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THE JUSTICE AND SECURITY RESEARCH PROGRAMME

JSRP Policy Brief 7 February 2017

Land Conflict and Security in Acholi, Northern Uganda

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Land security in Acholi has been a focus of international interventions throughout the ten-year period since the end of the LRA insurgency on Ugandan soil. This has been in response to a number of studies predicting and later identifying massive levels of conflict over land in the wake of long-term displacement of the entire rural population. Interventions have included legal aid programmes, recording and publishing the principles and practices of customary land management, sensitising communities and local council courts on Ugandan land law, training traditional and local council leaders in the principles of mediation, and most recently, demarcating and seeking to title land parcels.

These interventions tend to have been predicated on principles of access to justice, aspiring to formalised land management under the Ugandan Land Act of 1998 and its subsequent amendments, and the structure of land management institutions and processes they define.

Work undertaken through JSRP, alongside other work in progress, has identified a number of issues with such approaches, relating on the one hand to the absence of functional justice systems, and on the other to the misinterpretation of the problems at stake.

Absence of functional justice systems

a) The justice, law and order sector - police, courts and prisons - is overwhelmingly perceived by the public, apparently with justification, as criminalised at lower, perhaps all levels. These agencies tend to function as markets loosely shaped around theoretical legal processes, local cultural understandings of culpability, liability and evidence, and the lived realities of organisations that have developed in an environment so underfunded as to deny them the capacity to actively pursue their function - rule of law. One consequence is that there is little to differentiate civil and criminal law. This is a viciously circular problem – additional resources at this stage may extend the criminal reach of the agencies concerned rather than help them reform. Due to marketization, land cases that come before the formal courts are typically managed in such a way as to extract funds from the parties. Rulings by courts are problematic:

- Cases are usually extremely extended, lasting years, during which time disputes escalate and become violent.
- Cases are often initiated by land grabbers aiming to take advantage of the system's marketization.
- Courts are asked to make decisions in cases where there is little or no applicable law.

- Presenting evidence is difficult and costly for the parties, as it is usually based on witness testimony. This is readily falsifiable, contestable and depends on the financial ability of each party to transport their witnesses to the court on multiple occasions due to adjournments. Courts have no resources to visit dispute locations.

- Favourable rulings are reportedly purchasable from magistrates. Even where this may not have occurred courts have so little public legitimacy that corruption is assumed by the parties.

- Rulings by courts do not necessarily end disputes; in fact they frequently do not. They carry little or no moral authority, and courts and police lack the capacity and sometimes motivation to enforce decisions.

b) Government land management institutions are also compromised by corruption, though typically with less problematic consequences as they may nonetheless perform their intended functions, albeit for additional costs. They are also compromised by lack of will on the part of some national and local political elites to formalise private landholding, as the scope for patronage using land is greater the less it is formalised. Hence cooperation between the government and international actors in implementing the Land Act (1998) and its amendments and the Land Policy (2013) are unlikely to translate into a functioning and comprehensive system protecting the general public.

c) The consequences of a) and b) need to be seen in the light of partially effective local land management and dispute resolution processes. While far from comprehensive and consistent, local land management and conflict resolution processes are often subject to at least some accountability in the form of oversight by communities, restricting opportunities for corruption. Land cases heard by – or more often mediated by – village or clan leaders in public tend to reflect facts and morality as understood by the majority of the community. There is a perception of legitimacy. Referrals to formal courts by NGO programmes, and titling of land, take people out of this partially functional system and place them in the hands of the dysfunctional and largely criminalised justice, law and order system.

Misinterpretation of the problems

a) Land conflicts in Acholi can be broadly grouped into four types:

- Large-scale land acquisitions by government on behalf of private sector investors. Although these acquisitions are sometimes of very questionable legality, land law changes anticipated in the Land Policy (2013) will increase the government's *legal* powers of expropriation without compensation.

- Territorial disputes between clans, or groups of clans known as chiefdoms, sometimes in collaboration with local politicians. These are particularly problematic as they generate long-term inter-community hostility and violence.

- Disputes between land holding groups and institutions - schools, churches and local government - that have been 'gifted' land in the past. It is common for the current generation to challenge the (usually unwritten) terms of these 'gifts' made by their parents and grandparents, demanding payments or return of the property.

- Intra-community disputes over land access or 'rights' to particular land parcels.

In practice international interventions are focussed almost exclusively on the last of these.

b) An overwhelming majority of rural land is occupied and managed communally by kinship groups – clans, sub-clans and extended families, referred to from now on as land-holding groups (LHGs). However this generalisation obscures very large differences in practices, and in the sorts of claims that groups and individuals make to land parcels. Many such differences arise from land availability – some LHGs are land-poor, others are land-rich. Traditional land custom evolved in conditions where any such problems were local and temporary – if there was insufficient land to go round, a family or group of families would move away and settle on empty land. Now that there is a lack of empty land to move to, land-poor clans have to identify new ways of responding to land claims and allocating land access. LHGs are instances of 'intimate governance' inasmuch as they function in many ways like families.

