

ACHIEVING SUSTAINABLE LAND OWNERSHIP AND LAND USE CONFLICT MANAGEMENT IN UGANDA

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Abstract

This paper explores land ownership and land use conflict management in Uganda. The author builds an argument that supports the view that a proper management of land ownership and Land use is vital for managing emerging conflicts. It highlights land ownership and Reform in Uganda focusing on a historical perspective. The author further focuses on Land related conflicts in Uganda. Specific attention is put on the progress towards land reform and sustainable use. The last part of the discussion ends with fostering sustainable land ownership conflict management. Recommendations aimed at creating sustainable peace in land ownership and land use in Uganda are also brought forward.

Introduction on Land as a major factor of production

In the production process, there are a number of four factors considered vital. These include; land, labour, capital and entrepreneurship. Land is the primary factor of all production processes (Lipsey et al, 1992). Land has been defined, by different scholars and practitioners, in several ways, both narrow and broad. The Economists (Lipsey et al 1992, & David, 1992), noted that land refers to all those gifts of nature, such as soil, forests and minerals, commonly referred to as natural resources. According to the National Land Use Policy document (NLUP 2007), land refers to soil, landforms, geology, climate and hydrology, the plant cover, and fauna, including insects and micro organisms. Thus it comprises all the elements of the physical environment.

These definitions indicate that land is an economic resource which is important in production and distribution processes. Indeed, both Lipsey et al (1992) and NLUP (2007), concur that not much can be done except when the producers of wealth use land in their production processes. However, its supply is perfectly inelastic. This means that its total availability does not increase or decrease. As the population increases, there is an increased demand for land despite the fact that its supply remains unexpanded. This often results into acute competition which renowned Economist Tom Malthus theorized would escalate into what he referred to as a population trap (David, 1992). Consequently, individuals', families', communities' and governments' interests in land ownership may clash. Besides, various interest groups could have differing rights over the use of land. The rich may buy it faster than the poor land owners. They may seek to displace them in their effort to develop such land, resulting into conflict. It is only when conflicts are not efficiently managed that they produce disastrous effects (Maicibi, 2003). This means that comprehensive measures for protecting the poor in accessing land are vital in land ownership and land use conflict management.

Land ownership and Reform in Uganda: Historical perspective

In Uganda, land relations have been guided by existing tenure systems. The Pre-colonial Ugandan societies did not have common land tenure systems. These variations in land tenure systems ranged from state to stateless societies. For instance Mugambwa 2002, notes that land in pre-colonial Buganda Kingdom was customary owned. This ownership included four categories of rights of control over land namely: The Obutaka (rights of clans over land), Obutongole (rights of the Kabaka and the Chiefs), Obwesengeze (Individual hereditary rights) and Ebibanja (peasant rights of occupation). This land tenure structure greatly influenced how land was to be used with an aim of mitigating conflicts. It should however be observed that Semi-feudal structures of land rights were replicated in other pre-colonial kingdoms in Uganda such as Ankore, Toro and Bunyoro. In other decentralized pre-colonial societies like Kigezi, Acholi, Lango and Sebei, land was customary owned. This type of ownership enabled individuals to possess and use land in

line with community expectations. This greatly promoted land use and ownership while checking related conflicts.

At the time of Uganda's independence in 1962, four categories of land tenure systems existed: The Mailo land, freehold, lease hold and customary tenure. In illustrating the nature of these tenure systems Mugambwa (2006) observes that Mailo land basically worked in Buganda and accrued from the 1900 Buganda agreement. In case a Mailo land owner allowed a "Kibanja" occupant - peasants to use their land, these were deemed to pay fixed annual rent. At no time was the landlord granted permission to evict a Kibanja owner except when land was required for a public purpose or in case such a person abandoned his plot of land. Freehold tenure systems were applied in Ankore and Toro Kingdoms following the 1903 Crown Lands Ordinance. The British also issued adjudicated freehold to a small number of people and churches or religious institutions. The areas of Kigezi, Bugisu and Ankore were subjected to adjudicated freeholds. This scheme of issuing individual titles was widely accepted because of population pressure and land use disputes at a time (Murindwa-Rutanga, 2007). Lease hold tenure was drafted in relation to the 1969 Public Land Act. This enabled individuals to acquire lease on public land. Customary ownership was left open with occupants of such land having no protection against evictions except compensations for some developments on such land like buildings and crops. The Public Lands Act of 1969 however, granted protection to occupants of customary land.

