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CONFLICT IN UGANDA'S LAND TENURE SYSTEM

BY NORAH OWARAGA

SUMMARY

- Uganda's dualist land tenure system is a root cause of conflict over land use and ownership. The current land tenure laws facilitate land alienation, threaten livelihoods and contribute to food insecurity.
- Given the nature of land disputes in Uganda, reform is needed to move forward and develop a land tenure system that works for the country. Examples of different models from other countries, like China, may offer inspiration for an improved system in Uganda.

Over half of Ugandan households consider agriculture to be the single most important source of their livelihood, and as such, land is a critical resource for the 42 percent of households that earn a living from subsistence farming (Uganda Bureau of Statistics, 2010; 2011) and for the 65 percent of the population employed in agriculture and hunting (Kaggwa et al, 2004). Taken together, land is of critical importance to many Ugandans, especially considering that 85 percent of the rural population depend on it for their livelihood and income.

Uganda covers an area of 199,807.4 km² (Uganda Bureau of Statistics, 2011). Its population density has increased from 123 persons per km² in 2002 to an estimated 165 persons per km² in 2011 (Uganda Bureau of Statistics, 2011). Land is a "fictitious commodity" which is not produced through market mechanisms, however, and it is also a limited resource (Polanyi, 1994 quoted in Carmody, 2011: 239). This means that increases in population density inevitably also lead to greater competition for a finite amount of productive land, heightening the potential for conflict to occur.

This backgrounder explores linkages between land conflict and Uganda's system of land tenure, including the rights and institutions that govern access and use of land (Maxwell and Wiebe, 1999). Information from Uganda's draft

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National Land Policy, the Uganda Land Act, and the National Development Plan forms the scope of analysis in the present case.

“TRADITIONAL AFRICAN” VERSES “GLOBAL WESTERN” MEANINGS OF LAND OWNERSHIP

Uganda's constitution stipulates that “all land in Uganda shall vest in the citizens of Uganda and shall be owned in accordance with the following land tenure systems: customary, freehold, mailo and leasehold” (Republic of Uganda, 1998: 4985). A significant proportion of Uganda's total land – 81,122 km², or 40 percent – is under customary tenure. Broken down by region, and 76 percent of land in the north, 54 percent in the east, and 47 percent in the west is under customary tenure (Republic of Uganda 2010: 173).

Uganda's central region is an exception, however, where 99 percent of the land is individually owned. These lands are divided into unregistered freehold mailo (71,331 km²), registered freehold mailo (15,585 km²) and leasehold (31,769 km²) (Republic of Uganda, 2010: 173). Mailo is a system that started in 1900, in which land in central Uganda – then known as Buganda – was divided between the King of Buganda, chiefs, notables and the Protectorate (British) Government of Uganda. Under the mailo tenure system, land ownership is held in perpetuity (Nyamugasira, 1996).

Uganda's customary tenure fits the description of land ownership in the “traditional African sense” (Pottier's 2007), in which land is a resource for which people have use-rights. In this understanding, unconditional individual ownership of land is not allowed but access to land for individuals, in accordance with community authority, is encouraged (Ault and Rutman 1979; Plattaeu, 2002; Atwood, 1990).

In contrast to customary tenure, Uganda's freehold, mailo and leasehold systems are based on individual ownership (Macpherson's 1964: 53-54), fitting a description of land ownership in the “global-western sense,” where land is individually owned, with exclusive rights, and acquired through formal contractual arrangements between seller and buyer (Ault and Rutman, 1979).

The majority of Ugandans, however, perceive ownership of land in the “traditional African sense,” according to a national survey where 75 percent

of respondents claimed they owned land (Republic of Uganda, 2010), although 95 percent of Ugandans do not have land titles (Ministry of Lands, Housing and Urban Development, 2011: 174).

In contrast, the Ugandan government holds the view that land ownership in the “traditional African” sense is inefficient and delays development (Atwood, 1990; Ault and Rutman, 1979; Barrows and Roth, 1990). The government argues that this understanding impedes the transformation of the country from a peasant-based culture to a modern economic society (Republic of Uganda, 2010: 173).