Uganda land law establishes their entitlement to follow their own customs and establish their own practices limited only by members' constitutional rights.

c) Interventions tend to make false assumptions about the workings of LHGs. It is often assumed that individual members of LHGs have specific 'rights' to land access based on kinship or marriage. In fact kinship and marriage can be the basis of claims, but in the absence of strong usage and development claims to particular land parcels they are unlikely to succeed in contexts of land poverty. Such usage and development claims are made by households rather than individuals. Typically an elderly person would retain a claim to enough land for their own subsistence needs, but not to all the plots they may have cleared and used when they had a young family – these would pass to the next generation. Thus for example many of the cases reported by civil society agencies of widows being dispossessed of 'their' land misinterpret the nature of typical customary land claims.

d) To talk of 'land conflict' within LHGs is problematic, in the same way that to describe divorce as a property dispute would risk missing the point. Most intra-LHG conflicts incorporate a land element, given that land is the principle common property of most LHGs and the source of income and sustenance for most or all residents. Nonetheless, to assume that land issues are the *cause* of such disputes is often mistaken: family dynamics are complex and the origins of relationship breakdown rarely susceptible to simple explanations. In a post-war, post-displacement context of widespread severe poverty, and an almost complete absence of state services, or state protection of persons or property, this is all the more true.

e) Individuation of land is sometimes taking place, but in different ways and at different rates. In locations where there is severe land-poverty land holdings may be partitioned between households or larger family units within the LHG, (though the LHG may nonetheless continue to play a major role in management and dispute resolution). Furthermore, LHGs tend to provide more than just land access and management. In the general absence of state services, security of persons and property and management of risk is generally dependent on clan or sub-clan membership, which is the source of most social capital and resilience capacity. The risks inherent in titling programmes are that they undermine the familial authority and functionality of LHGs and expose members to the dysfunctionality of the justice, law and order sector. However where there is no familial authority, or where relationships have entirely broken down, then titling is not necessarily harmful.

f) The Land Act allows for incorporation of LHGs so that they may apply for land title (Communal Land Associations – CLAs; though in theory other forms of legal incorporation could be used). These are problematized by the fact that membership of an LHG does not necessarily or easily translate into 'rights' of land access. One can be a member of a clan or sub-clan or extended family simply on the basis of genealogy, but if that LHG is land-poor and all available land is already allocated on the basis of usage claims, then that membership may not provide land access. It is deeply unclear how the functional fluidity and negotiability of LHG membership can be translated into legal personhood, as well as how this can then be related to individual land rights. This complexity has not been addressed either by development organisations seeking to promote CLAs or by the Ministry of Land, Housing and Urban Development.

g) Much of the policy debate within Uganda, including in relation to Acholiland, is currently focussed on CLAs and a form of title defined in the Land Act, the Certificate of Customary Ownership (CCO). Land advocacy and otherwise involved agencies tend to have lined up as 'for' or 'against' these instruments. This polarisation misses the point: CLAs are a form of incorporation, CCOs a government land title, a 'poor man's freehold'. In a functional legal framework both might be useful in some contexts. These would be determined by whether land was already individuated, and if not, whether (among other considerations) a land-holding group was able to relate kinship claims to land access. However in the context of a criminalised legal system it is unclear whether in those instances where these instruments are potentially workable there is increased *security* or *risk* generated for the rural poor through increased exposure to that system.

Policy recommendations

1. Programmes involving legal aid in land cases, and those supporting titling and/or incorporation of LHGs, are increasing the exposure to risk of purported beneficiaries in multiple ways, even if they are actually or theoretically increasing peoples' capacity to defend themselves from certain types of land grab (in a criminalised system possession of a land title may increase ones exposure to other types). Due to the marketization of state services, the poorer the party, the greater the probable negative balance of consequences. Such programmes should be abandoned except where they can demonstrate that they are engaging only with those cases where the risks of external depredations – by government, elites, or other clans - outweigh the risks of undermining social cohesion and exposing beneficiaries to a criminalised legal system. In particular, such programmes may have relevance in areas with high potential resource extraction value, and in urban areas through seeking to protect land owners from uncompensated expropriation by local authorities, though mooted changes in the law may make such protection in either context ineffectual.

2. Given the realities on the ground, supporting the mediation efforts of local actors, both customary and elected, is most likely to reduce conflict while avoiding undermining social cohesion and security. Restoring the formal legitimacy of Local Councils 1 and 2 (village and parish) by holding new elections could be advantageous (though recent proposals by the ruling party to abandon secret ballots in such elections would be problematic).

3. Designing policy interventions through an understanding of the intimate governance of clans, sub-clans and extended families, and recognising that internal conflicts in such groups may involve land but are not necessarily fundamentally about land, would enable a search for new approaches. These are likely to involve supporting land holding groups and communities in adopting what are understood locally as moral approaches to land (re)distribution. Such interventions would be facilitative rather than prescriptive, helping land holding groups to address collectively the general problems they are facing around land distribution.

4. A focus on intra-community land conflict is deeply problematic in development terms. In a context of rapid population growth, dependence on agriculture for subsistence and income generation, and lack of alternative jobs, there is inevitable contestation over land in land-poor land holding groups. These are 'family matters', issues of intimate governance. How they are settled will involve winners and losers, in ways that are locally understood as fair and morally sound - or not. Usually this is not so much a matter of driving people off the land as of redistributing it or resisting new claims. There is no legitimate basis for judicial or other external interference in these processes except where laws are broken or individuals' constitutional rights are infringed. More productive from a development perspective would be a focus on reducing demand for land, by injecting the resources needed for intensive agriculture (such initiatives largely ended in Acholi with the cessation of post-conflict 'transition funding' around 2010, leaving investment in such activities beyond the means of most people); and through major job creation initiatives.

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The political marketplace: the transactional politics whereby political loyalties and political services are exchanged for material reward.

Moral populism: the social and political role played by exclusivist identities and values in mobilizing communal sentiment in support of political projects.

Public mutuality: the discourse and exercise of public life based upon norms and rules that exemplify the values of respect for persons.

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This material has been funded by UK aid from the UK government; however the views expressed do not necessarily reflect the UK government's official policies or the positions of the London School of Economics and Political Science or other JSRP partners.