In 1975, President Idi Amin Dada pronounced The land Reform Decree which abolished the land tenure systems in Uganda by declaring all land as Public Land. The Uganda land Commission was established specifically to handle issues of land on behalf of the state. This step in away removed the legal protections customary tenants had enjoyed under the 1969 Public Land Act. All mailo ownership, which existed immediately before the enactment of the decree, was converted into leasehold for a period of 99 years for public bodies and 99 years for individuals. The Decree altered the fundamental legal status of tenants by abolishing a number of laws that provided for prudent ownership of land including; the Busuulu and Envujju Law of 1927, the Ankole Land lord and Tenant Law and the Toro landlord and Tenant law of 1937.

The next step in Uganda's land reform system was the promulgation of the 1995 Constitution that pronounced itself on issues of land tenure policy. Article 237 of the Constitution recognizes the right of citizens to own and use land. Despite these assurances, land ownership and use in Uganda has continued to be a source of conflict hence the need for an inquiry into how best sustainable land ownership and use can be realized without conflict, irrespective of differing interests.

Land related conflicts in Uganda

The experience of escalating land conflicts in Uganda stem from the colonial era. A good example of this fact can be traced in the history of Buganda Kingdom and its relationship with the then Uganda. The 1900 Buganda agreement with the British created a new land tenure system of crown land and Mailo land. However by the time of independence in 1962, the Buganda land question was not properly resolved. Buganda was rather fussed with other societies to form the Republic of Uganda. Tensions of land ownership between the central government and Buganda Kingdom have persisted even today with the latter accusing the former of illegally occupying part of Mailo land. More is needed like the case of Cameroon for the Ugandan government to ensure full transfer of Mailo land to Kingdom authorities to mitigate land ownership conflicts. For this to be realized there must be political will from the central government. Because of its central location, Buganda Kingdom has been a hot bed of massive land investments. However this has been at the expense of "Bibanja" owners since many lack land titles. Strict control and procedures of issuing of land titles must be ensured to protect these tenants. This process is often undermined by corruption in land boards that results into issuing of false land titles that further fuels land ownership conflicts.

Northern Uganda was engaged in armed conflicts between the Lord Resistance rebels led by Joseph Kony who is still at large and the government of Uganda since the 80's. This conflict resulted into Mass displacement that began in 1996, when the government ordered civilians into camps, in most cases without prior discussion with host communities. A second round of government-organised displacement took place in 2002. The camp population was estimated at around 1.5 million at a time, including the existing inhabitants of the land where the camps were

situated. Since the host populations lived in the same camps, and had limited access to land, they were also generally considered to be Internally Displaced Persons (IDPs).

With the end of the war in northern Uganda, the IDPs were ordered to return to their original land. Land in northern is majorly communally owned. The very first group's resettlement was based on clan ties. Challenges came in later especially for the people born during the war time since most of them lost their parents with vital information about their land. Additionally, those that had stayed for long in urban areas and belonged to the young generation lacked protection in relation to identifying exactly where their parents lived. In case such areas were identified but already occupied by earlier returnees, such people lacked money to enable them seek for justice ending up exploited. However the government has empowered Local councils and courts to handle cases related to land, but these have not been active. Also the death of older people during war who could have provided vital information on land in their areas has become a challenge. This has greatly fuelled land ownership conflicts in northern Uganda. As (Andrew, 2009) noted, enforcing property rights and resolving ownership disputes can be an incredibly complex endeavor, one with policy as well as legal dimensions. It can be especially challenging in countries with less formalized legal and judicial systems.

In Eastern Uganda the major land conflicts have been in relation to reallocating people from Mount Elgon to other areas due to environmental concerns. In 2010, massive mudslides occurred in Bududa on the slopes of Mount Elgon. Villages including Nameti, Kubewo, and Nankobe were heavily affected with 85 homes being destroyed in Nameti village. In Butaleja, over 6,000 homes from the Sub-counties of Kachonga, Masimasa, Kimuntu and Nawangofu were affected by the rains. The government attempted to resettle people from Bududa to other parts of the country like Kayunga District. This has been faced with stiff resistance by the locals. The few who were successfully resettled fled back to their home area because of lack of benefits and protection in form of titles to grant them full ownership of the pieces of land acquired.

