

# **UNVEILING GENDER, LAND AND PROPERTY RIGHTS IN POST-CONFLICT NORTHERN UGANDA**

## ***Overview:***

This paper is a product of extensive literature review and the findings of various research undertakings in which I have worked as a Researcher for a number of clients, but more specifically TROCAIRE Uganda -2008, Alert International – Uganda 2008 and World Bank – in a series of studies from 2006-2008. The paper reviews, key gender issues that need to be addressed in relation to IDP return and the resumption of livelihoods, but specifically singles gender issues as they present themselves in the recovery of northern Uganda. In the first part, the key issues on gender and tenure security in northern Uganda are defined, the second part articulates how land administration and management is affected and shows the inadequacies in policy and law, in addressing gender and land in post conflict. The conclusion is drawn that the root causes of vulnerability that ultimately lead to livelihood insecurity revolve around; tenure and property rights; rights administration and management; policy and legal framework, therefore re-establishing an enduring property rights regime in land, requires addressing three inter-related issues.

- a) securing the essential ingredients of security and certainty of property rights;
- b) identifying potential conflicts and addressing them at their latent stage; and
- c) establishing a robust and dynamic institutional arrangement that handles land and biodiversity related transactions in a transparent and accountable manner

**By Margaret A. Rugadya,  
Social –Legal Policy Analyst<sup>1</sup>,  
Associates for Development and  
Research Fellow<sup>2</sup>**

*I am grateful to Eddie Nsamba-Gayiiya<sup>3</sup> and Herbert Kamusiime<sup>4</sup> for their comments and critical feedback over in the course of preparation of this paper. My special thanks to the staff of Associates for Development for being there when needed. The views expressed in this paper are entirely my own (not my clients), except where it is explicitly stated.*

---

<sup>1</sup> Also hold the position of Executive Director, Associates for Development

<sup>2</sup> and a Research Fellow of the European Centre for Development Policy and Management and Maastricht School of Governance, Netherlands

<sup>3</sup> co-researcher on the northern Uganda assignments for World Bank and Trocaire-Uganda

<sup>4</sup> co-researcher on the northern Uganda assignments for World Bank and Alert International Uganda

### **AFTER 20 YEARS OF DECLINING, IS THERE OPPORTUNITY FOR CHANGE?**

Northern Uganda remains an eyesore in Uganda's impressive poverty reduction record. In contrast to the rest of the country, northern Uganda did not register any major improvements in household well-being during the 1990s. For example the national poverty head count index declined from 56% in 1992 to 34% in 1999. On the other hand, the poverty head count index for Northern Uganda only declined 72% to 64% during the same period (UBoS, 2003). This region is home to 7.1 million persons<sup>5</sup> with an average household size of 5.2 persons (the average household size varied from 5.1 in Acholi to 5.7 in Teso). The literacy rate is about 54 percent, which is lower than the national average of 68 percent, literacy rate for males (68 percent) is higher than that of females (41 percent).

Acholi sub-region has the highest proportion of economically inactive working-age population (50 percent). Even when other dimensions of welfare are considered, the region still performs dismally as compared to the rest of the country. For instance the infant mortality rate for northern Uganda is about 20% higher than the national average (UBoS, 2001). The poor human development outcomes in northern Uganda were attributed displacement of households from their farmlands into IDP camps, which rendered large parts of northern Uganda largely inactive<sup>6</sup>. The protection of property rights<sup>7</sup> and re-establishment of production relations on land will be important for bridging the poverty gap<sup>8</sup>, between war-affected areas (northern Uganda) and the rest of the country which has been widening since 1997.

In 2007 and early 2008, due to significant improvements in the security situation (in particular the signing of the Cessation of Hostilities Agreement between the LRA and the Government of Uganda in July 2006) populations began to move in a bid to return home from displacement. Since the said agreement, a large percentage of displaced persons (IDPs) in the region have left camps to which they have long been confined and have returned to their villages of origin or transit sites closer to their homes. Peace and stability will therefore hinge on addressing and clarifying outstanding overlaps and conflicts over land and biodiversity resources. It is argued that, an essential first step is stalling durable resource scarcity driven conflicts, that are likely to undermine post conflict reconstruction efforts, create new fault lines for resource-based conflicts, make it difficult for local governments to access land for public infrastructure and investment projects (Godber, et al, 2008<sup>9</sup>).

