access in the area of land justice, since there is little motion in terms of cases moving

to final resolution, with that the public is loosing confidence in the justice system, extra judicial means to resolve disputes are now being pursued leading to loss of lives or under hand eviction orders from the Registrars', because the systems moves too slowly, in part due to the staffing (a few Judges for example in the Land Division in High Court who have other responsibilities as well such as criminal cases).

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

4.2 Politics and Land

Early in 2015 conflicts eroded with some of the reason being political influence. Greatly bad examples are displayed by the political leaders who actively involve themselves in the act of the conflict take for example the Member of Parliament of Mukono district Hon. Betty Nambooze Bakireke who always tries to forcefully reinstate people back to their land however much there

¹⁰ Rugadya...et al, 2008.

is an eviction order from courts of law. This alone has greatly been a major cause of land conflict in Mukono District.

4.3 Deficit in Land Administration

It is important at this level that land administration is distinctively addressed from conflict resolution, rather than rely heavily on either of the two, since they are complimentary in nature and the smooth functioning of one determines the efficiency of the other. The Land rights administration is beset by a number of malfunctions– these are a source of land disputes and conflicts – until recently, land sector institutions were designed to serve the interests of a narrow minority of relatively wealthy registered landowners. Land conflicts and disputes are on the increase and yet there is lack or no capacity at all in the institutions charged with the adjudication and settlement of land disputes both statutory and traditional. The increasing and continuing proliferation of administrative and statutory land governance institutions existing in parallel with traditional institutions is creating a complex land governance infrastructure; this is made worse by the fact that some of these institutions are not fully operational in certain areas; such as northern Uganda and yet they are defacto legal institutions. For example, the Surveyors Registration Board¹¹ has been blamed on the increased number of unqualified land surveyors who have deliberately failed to adhere to professional standards, “mistakes are done during boundary openings and the problem is serious due to increased number of ‘undercover’ surveyors”. “If we are to curb land conflicts, there should be no short cuts to quality”¹². Out of the 650 surveyors so trained in the country, only 56 are registered members of the Institute of Surveyors of Uganda, a professional body for surveyors in the country. Within the traditional institutions on the other hand, custodians of customary law are modifying customary or informal systems to address changing socio- economic conditions often times skewed to guaranteeing greater and more secure rights for male custodians at the expense of weaker and marginalized groups thus more disputes.

¹¹ A government regulatory body charged with the professional registration of surveyors.

¹² John Musungu, Chairman Surveyors Registration Board.

Many of the land administration institutions are weak or not functioning. Land Committees that are to be responsible for recording land boundaries on customary land and recording transactions of in certificates in occupancy at the local level have largely not been formed due to financial constraints. There is also a lack of knowledge on the part of the sub county chiefs that are supposed to perform the role of recorder to the level that they are not even aware of this particular responsibility. District Land Boards are also rare and District Land Offices that are supposed to support them are weak. The land register in Uganda, which operates on the Torrens System of land registration, embodied in the Registration of Titles Act (Cap. 230), was established over 100 years ago. It is estimated that 60% of the records in the register is currently out of date; this therefore means that the available information is no longer reliable and therefore impinges on the integrity of land register since it does not depict the true situation with regard to the current ownership and other interests on registered land.

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

4.4 Corruption and Ignorance of the Law

Corruption and illegitimate demand for money both in land administration and dispute resolution is at the extreme. Despite Government of Uganda's (GoU) array of policy formulations and technical achievements, several studies including the 2003 National Integrity Survey reports indicate that the perception of corruption and real level of corruption in public offices in Uganda is still high. The Land Registry processes about 15,000 to 20,000 transactions annually¹³. MOJ carried out a survey in 2004 and found out that the registry was making an average of 100 filings per day. The filing involves transfers, lodging and release of caveats, withdraws and release of mortgages, extension of leases, surrender of leases, fresh registration of leases and free holds.

The report of the survey indicates also that 92% of the lawyers perceive an increase in corruption in the Land Registry.

Corruption and illegitimate demand for money slow the justice delivery process. A 2008 survey¹⁴ for Ministry of Justice found that 88% of respondents were asked to make un-receipted payments in dispute resolution institutions. 52.3% of the respondents in the survey reported that they had made payment to District Land Tribunals (official and unofficial payments for the services they received). Bribery was highest (33.0%) in the central police; 16% in the High Court; 16% in the Magistrate's Court; 11% in the District Land Tribunals; 7.3% in the LC1 Courts. Bribery was least common in the customary courts where only 2.7% of the households paid a bribe.