In South Western Uganda Kabale District, land use related cases have been reported between National Environmental Authority (NEMA) over conservation concerns and the locals in relation to agriculture as a practice in wetland areas. This has been especially critical in Kashambya Sub

County. Other land use conflicts have been associated with gazettment of Mugahinga National park by Uganda Wild Life Authority (UWA) and the surrounding agricultural indigenous communities. A similar situation has been reported around Mount Elgon National Park between UWA and the locals in Eastern Uganda.

In Bunyoro sub region, land conflicts have been between the Bakiga immigrants and the indigenous Banyoro Queen Elizabeth National Park. Recent conflicts have been over competing land uses of Oil exploration and Agricultural practices. What is true in all these cases is the aspect of ignoring local actors in implementation of conservation aspects. Whereas Uganda has a well formulated Land use Policy promulgated in 2007 for mitigating land use related conflicts, its implementation is still wanting. The policy stipulates the big role local actor's play in resolving land use conflict but this is least exploited an aspect critical for creating peace. What hinders this initiative is general lack of will among the implementers. The Amazon experience is vital in enabling Uganda tackle emerging land use conflicts.

Progress towards land reform and sustainable use

This part explores provisions in the constitution and the Land Act that have been paramount in mitigating land related conflicts in Uganda

Provisions in the 1995 constitution and the 1998 Land Act for mitigating land ownership and land use conflicts in Uganda.

There are a number of Paramount provisions in the 1995 constitution and the 1998 Land Act for mitigating land conflicts in Uganda. Rugadya 2009, notes a number of these aspects that have enabled government actors in containing emerging conflicts. These include;

1. The Constitution and the Land Act guarantees citizens Land Ownership

This is a great has been a great step in ensuring peace. Article 237 of the constitution provides that land in Uganda shall belong to the citizens of Uganda and shall vest in them in accordance with four tenure systems: Customary, Freehold, Mailo and Leasehold. This provision is re-enacted in section 3 of the Land Act. This clause totally reverses the old system where land was vested in the public land. Now, individuals' rights to land have been secured by virtue of occupation. The state no longer controls ownership of land in Uganda.

2. The provisions in the Constitution address the protection of Customary Ownership of land.

This provision has enabled stable land ownership since traditionally majority of the land in Uganda was communally owned. Article 237 (4) (a) of the constitution recognizes customary tenure as one of the forms of holding land in Uganda. The majority of Ugandans hold land under customary tenure; this provision therefore guarantees them security of land ownership. These tenants on customary land have a chance to acquire a certificate of customary ownership on the land they occupy and convert this certificate to a freehold title. This certificate of customary ownership has been accorded value under the Land Act enabling it to be transferred, mortgaged, or otherwise pledged. This is intended to enable holders of a certificate of customary ownership to have access to credit.

3. The Tenants on Registered Land have also been protected

The constitution guarantees security of tenure to tenants on registered land commonly referred to as lawful or bonafide occupants. These tenants can acquire a certificate of occupancy on the land they occupy and if they so wish, they can negotiate with the registered owner to be able to acquire a freehold title. These tenants on registered land are too expected pay the registered owner of land a ground rent of not more than 1,000/= . Failure to do this for two (2) consecutive years may lead the tenant to lose his security if he/she does not have sufficient reason for not paying. The registered owner cannot ask the tenants for anything else (including things in kind) except that 1,000/= provided for the certificate of occupancy can also be mortgaged, pledged or transferred. The tenant by occupancy also has the right to pass on his tenancy in a will.

4. The Land Act has addressed the question of Communal land Ownership

The Land Act recognises the right of people to hold communal land. The people may if they so wish form themselves into a communal land association and this association may be incorporated. The communal land Association may also form a common land management scheme by which the members agree to manage the communal land and to set out their rights and duties.

5. Women and other vulnerable groups have been provided for in the Land Act.

The Land Act in Cap.227(27) , requires that before any transaction can be carried out on land on which a family resides or from which it derives sustenance, the spouse, dependent children of majority age and the Land Committee in case of children under the age of majority should be consulted. The Land Act also provides in accordance with constitutional provisions, that any customary provisions, that any customary practices which deny women, children or use of any land shall be null and void. The Land Committees have the duty of ensuring that the rights of vulnerable groups are protected.