---

<sup>5</sup> Northern Uganda IDP Baseline Survey , UBOS 2007

<sup>6</sup> Sarah Ssewanyana, Stephen Young and Ibrahim Kasirye, 2007 In Poverty under Conflict: The case of Northern Uganda. Paper presented at Conference on Economic Development in Afriva, Oxford UK.

<sup>7</sup> *Land or natural resource tenure* refers to the bundle of rights held in relation to a specific parcel of land and/or defined resource. This includes trees, pasture, water, mineral, buildings, and other immovable property. The bundle of rights includes, but is not limited to, the right to sell (or harvest), exclude others from, subdivide, mortgage, bequeath, and use (e.g., plant crops/trees, cut trees, bury dead, and construct homes) the land. *Property* refers to a collection of rights in the use and transfer (e.g., through selling, leasing, or inheriting) of a bundle of assets (natural and physical).

<sup>8</sup> Estimated to be at 64% in Acholi region compared to the national average of 38% (UNDP 2007, Human Development Indicators for Uganda)

<sup>9</sup> Land Tenure, Biodiversity And The Post-Conflict Agenda in Acholi Sub-Region; Resolving the Property Rights Dilemma, 2008 by Godber Tumushabe, Arthur Bainomugisha and Onesmus Mugenyi

Since 1986, a combination of factors has emerged to create widespread uncertainty and insecurity in the regime of property rights in land and biodiversity in Northern Uganda. The growing competition over land driven by factors ranging from speculation, the apparent breakdown or weakening of traditional land management institutions to external influence, which has adversely impacted on the capability of traditional institutional arrangements, custom and social conventions that were at the heart of the pre-war land and resource management mechanisms. As a rural and agrarian community, the most important resource for Northern Uganda is land (see Refugee Law Project, 2006<sup>10</sup>).

Given the centrality of land to livelihoods and coping strategies, it is not surprising that the vast majority of those that have returned to their places of origin claim right to inherited land. One of the crucial factors shaping IDP return decisions is access to land (see Oxfam, 2007<sup>11</sup>). Some people have spent as long as 20 years, a generation, away from their traditional social structures, their cultural foundation and their land. The prospect of returning home must be alternately confusing, full of anxiety and full of expectation (see USAID 2007<sup>12</sup>). The current confusion over land is exacerbated by widespread uncertainty among the IDPs about what has happened to their land during their time in displacement, in combination with the fact that people know all too well that land is their most important asset, this fuels speculation and creates tension. Disputes overland are adding further uncertainty, with the most vulnerable members of society such as widows and orphans, at greatest risk of being denied their land and property rights.

Livelihoods in this region remain under threat and poverty levels remain much higher than throughout the rest of Uganda. Vulnerability is apparent and makes itself known in discussions around the themes of land grabbing, landlessness, lack of land access, tenure insecurity, general insecurity and a lack of a clear livelihood. This is especially the case for specific groups such as women, widows, female-headed households, children-headed families, the elderly and PWD. Tenure security has declined in northern Uganda due to the increasing number of land conflicts as IDP return commences, compared to the pre-displacement period. A high level of distrust of the Central Government's intentions toward land exists and has persisted; giving rise to a substantial level of tension<sup>13</sup> that has a high chance of erupting into violence unless matters are clarified. The situation is further fuelled by politics driven by feelings and emotions that have shaped and defined the articulation between Government and people's views over land and natural resources tenure.

---

<sup>10</sup> Refugee Law Project (2006), Only Peace Can Restore the Confidence of the Displaced, Kampala: Refugee Law Project

<sup>11</sup> Oxfam(2007), The Building Blocks of Sustainable Peace: The Views of Internally Displaced People in Northern Uganda, London: Oxfam

<sup>12</sup> Land Matters In Northern Uganda-Anything Grows; Anything Goes, Post-Conflict "Conflicts" Lie In Land, USAID

<sup>13</sup> Between cultural leaders who feel they are the custodians of land in Acholi region and political leaders who feel the legal mandate to mediate such land matters lies with them. Evidence shows a divide in the leadership on how to carry forward the tenure.