It is also a fact that knowledge on law and rights especially land law is limited amongst communities. A survey¹⁵ for Ministry of Justice showed that an aggregate of 90% of respondents had no knowledge of what is contained in the Land Act. Not even a single district amongst those surveyed had more than 15% of their population with any knowledge of the

¹³ MOJ Survey, 2004.

¹⁴ Rugadya..etal, 2008.

¹⁵ Rugadya..etal, 2008.

contents of the Land Act. In another survey¹⁶, six years after the passage of the Land Act, it was found that such knowledge remained low; only little more than a quarter of the population indicated that they were informed about the law.

4.5 Population Growth

By 2050, Uganda's population is expected to reach 120 million, three-fold the current population. Uganda's population is growing at a high rate of 3.2 per cent and is projected to shoot up to 39.3 million in the year 2015 and 54.9 million in 2025 due to high fertility rate (6.7) this relatively high level of population growth has led to increased land scarcity and it is also characterized by considerable regional diversity¹⁷. Population densities vary from 12 per km² in the North to 282 per km² in the West (Mugisha 1998)¹⁸. The average Ugandan woman gives birth to seven children in her lifetime. Rapid population growth, combined with either limited opportunities for non-agricultural employment or, in other areas, increasing non-agricultural demand for land, is a key factor that causes land values to appreciate, resulting in higher competition for a limited or decreasing amount of land available. This is the major driver for conflicts across generations or ethnic groups as most of the land conflicts are in highly populated areas, a population policy might also be a key element in averting an escalation of land wars in Uganda, especially those related to inheritance. Population growth can be contained through family planning, cultural and legal measures. Legal measures include abolishing of early marriage by setting a higher marriage age of first marriage for all kinds of marriages and legalization of abortion for unwanted pregnancies. In the words of Chief Administrative Officer (CAO), Mukono sums it all: '... every funeral results in more land conflicts because of especially polygamous marriages and belief that making a will is tantamount to signing your own death warrant...'

¹⁶ Gender Baseline Survey, 2004 for Ministry of Lands.

¹⁷ As cited in status of Urbanization in Uganda, 2007.

¹⁸ Uganda's GDP grew an average of 6.2 percent per year between 1987 and 2004 (IMF 2005a). However, when the country's high annual population growth rate is taken into account the per capita growth rate becomes relatively modest.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

5.0 Introduction

Land conflicts often have extensive negative effects on economic, social, spatial and ecological development. This is especially true in developing countries and countries in transition, where land market institutions are weak, opportunities for economic gain by illegal action are widespread and many poor people lack access to land. Land conflicts can have disastrous effects on individuals as well as on groups and even entire nations. Many conflicts that are perceived to be clashes between different cultures are actually conflicts over land and related natural resources. As such the recommendations and conclusions to such conflicts are stipulated below;

5.1 Recommendations

Uncovering hidden land conflicts

People – especially those in a position to improve the situation – often ignore land conflicts until they cannot be overlooked any longer, as tension and violence rise to a level which threatens major parts of society. However, many land conflicts linger for years in a state of pre-conflict or early conflict characterized by tense instability and repeated confrontation which each time raise the average level of tension.

Intervention should start here, avoiding the crisis that may come and finding a realistic solution for all parties. Of course, this is only possible so long as no party has totally lost face or been entirely destroyed by the other.

This, however, requires that the latent land conflict first has to be uncovered and intentionally named. While everybody may talk about it in private, the issue might not be publicly addressed or, if it is, it may be ignored by those responsible for it. In all cases, two approaches are necessary: first, proper documentation of as many land conflicts (cases) as possible and second, widespread dissemination of information on them. NGOs as well as land administration can play a major role in this process.

Documentation can be compiled in different ways: National Human Rights Commissions often have detailed accounts of violent land conflicts such as evictions. NGOs sometimes gather information and publish lists of all land conflicts (cases) within a country or a given area, identifying the conflict issue, its parties and the attempts and failures to solve it. Land administrations can create GIS-related databases, not only describing the type of conflict but also indicating the location and size of the property/properties involved.

Documenting land conflicts will only have an effect if the findings are then spread widely through society. In the case of state capture, or evictions and other unjustified land conflicts initiated by the state or its public officials, those responsible need to be identified in the documentation.

Choosing a suitable form of conflict resolution

Depending on the degree of escalation present, eight strategies of conflict resolution are recommended (Glasl 1999, modified):

1. **Facilitation:** The facilitator helps the parties come together, the parties still being able to solve the problem by themselves.