6. The Land Act provides for the establishment of Land Management Institutions

The Land Act in pursuance of the overall government policy of decentralization provides for a decentralized land management and dispute settlement mechanism. The legislation requires the creation of a very large number of new institutions for land management/administration and land dispute resolution. These have been designed to shift the focus of land management to the local level, and provide for effective community involvement in land management decisions. The Land Management hierarchy starts with the Uganda Land Commission, which is vested with a responsibility for any government land related issues. The District land boards independent from the Uganda Land Commission and from any other government organ or person are in charge of all land in the district. The land committees set up in each parish gazetted urban area or a division in the case of Kampala as advisory role to the District Land Board.

7. The Land Act caters for Dispute Settlement Institutions

The Land Act provided that from the onset of having been passed as law, all Local Council courts and magistrate courts stop handling new land matters and only complete old cases within the subsequent two years. It further provided for a land tribunal for each district, sub-county and for each gazetted urban area and in the case of a city, a tribunal for each division. It provides for the chief justice to appoint the Judicial Service Commission who will appoint the District Land Tribunals and the sub-county and urban land tribunals.

Fostering sustainable land ownership conflict management in view of the implementation of the 1998 Land Act and Land Reform .

In spite of the good formulated mechanisms the Land Act provides in containing land related disputes, conflict related to ownership and use of land have persisted. The main challenge is based in the slow pace in its implementation. Challenges that have persisted include;

1. In ability to Empower institutions effectively

In implementing the Land Act, the Ministry of Water, Lands and Environment (MWLE) which is the line ministry, has adopted a participatory and consultative approach to the planning as well as the actual execution of the implementation by involving all key stakeholders. The country has adopted a participatory and consultative implementation strategy. The main thrust of this strategy is a creative “bottom up” approach to the implementation by involving a range of stakeholders from the outset, and by building capacity at the centre, in local institutions, and at the grass-roots. The subsequent challenge has been the centre attempt to take on too much and the local governments and other local institutions failure to be empowered enough to fulfill its roles effectively. Rwanda has successfully managed the refugees resettlement land conflict using a bottom up strategy. Using the local authorities, the first wave of settled refugees were compelled to share land with the second wave returnees upon proper verifications of ownership (Prunier, 1995). This insight is vital for addressing the Northern Uganda land conflicts associated with the Internally Displaced Persons who were encouraged to return to their villages after the war.

2. In adequate Proper sensitization on the Land Act

The urgent provisions of information for the public, as to the content of the Act and its implications have not been widely publicized. The provision and maintenance of grassroots support for land tenure reform is a critical element in the success of implementation. This may be the reason why it seems to date the public is skeptical about its provisions. As it stands, only the Uganda Land Alliance has made efforts to reach people at the grassroots levels on a small scale. West China experienced a similar challenge associated with sensitizing people prone to displacement due to high population concerns on land matters. What is unique with the China

success is that the government made it clear about the benefits associated with occupying new areas (Wen , 2003).

3. Slow processes in implementing Institutional Framework

Whereas the Act provides for the establishment of land boards and tribunals to handle land related cases, the process has been slow. Until these tribunals are appointed and rendered operational there is a serious vacuum in land dispute settlement.

4. Absence of a comprehensive national land policy and delays in implementing Land Use Policy is responsible for land conflicts.

Uganda lacks a comprehensive national land policy, which is so vital in guiding implementation of the land law. What exists are scattered part of the policy which can only be pieced together from the 1995 Constitution, presidential public pronouncements and government statements. The need for a clear and comprehensive national land policy to guide the provisions in the land law, streamline the objectives and guard against contradictions and inconsistencies cannot be underestimated. Whereas Uganda has a good Land Use Policy, its implementation has been quite slow which has increased land use conflicts. It has not effectively exploited all stake holders in its implementation.

The Amazon basin biodiversity conservation program provides a great example of a successful comprehensive program for land use conflict management. It was promulgated to formulate Large-scale approaches supported by United Nations Agency for International Development (USAID) to promote conservation in the Amazon Basin and mitigate land use conflicts .It worked in close collaboration and linkages with other agencies, other donors and local actors and authorities. Consequently, USAID has invested heavily in a strategic conservation program to support and improve ongoing conservation efforts in the Basin and coordinates with other donors, national governments, and public and private organizations to seek value-added results through a regional approach. This shows that it is possible to formulate an all inclusive program to ensure conservation while at the same time containing emerging conflict. It further proves to us the possibility of containing conflicts in areas of high population while ensuring conservation.