## **WHAT ARE THE KEY ISSUES ON GENDER AND SECURITY OF TENURE?**

It cannot be overstated that the population emerging out of the IDP camps is significantly different from the one that went into them (see also Oxfam, 2007). It is an established fact that tenure security has declined for the most productive groups in northern Uganda<sup>14</sup>. Five aspects of tenure and property rights need to be addressed;

- i. Tenure Insecurity
- ii. Insecure land rights for women
- iii. Threats to customary land tenure systems and institutions
- iv. HIV/AIDS pandemic
- v. Weakened Social Networks

### **1. Tenure Insecurity**

Insecure tenure is attributed to uncertainty and insecurity in the regime of property rights in land and biodiversity in northern Uganda, as a result of political and or economic interest in the area. In a 2007 study<sup>15</sup>, it was found that about 85% of the respondents in northern Uganda had experienced threats to tenure security and 59% felt these threats were significant. Tenure security had worsened and there were a greater (and increasing) number of conflicts compared to the pre-displacement period. The following aspects have contributed to the drastic decrease in land tenure security;

- i. Evidence of widespread distrust, speculation, suspicion and fear of government's intentions on land leading to speculation and rumors of possible land grabbing being amplified. In the study above, 23% of the respondents felt that the government, the army and rich people had taken too much interest in their land without clearly declaring their motives or intentions;
- ii. Insecurity for the last 20 years led to land grabbing and unlawful occupation of land belonging to the displaced that remain in camps.
  - a. *Previous and on-going attempts by private individuals to acquire private interests in land* which is perceived to be owned communally. Acholi leaders believe that Government is engaged in designs to help well placed and politically influential people from other parts of the country to access and enclose land in Acholi land. Common Property Resources<sup>16</sup> are particularly targeted by individuals as well as government agencies. There is widespread anxiety among the leaders and the public that individuals from within and outside could take advantage of the law to enclose and title land that belongs to clans and communities. Indeed, there is a big likelihood that this could happen

<sup>14</sup> Rugadya, M., Nsamba-Gayiyya, E., Kamusiime, H., 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, September 2007

<sup>15</sup> Rugadya, M., Nsamba-Gayiyya, E., Kamusiime, H., September 2007

<sup>16</sup> such as some of the clan hunting grounds fell under the jurisdiction of more than one clan and access was regulated through a well acknowledged hunting timetable for the different clans.

given the institutional complexities and overlapping institutional mandates over land that are prevalent at the moment.

- b. Investor interest in the region; Pursuit of land access by large-scale commercial interests, speculators and grabbers was also causing tension particularly in the Acholi sub-region. The concern is that commercial agricultural interests will be cavalier in their treatment/understanding of land rights and land use issues. A number of highly publicized multiple attempts to acquire land in the sub-region presumably for investment and potential government development programmes<sup>17</sup>, while some of these proposals may have been legitimate investment programmes to help re-establish peace and spur economic development activities in the region, the absence of a clear national policy and institutional framework for pursuing these initiatives has fueled the suspicion that “government” or investors as trying to usurp their land. IDPs and local leaders are suspicious that government is out to grab land for investment. Evidence on the ground did not point to even a single case where government had grabbed land<sup>18</sup>. The underlying problem is that in many cases Government acts more as an interested party rather than a neutral arbiter in such matters.
- iii. One of the other factors contributing to the increased tension is lack of appropriate communication and dissemination of relevant information. An aggregate of 90% of the survey 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 contents of the Land Act<sup>19</sup>. The conflicting messages and statements on land given by the different stakeholders are themselves a cause of suspicion, insecurity and uncertainty in matters of land and property rights. Politicians, traditional leaders, central government officials are sending out information and messages that are either conflicting or incoherent. All these groups are suspicious of each other and this suspicion is getting extrapolated at the local level.