DYNAMICS OF DUAL MEANINGS IN UGANDA'S LAND TENURE

The different interpretations of land ownership in Uganda are a major source of conflict. Government policy promotes greater individualization of land, which confers permanent use rights to individuals and enables the transfer or sale of land (Plattaeu, 2002: 19). The government also plans to take a transformational approach to customary tenure, issuing certificates that confer rights to convert customary lands into freehold tenure (Fitzpatrick, 2005). This individualization of land ownership generates fears that legal land alienation (Shipton, 1990: 358) will lead to conflict as different parties assert their perceived access rights (Mpanga, 2011).

Presently, over 90 percent of domestic disputes in Uganda are related to land conflicts. Five percent (310,000) households are directly affected, and land often changes hands as a result of these conflicts, as opposed to through sale of property.

The manifestation of disparate views on land ownership between government and communities is best reflected in Acholiland, in northern Uganda. In this example, a corporate investor, the Madhavani Group, attempted to acquire 20,000 hectares of land for private ownership (Wacha and Jwee, 2011). The ensuing conflict pitted the ‘modernists,’ represented by the government and the Madhavani Group, against the ‘traditionalists,’ represented by the Acholi Land Forum (a non-governmental organization) and members of parliament from Acholi. The traditionalists successfully sought a court injunction to stop the sale.

The Acholi-Madhavani Group case illustrated the complexities of the duality of Uganda's land tenure: multilayered authority over land, disputes over ownership and the nature of user interests (Deininger and Castagnini, 2006; Fitzpatrick, 2005; Ministry of Lands, Housing and Urban Development, 2011; Mabikke, 2011). In essence, chaos is built within Uganda's current land tenure systems: the modernists preferring consolidation in the hands of the few for commercial crop production while the traditionalists prefer more equitable distribution within collective land ownership.

Land conflicts, such as the Acholi-Madhavani Group case, prevail in other parts of the north and other regions of Uganda as well. In the eastern region, for example, the government is duelling with the Bagisu and Bagwere ethnic groups over the Namatala wetland (Bitu and Edyegu, 2011). In western Uganda, the conflict pits the Banyoro ethnic group, who assert ownership rights, against the government. In the central region, a corporate investor, the Mehta Group, wants to acquire 7,100 hectares of land in the Mabira National Forest, which has sparked massive protest demonstrations (Nalugo, 2011; IRIN, 2011). Also in the central region, there is conflict between mailo landowners and *bibanja* (tenants) holders (Mpanga, 2011).

CORPORATIONS' QUEST FOR LAND

Large corporations are increasingly seeking land for commercial agriculture and investments in Uganda. For example, BIDCO, a consortium of North American, Malaysian and Singaporean investors, was recently granted thousands of hectares of land in Kalangala District by the government to establish an oil palm plantation (World Rain Forest Movement, 2009).

These activities have fuelled fears of land alienation among Ugandans, especially those living in rural areas. Corporate land investments also bring about environmental concerns. In the case of Kalangala, a region composed of 84 islands and mainly occupied by fishing communities, there is concern that toxic chemicals used for growing palm trees will wash into Lake Victoria and reduce fish stocks and other animal populations. This is expected to threaten the food security of the Kalangala communities who depend on the lake for food.

The vast tracts of land granted to BIDCO have already resulted in the destruction of a tropical forest that provided Kalangala natives with edible

plants, among other resources. BIDCO is expanding its land holdings by purchasing more land around its palm oil plantation; absentee mailo land owners are selling land to BIDCO, leaving former tenants destitute. As a result, alienated tenants are encroaching on a 200-metre protective embargo zone that separates the lake and cultivated land.

SEARCHING FOR IDEAS THAT WORK

Uganda's land policies are in need for revision to mitigate conflict and food insecurity; this should be done by strengthening the traditional African sense of land ownership. Looking beyond the borders of Uganda for a solution may offer useful ways forward. China offers an interesting case study on finding a common ground between land tenure systems which combine private use rights with public ownership. In this instance, land in China is collectively owned and distributed "on loan" to households (Pottier 2007). The Western system of tenure that asserts that collective ownership of land is a disincentive to productive land use does not hold true in the case of China. China's current five-year plan claims that farmers have benefited through the construction of a socialist countryside (European Union, 2011) in which "China will continue feeding itself very adequately for the foreseeable future on its small, household-operated farms" (Posterman, 2001). Much can be learned by Uganda from the experience of others in finding a land tenure system that works.

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