5. The land ownership and Land use conflict management has been undermined by Suspicion about the new law

From day one, the Land Bill was received with suspicion, apathy, fear and outright rejection. Many sections feel that the Land Bill was not given adequate time to be considered, scrutinized and debated as because it was published very late on 2nd March, 1998 while targeting it to make it law by 1st July, 1998. The majority of Mailo owners especially in Buganda are also not happy about the new status given to the Bonafide occupants by the law. It is likely that some groups of primary stakeholders whose interests are threatened by the legislation may try to overturn the legislation or parts of it, by tabling amendments in parliament, recourse to the Constitutional Court, or by causing civil disturbances. The women were not happy because the clause on co-ownership of land by spouses for which NGO's especially the Uganda Land Alliance, FIDA and UWONET lobbied so much for was accepted in principle by Parliament, but was missing from the Act.

6. Political Pressure, Economic Policies and absence of strategic plan is also responsible for land conflicts in Uganda

Partly as a counterweight to the vocal opposition in the country, and as a response to popular expectations, there is currently a lot of political pressure seen in the implementing the Land Act, this could undermine the implementation process if government takes to hasty and ill-advised actions. There have been demands from political quarters that the law is implemented immediately. One of the serious weaknesses in the reform program is that there was no strategic plan at the inception of the Land Bill to work out the required resources, the financial implications, and the availability of human and financial resources.

7. Overlapping laws have also fueled land conflicts in Uganda

A number of other land-related laws are in need of review and up-dating in order to harmonize them with the provisions of the Constitution and Land Act and to meet current needs. The principal laws which are in need of revision are the Survey Act (which dates from the 1920s and provides for detailed and high standard cadastral survey which is

unnecessary complicated for surveying of customary holdings), the Registration of Titles Act (which is currently based on the Torrens system of registration, setting out lengthy and difficult procedures for the acquisition of certificates of titles), the Land Acquisition Act (which is currently inconsistent with Constitutional requirements for compensation for land acquired by government and could cause difficulties in acquiring land for redistribution to tenants), the Mortgage Decree (which is at present virtually inoperable and would make the provision of loans from the Land Fund along and difficult process, and also the use of certificates of customary ownership and certificates of customary occupancy as security for credit impossible), and the Town and Country Planning Act (which needs harmonisation with the current local government arrangements) . It is not a surprise that these laws have often resulted into conflicts with cultural institutions land boards, the urban Authorities, religious institutions as well as investors.

9. Inadequate Capacity in local governments

The heaviest burden of implementation lies with the local governments. The local governments have serious capacity short falls. Some Districts are unable to recruit qualified technical staff for District Land Offices and therefore unable to perform adequately the support services necessary for many aspects of land reform. The Land Act required each District to have 5 professional staff a Land Officer, a Surveyor, a Registrar of Titles, a Valuer, and a Physical Planner. Only 16 Districts out of a total of 45 currently have Land Offices; only one of these a Physical Planner, none of them has a Valuer and only a few have District Registrars of Titles. The successful implementation requires a well-paid, motivated and transparent civil service. Currently the personnel lack tools and a living wage which factors seriously erode the capacity to deliver.

Conclusion

Uganda has a well formulated constitution and the Land Act for containing land related conflicts. However the implementation of provisions within these instruments has been rather slow which has led to persistent land conflicts. In order for countries to realize peace related to land ownership and land use, it paramount to empower organs for

ensuring efficient transfer of land rights, and access to land for various uses. Having well formulated policies is not enough without practical implementation in order to realize peace. This must be backed by good governance willing to contain land related conflicts.

Recommendations

1. Land use policy implementation

There is need for Uganda to foster implementation of land use policies in order to create a culture of peace. This should bring on board all stake holders in order for the implementation to be owned by society.

2. Reconsidering peace and conflict issues inherent in the Land policies

The inherent peace and conflict issues in the land policies need to be applied with great sensitivity. Often countries tend to ignore or react with less urgency to this important element yet vital for conflict management.

3. Provision of alternative sources of livelihood

In case of quest to either shift or relocate people for conservation purposes, effective compensations should be done. This is because land ownership is a human right which must be enjoyed by humanity.

4. Proper Sensitization on land use and land ownership related issues

There is a need for countries to embrace the element of proper sensitization to nationals on issues pertaining land use and ownership rights. This in turn helps implementers of policies to be understood by the public.

5. There is a need to speak with one voice to avoid contradictions in policy implementation

This is because it raises suspicion in case of contradictions between politicians and implementing agencies. People need to see a combined stand on key public policy issues between the two.

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