## 2. Insecure Land Rights for Women

The basic gender distinctions in land access, ownership and control are remarkably similar across all sub-tenures and across northern Uganda<sup>20</sup>. Both men and women

---

<sup>17</sup> Divinity Union Ltd. In 1999 put up a proposal to turn several districts in Northern Uganda into a grain belt (the company is owned by Gen. Salim Saleh). UWA proposed to degazette Lipan controlled Hunting Area into a national park. In 2003, a Security and Production Programme (SPP) was conceived as a potential “Strategic plan for solving the insecurity in the sub-region”

<sup>18</sup> Rugadya, M., Nsamba-Gayiyya, E., Kamusiime, H, 2007

<sup>19</sup> Ibid, Page 34

<sup>20</sup> land is inherited patrilineally, father to son or nephew; men access land through inheritance, purchase, or allocation by clans or other authorities; women access land mainly through marriage; daughters are given only usufruct rights at their natal homes, rarely ownership rights; sons are given ownership rights over inherited land; rights of women to husband's land is only usufruct; in the exceptional cases where daughters inherit land, the amount is less than that inherited by sons; co-ownership between husband and wife does not exist in any of the districts, but is presumed in Lira as long as spouses are

have access to land (secured in different ways), while ownership and authority over land is almost entirely the preserve of men, whether as household heads or clan members or leaders. Not only is there a significant and prevalent inequality in the types of land rights possessed by men and women, the security of these rights is also much lower for women than it is for men. Three aspects are distinct;

- i. Since women's access rights are generally conditional on social relationships, (as a wife, as a daughter, as a sister), where those social relationships are vulnerable, women become vulnerable to loss of land rights very few women are seen to be joint owners of land, even if they are married.. One striking finding is that women in cross-cultural marriages are more vulnerable to loss of land rights since these women are considered even less to belong to the clan they are married into.
- ii. The land tenure insecurity experienced by women stems predominantly from customs and attitudes relating to their personal rights and status. Women's insecure tenure is said to affect (social status) self-confidence, self-esteem, and the regard in which she is held by her children (imagine!). In view of the system of patrilineal inheritance, the security of women's rights is enhanced by having male children. It is considered taboo in most parts of northern Uganda for women to own land or inherit land, even though women have the actual interest to own land, when this occurs, sanity of society is questioned, as summarily put in the dictum; "two cocks cannot crow on the same tree"<sup>21</sup>. It is therefore no surprise those female-headed households, child headed households, widows and orphans who are considered "extremely vulnerable" have not joined the exodus back home and are hanging in the IDP camps. This is because they do not have capacity to rebuild their shelter and livelihood without the support that social systems used to provide in the past.
- iii. Non-definition of where rights of women should accrue is also outstanding. In allocation of land rights, women are considered to belong to the clan of their birth and do not assume the clan of their husband when married. The perception of women's lives as transitional owing to the family/clan set up is a reality for women and it acts as a disincentive to devote long-term investments in the household. This implies that interventions to economically empower women and eventually eradicate poverty from households needs to embody elements of real tenure security and guarantee of ownership of produce from land.

Customary systems that may have protected widows' rights to use land have broken down in the 20 years of displacement. Customary tenure has evolved so much so that it is no longer a system in which equity and protection of women's land rights are enshrined and are still thriving. Women are systematically excluded. The rules of

---

living harmoniously; women's rights over inherited land are less than those over purchased land, but few women can purchase land and even this is not secure; Clan authority tends to be stronger over inherited land than purchased land

<sup>21</sup> Jackie Assimwe, 2002

devolution are different between women and men. The traditional rules and social norms that once protected women's right to land can no longer be taken for granted.

### **3. Threats to Customary tenure systems and institutions**

Until only one or two generations ago, a person could claim land as his (note the gender distinction here) own by settling on and cultivating virgin land. Due to land pressure and the formalization of property relations (exacerbated by the conflict), this tactic of claiming virgin land is much less available today (see also 2007, UNDP<sup>22</sup>). While the clan system in northern Uganda used to effectively control access to and occupation of arable land, on return from IDP camps, the clan authority system that could have been disrupted by the war and the displacement of people, will not have the same effective cohesion, power and instrumentality to take administer and manage land.