Facilitation can be applied in a very early stage of pre-conflict to defuse the conflict in time and avoid escalation.

2. **Moderation:** The moderator helps the parties come together to clarify and settle minor differences, the parties still being able to solve the problem by themselves. Moderation can be applied in a pre-conflict situation to defuse the conflict in time and avoid escalation.

3. **Consultation:** The “tutor” accompanies the process, working on the deeply internalized perceptions, attitudes, intentions and behaviors of the parties in order to calm them. Consultation is yet another approach useful during the stage of pre-conflict to stop the conflict progressing toward becoming a full-blown crisis. It is more appropriate than simple moderation in a case where a latent conflict has manifested itself for a longer time and has already created prejudices and hostility.

4. Socio-therapeutic consultation: This special form of consultation focuses explicitly on destructive, dysfunctional or neurotic behaviour due to psychological damages caused by former negative experiences in life. Socio-therapeutic consultation is extremely helpful if the parties involved have already lost face during the processes of peacemaking, peacekeeping and peace building, as it helps in the understanding of one own behaviour as well as that of one's opponent, and therefore creates understanding and a willingness to forgive one another.

5. Conciliation: This is a mixture of consultation and mediation.

The conciliator helps the parties to negotiate while – whenever necessary – addressing internalised perceptions, attitudes, intentions and behaviours with the objective of reducing prejudices and hostility. Conciliation can be applied in pre-conflict and early conflict situations as long as the parties are able to talk to each other.

6. Mediation: Mediation, too, requires that the parties are willing to face each other and to find a compromise. The mediator follows a strict procedure, giving each party the opportunity to explain its perceptions and to express its feelings, forcing the other party to listen and finally moderating a discussion aimed at finding a solution with which both parties can live.

Preferably, the moderator should not propose solutions but may lead the way towards them. At the end, a written contract is signed by all parties and the mediator seals the agreement.

Mediation can be done in any situation as long as the parties are willing to find a compromise.

7. Arbitration: Arbitration follows strict rules too. Unlike the moderator, however, the arbitrator is expected to make direct suggestions on how to settle the conflict. He is more influential and powerful than moderators, tutors or mediators. He has decision-making authority. Therefore, arbitration can be used even at the peak of a conflict. What makes it different from adjudication is that the arbitrators are accepted and trusted by both parties. The arbitrator may be appointed by all conflicting parties or be a respected person traditionally responsible for dispute settlement.

8. Decision by a powerful authority (adjudication) should always remain the last resort.

Customary land dispute resolution

In many parts of the world, indigenous peoples have a very special relation to their land. For them, land is more than an economic or productive asset. It represents home, binds together past, present and future and constitutes their spiritual base. Land being such a complex issue for them, disputes about it have to be settled in a more comprehensive manner. Customary conflict resolution is therefore especially appropriate for dealing with these land disputes, as long as the conflicts are within its jurisdiction.

Customary conflict resolution is a form of arbitration with a strong conciliatory character. This makes it different from litigation as well as from alternative dispute resolution (ADR). In other words, it includes elements of both: There is both a binding third party decision at the end as in litigation and there is a strong focus on the re-establishment of harmony as in consensual approaches of conflict resolution. As opposed to modern arbitration, the arbitrator in these cases cannot be chosen but is defined by his position.

The arbitrators are the elders (generally a panel of exclusively old men), whose main objective in conflict resolution is to re-establish harmony, cohesiveness and unity within the community. A conflict is therefore not considered to be simply a matter between the individuals involved but rather an affair of the entire community. The conflict is resolved when the conflicting parties are once again reintegrated into the community. Much attention is therefore given to spiritual and psychological measures such as purification, pacification and reparations, all of which are considered to have healing effects facilitating the mental and spiritual rehabilitation of victims as well as perpetrators.

While customary conflict resolution is (still) quite popular in rural areas, the urban populations most often prefer alternative dispute resolution, one reason being that they do not want to be old-fashioned; another being that differentiated treatment according to status and position is thought to be unacceptable for modern people. Therefore, it can be assumed that slight modifications of the customary conflict resolution - by simply recognising and integrating the

principles of equity and inclusiveness as enshrined in most national constitutions – would greatly improve the acceptance of customary conflict resolution as a method.

Religiously based land conflict resolution

While many societies make reference to their religion or religious understanding when it comes to conflict resolution, this is done sometimes more – and sometimes less - consciously and directly. In many countries, religiously based morals and values have entered directly into customary or formal law. In other countries, religion has had an impact on the philosophy that has influenced formal lawmaking. In still other countries, religion is unconsciously referred to in land conflict resolution. In quite a number of countries, however, religious law is equal to state law. In most Muslim countries, for example, land conflict resolution can as often be based on the Shari'a as on the Civil Code or Civil Procedures Code – especially at the local level.