It has to be noted that;

- i. Before the conflict, land was usually allocated and managed by the family patriarch (often the grandfather), who provided plots to each male family member according to their needs and perceived ability to use the land. Men controlled the land, but women also had certain rights. A woman had rights to use her parents' land prior to marriage, and her husband's land afterwards. No husband was supposed to prevent his wife from using his land, and if he predeceased her, she still had user rights: she could use the land as she saw fit and pass it on to her children, but could not sell it. If somebody tried to take this right from her, she could appeal to the elders who would then intervene on her behalf. People knew their rights and how to protect them, and who to appeal to if they felt these had been violated. However, this transparency or relative predictability cannot be taken for granted in the return situation, as years of displacement have weakened these mechanisms.
- ii. In a village, boundaries were known because they were usually agreed upon by owners of neighboring fields, using a mixture of natural border posts (such as trees and edges of swamps) and border signs developed overtime, such as the lines of field refuse which develop into durable demarcation lines. Although the system created and maintained hierarchies of power (especially along gendered lines), it had the advantage of being relatively transparent. One problem is that the longer people are kept away from their land, the less useful such practices became. Border sign posts, such as the lines of field refuse, disappear, while the fact that the fields became overgrown makes it difficult to recognize natural border posts between the tracks owned by different people and families. Some simply have forgotten the actual borders, or were too young to remember, and some try to take advantage of the confusion to try to enlarge their property or lay claim to land that never belonged to them.

---

<sup>22</sup> Returning to uncertainty? Addressing vulnerabilities in Northern Uganda, 2007, UNDP

In the aftermath of IDP return, customary tenure has undergone transformation in terms of institutions and practices.

- i. Contrary to earlier practices, household heads have generally become “owners” and not “trustees” or custodians of rights in land. The power base of this tenure had shifted to some extent from the clans to the household heads. Land sales are being undertaken following justification to clans but final approval is, in many instances, not within the realm of the clan, for it is merely informed and is no longer the sanctioning authority.
- ii. Two decades of war disrupted the traditional land management systems and institutions as that for generations ensured equity, transparency and accountability in land transactions and access to key natural resources. The entire legal regime regarding individual and community rights in key biodiversity resources, such as forests, protected wildlife areas, community hunting grounds etc. have become more unclear or severely contested.
- iii. For customary tenure to function as it should, the system is reliant on social cohesion and stable family units. It has difficulty accommodating the breakdown in social order, the great number of children board out of wedlock, and the increase in cohabitation that conflict and displacement have produced.
- iv. There is significant contestation of the institutional legitimacy of the national, local government and traditional institutions for the enforcement of property rights and resolution of potential conflicts
- v. People who hold their land under customary tenure, without documentation, risk losing their land permanently in many different ways and for a number of reasons, e.g. for ‘development’ (schools, hospitals), for trading centres (many camps were established around existing trading centres and new trading centres have emerged in the sites of other camp; by gazetting; leases given to investors; through fraud; to relatives and neighbours
- vi. The social breakdown, caused by displacement to camps, has certainly weakened the clan’s ability to enforce its traditional rules of protection.
- vii. Prior to the displacement, the family structure protected wives, widows and children against attempts to interfere with their right to use land. This tradition has been threatened in the return situation.
- viii. Failure to understand and to properly interpret customary land laws have led to some people losing land to others. A situation where clans that have lived on a particular piece of land for over 50 years are now being asked to vacate the land. The new generation of youth born in the camps has a totally different understanding of access to land under customary tenure. Many believe that women do not have a say on land related matters. They misinterpret customary laws and cause more conflicts; they have also lost respect for their elders which is detracting from effective enforcement of customary decisions.

It is apparent that there is no consensus as to the direction customary ownership of land in the region should take in the face of other competing tenure regimes. The progressive codification of the customary norms undermines the customary land tenure regime and may signal its eventual collapse<sup>23</sup>. In the event that recovery and reconstruction programmers begin thinking of certification or registration of customary tenure, they would most likely face an uphill task in implementing such undertakings because of the high suspicion the communities had for any titling or certification initiatives.

#### **4. HIV/AIDS pandemic**

TASO estimates<sup>24</sup> that 50 percent of people in camps are infected with HIV/AIDS. Land is a critical asset for those with HIV/AIDS because land, housing and other property constitute a resource base which the household can draw from to cover HIV/AIDS related costs, including the costs of medical treatment, provision of care, and services related to deaths and funerals. Land may also provide the means of sustaining livelihoods even when the income earner is ill-through leasing out of land. Profits from sale of assets may help offset losses that result when household caregivers-often women and girls-are diverted from other income generating activities to take care of those ill due to HIV/AIDS.

Studies<sup>25</sup> have found that property ownership, while not easily linked to women's ability to prevent HIV infection, can nevertheless mitigate the impacts of AIDS, and can also enhance a woman's ability to leave a violent situation. The linkage between HIV/AIDS and property rights is strongly mitigative in the sense that property rights endow a level of empowerment that enables women to manage the effects of HIV/AIDS, especially access to health care and nutrition. Property rights amongst rural women are much less fixed, often context defined, and tend to exacerbate the effects of HIV/AIDS, irrespective of whether the women were partnered or not. In fact, the concentration of HIV/AIDS is directly linked to emotional needs and economic insecurity among both partnered and non-partnered women. In this case property rights reduce risky behaviors and therefore the risk of infection and play a big role in empowerment to manage the effects of HIV/AIDS; although this is often skewed to favor urban non-partnered women compared to their urban partnered and rural counterparts.

---

<sup>23</sup> It is important to recognize that communal land ownership is governed by customary rules and norms. Such rules and norms remain largely unwritten and continue to evolve and adapt to new changes in the environment with which they operate. However, when such rules are codified into written law, they become part of the statute law and hence cease to be customary. Codification removes the flexibility and capacity for evolution and adaptation that are inherent in all customary legal systems.

<sup>24</sup> Land Matters In Northern Uganda-Anything Grows; Anything Goes, Post-Conflict "Conflicts" Lie In Land, 2007 USAID

<sup>25</sup> Margaret Rugadya and Herbert Kamusiime 2008, in Women's Property Rights Hiv/Aids & Domestic Violence – Research Findings From Iganga, Uganda, 2008, Published by Associates for Development, Human Sciences Research Council, and International Centre for Research on Women

Evidence also suggests that the extent to which secure property rights and property ownership mitigates the consequences of HIV and violence, depends on the quality of relationships<sup>26</sup>. Women more often rely on the institution of marriage to access and acquire land, therefore tenure security depended to a large degree on the quality of women's intimate partner relationship-more so than even the legal structures of ownership. In the current context of rapid social change, the institution of marriage is increasingly unstable and the rights in land are vulnerable to forfeiture or erosion of various kinds. It is therefore not sufficient for statutory laws to guarantee women the right to purchase, own and dispose of property in their own right without getting a regulatory framework that will ensure a change in practice.

## **5. Weakened Social Networks**

Displacement and camp life have eroded community support networks that in the traditional rural setting helped to ensure that the most vulnerable were cared for<sup>27</sup>. The degradation of social relations has occurred since camp life began; this factor has increased vulnerability for everyone through the fraying of social networks and the former relations of dependence and interdependence. However, it likely that the strongest impact is to be felt by those that need help the most, such as households headed by women and youth, households that lack access to land, and households with many dependents<sup>28</sup>. While the clan system appears to offer the best potential for inclusive individual and group rights to land and natural resources, the fracturing of the clan system could result in deleterious effects in a host of marginalized and/or disenfranchised groups. The ability of these people<sup>29</sup> to access land will be severely limited – in part by choice, but more often by social stigma and the inability to exert or find recourse in traditional land rights.

Women do not traditionally participate in public discourse or decision-making and are generally not part of any of the key traditional institutions. The disabled and those who are infected with HIV/AIDS are also not part of the public discourse on land and resettlement<sup>30</sup>. The number of people who have the potential to be disenfranchised in the post-conflict land distribution process is enormous. Overall approximately 15 percent of the female-headed households and 13 percent of the male-headed households

---

<sup>26</sup> Margaret Rugadya and Herbert Kamusiime 2008, in Women's Property Rights Hiv/Aids & Domestic Violence

<sup>27</sup> The bundle of rights that users of land (especially women, children and the elderly) used to enjoy with respect to marital land lies along a spectrum ranging mainly from use/access rights to the right to rent out land or housing as a source of income. Women are mostly clear that they cannot sell the land due to clan restrictions or because they are holding the land in trust for their children.