Just as with customary conflict resolution, religiously based land conflict resolution – whatever its popularity and efficiency – should be tested for adherence to certain basic human rights standards, such as fairness, impartiality, honesty and inclusiveness.

5.2 Conclusion

Land conflicts seldom result directly from any absence of rules or an overlap of regulations. They rather result from the egoistic exploitation and intentional continuation of institutional gaps and the disregard of formal institutions. The reasons for this are numerous and diverse: Many people are in need of shelter but cannot afford to follow formal rules for obtaining it. Others simply don't want to. This could be because of a desire to resist formal institutions because of previous experience of disrespectful treatment by them (e.g. through failure to grant recognition of legitimated customary or informal claims, or through a misuse of power) and the lack of trust or hurt feelings resulting from this. Another reason a person might choose not to follow the formal rules and regulations for obtaining land is because of a material desire for wealth or an emotional desire for status.

BIBLIOGRAPHY

- Deininger Klaus and Castagnini Raffaella, March 2004, *Incidence and Impact of land conflict in Uganda The World Bank, World Bank Policy Research Working Paper 3248 Field Survey in 5 Districts (Hoima, Bundibugyo, Kanungu, Arua and Amuru) Under contract for International Alert - Uganda*
- Kalyango Ronald Sebba, (2006) *Policy Development and Evaluation Service United Nations High Commissioner for Refugees Research Paper No. 127 Land conflicts and their impact on refugee women's livelihoods in southwestern Uganda.*
- Kigula John, 1999. *Overview of types of disputes and dispute settlement fora, Makerere Institute of Social Research and Land tenure Centre, College of agricultural and life Sciences,*
- Lastarria – Cornhiel, 2003, *Property Rights and Land Market: Uganda Country brief, Land Ministry of Justice and Constitutional Affairs (MOJ), May 2008, Integrated Study On Land And Family Justice in 20 Districts by Margaret Rugadya, Eddie Nsamba-Gayiiya, Regina Lule Mutyaba, Herbert Kamusiime, J. B. Asimwe and Valentine Namakula on behalf of the Ministry of Justice and Constitutional Affairs. Coverage:3574 households, 209 Focus Group respondents and 816 key informant interviews.*
- Nabeta Nkote, Dr (2009) *Common Pool Resource Conflicts: Conventional Perspectives to the Bagungu/Balalo -Basongora Conflict in Uganda.*
- Refugee Law Project (2006), *Only Peace Can Restore the Confidence of the Displaced, Kampala: Refugee Law Project*
- Rugadya Margaret and Kamusiime Herbert, 2009 *Countering Regional, National and Local Conflict Impacts of Oil Discoveries in the Albertine Rift Uganda: a report of a Qualitative*
- Rugadya Margaret, 2008, *Land, Sustainable Livelihoods and Vulnerability in Post Conflict Northern Uganda, Trocaire Programme Document*
- Rugadya, M., Nsamba-Gayiiya, E., Kamusiime H. (2007); *Analysis of Post Conflict Land Policy and Land Administration: A Survey of IDP Return and Resettlement, Issues*

and Lessons in Teso region, for the World Bank to input into the PRDP and the Draft National Land Policy.

Rugadya, M., Nsamba-Gayiiya, E., Kamusiime H. (2008), *Northern Uganda Land Study; Analysis of Post Conflict Land Policy and Land Administration: A Survey of IDP Return and Resettlement, Issues and Lessons: Acholi and Lango regions, for the World Bank to input into the PRDP and the Draft National Land Policy.*

Rune Hjalmar (2005) *The “Lost Counties”: Politics of Land Rights and Belonging in Uganda.* Espeland □ □ □ University of Bergen and Chr. Michelsen Institute, Norway.

Sanginga, P. C., R. N. Kamugisha, and A. M. Martin (2007) *the dynamics of social capital and conflict management in multiple resource regimes: a case of the southwestern highlands of Uganda.* *Ecology and Society* 12(1): 6. [Online] [URL: http://www.ecologyandsociety.org/vol12/iss1/art6/](http://www.ecologyandsociety.org/vol12/iss1/art6/) last checked on 10th April 2017.

University of Wisconsin; research and policy development project, research paper 3. 1999 *Tenure Center, University of Wisconsin–Madison, Under Subcontract to Development Alternatives, Inc. Financed by U.S. Agency for International Development*