<sup>28</sup> Rugadya, M., Nsamba-Gayiyya, E., Kamusiime, H., 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, September 2007

<sup>29</sup> EVIs; Vulnerable groups include female-headed households, widows, child mothers, child-headed households, HIV/AIDS victims, abductees, returnees, and illegitimate children. and HIV/AIDS victims, women headed households, the disabled, child soldiers and returning rebels

<sup>30</sup> Land is a critical asset because land, housing and other property constitute a resource base which the household can draw from to cover HIV/AIDS related costs, including the costs of medical treatment, provision of care, and services related to deaths and funerals. Land may also provide the means of sustaining livelihoods even when the income earner is ill-through leasing out of land. Profits from sale of assets may help offset losses that result when household caregivers-often women and girls-are diverted from other income generating activity

have no rights to any land-inherited, rented, or otherwise (see also Oxfam, 2007<sup>31</sup>). Extremely Vulnerable Individuals (EVIs) appear to be left out of the return process and need specially tailored interventions. These groups have failed to assimilate/resettle or have not joined in the exodus back home and have been forced to hang on in the IDP camps. They lack the financial and human capacity to rebuild their shelters and livelihoods in their places of origin, given that the social safety nets that would have helped them are either weakened or broken (Rugadya, et al, 2006-2007).

### **HOW IS LAND ADMINISTRATION AND MANAGEMENT AFFECTED?**

Northern Uganda is a post-conflict area in which the destruction of property and displacement of persons increased land disputes and land conflicts. The weakening of traditional/customary systems, structures and institutions that used to handle land administration/management is yet another crisis problem to deal with; the many years of displacement have eroded substantially the authority and outreach of traditional dispute resolution mechanisms. Land disputes in these areas are likely to increase as more IDPs leave the camps and try to return to their original homes/lands.

#### **1. Increase in Land Conflicts**

County wide, (Rugadya, et al, 2008<sup>32</sup>) there is a high occurrence of land conflicts at household level (34.90%); slightly higher among rural households (36%) compared to urban households (33%). 20% of land disputes go unreported; a dispute resolution rate at first call institution of 59.9%. Land conflicts point to lapse in land tenure administration and management especially with regard to boundaries (32%), ownership (19%) and its transmission, occupation, trespass, fraudulent transactions and succession wrangles. Disputes were mostly occurring on land that was left behind upon displacement, which on return had a dispute prevalence rate of 65% and predominantly on inherited land accounting for 71%. The most prevalent type of disputes were boundary related ranking with the overall average of 23%, steadily rising to 25% as return commenced (Rugadya, et al, 2007<sup>33</sup>). The major issues with regard to land conflicts can be summarized as follows:-

- i. 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.
- ii. There is a multiplicity of land dispute resolution fora leading to “forum shopping”, without clear hierarchy – this has created overlaps and conflicts in land disputes processing.
- iii. Land justice suffers from political interference; there are serious threats to the rule of law, the independence of the Judiciary and the principle of separation of powers.

<sup>31</sup> Oxfam(2007), The Building Blocks of Sustainable Peace: the views of Internally Displaced People in Northern Uganda, London: Oxfam

<sup>32</sup> Integrated Study On Land And Family Justice, May 2008 for Ministry of Justice and Constitutional Affairs

<sup>33</sup> Rugadya, M., Nsamba-Gayiyya, E., Kamusiime, H., 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, September 2007

- iv. the increasing and continuing proliferation of administrative and statutory land governance institutions existing in parallel with traditional Acholi institutions is creating a complex land governance infrastructure in the sub-region; this is made worse by the fact that some of these institutions are not fully operational and yet they are defacto legal institutions; thus creating significant problems of responsibility and accountability;
- v. Corruption and illegitimate demand for money slow the justice delivery process
- vi. Cases of restitution, compensation and resettlement are piling up without a clear policy, legal and institutional framework to handle.

## **2. Lapse in Land Governance; Institutional Conflict and Competition**

Traditional community (clan) governance, social welfare, and disputes resolutions mechanisms have deteriorated. This leaves a dramatic and disturbing power vacuum among the people of northern Uganda that is rapidly being filled by political and civil government authorities. Formal structures for dealing with land disputes, such as local council courts, are weak and often corrupt. The potential for disputes and conflicts between these power structures is more poignant than ever. There are seven potential governance crisis areas over which conflict will likely erupt in Acholi region;

- i. First level of conflict over land is between the central Government and the leadership of Acholi (Acholi Parliament Group & the District local governments). This conflict largely based on deep seated suspicious that the Acholi leadership holds over the perceived intentions of the Government.
- ii. Conflicts between the Acholi political leaders (Acholi Parliament Group and the Acholi local political leaders) over issues of mandates & roles by these politically influential actors. The conflict is largely driven by competition for influence and power which comes with demonstrated control over land matters such as ownership, allocation and access.
- iii. Conflict between the Acholi political leaders and the Acholi traditional leaders; largely a conflict over mandate in the context of the evolving land and natural resources tenure regime and the changing roles of Acholi traditional leaders. Each of these actors is contesting the mandate of the other over land matters in the sub-region. Political power, political influence & the potential wealth arising out of land and natural resources control appears to be the key drivers of this conflict.
- iv. Inter-clan conflicts: the period that the Acholi people have spent in IDP camps has created general uncertainty over clan lands and this is increasingly being evidenced in the process of return (during the process, some of the returns believe they should return to land they occupied at the time of colonization).
- v. Overlapping claims by different clans; the clan land claims in some cases are being pushed back to the pre-colonial clan settlement patterns which were disrupted by subsequent movements of people as part of the colonial

- administrative policies and the tsetse fly control programme during the colonial days<sup>34</sup>.
- vi. Inter-district conflicts in form of boundary disputes between administrative units on either side of the common borders of neighboring districts<sup>35</sup>
  - vii. Local administration boundary conflicts<sup>36</sup> both at the district & local level, there is no recognized mechanism for adjudicating in such boundary disputes.
  - viii. Conflict over specified biodiversity conservation areas<sup>37</sup>, re-establishing the ecological and legal integrity of reserves could spark a major conflict between the NFA and the responsible local government on the one hand and the local community that has encroached on the reserves on the other hand. Local Governments and the local people are largely opposed to securing biodiversity conservation areas<sup>38</sup>. There is general consensus that this opposition is based on the perception that Government uses gazettlement to deprive local people of their proprietary interests in land and the specific biodiversity resources.

### **3. Access to Natural Resources**

Like land, clan rights to natural resources are passed down through males, and women without husbands have either no rights or limited rights to these natural resources. With such large groups of disadvantaged and marginalized people expecting to result from unequal land access and land rights distribution, we could expect to see a similar unequal access to natural resources. The increasing marginalization of women's land rights and access can be expected to result in a corresponding increase in the destruction of wetland habitats – and the resilience of these important habitats compromised by regular, rather than by intermittent, use as a livelihood strategy.

Encroachment of protected areas, poaching, and commercial exploitation of the remaining natural resources in key biodiversity areas are very real possibilities as returning clans and selected individuals position themselves to get access and use of key natural resources. It remains unclear to most people in northern Uganda, the degree to which land and natural resources previously held in the public domain and/or in customary tenure as hunting/grazing/or forested lands will be accessible on IDP return. This includes surface and sub-surface property rights. This concern has been particularly heightened by the discovery of commercial deposits of oil in Northern Uganda. The prospects for uncontrolled resource "mining" threaten northern

---

<sup>34</sup> The most conspicuous of these clan conflicts at the moment are the Pawel versus Lamogi and the Patiko versus Lamogi conflict. Clans and clan members who are edged out of clan lands will most likely resort to occupying fragile biodiversity ecosystems and marginal lands

<sup>35</sup> e.g. there is a conflict between the people of Pabbo in Gulu & the people of Lamogi in Amuru). Other high profile inter-district conflicts include those between Nebbi versus Amuru and Amuru versus Adjumani.

<sup>36</sup> Paralo versus Atiak; Alero versus Amuru; and Amuru versus Pabbo.

<sup>37</sup> the Wiceri forest area is designated for potential gazetttement by the NFA, Bobbi Central Forest Reserve and Cwero Local Forest Reserve were reported encroached and degraded.

<sup>38</sup> UWA has plans to gazette the Apar area in Amuru District because it claims it is part of East Madi Game Reserve; the proposal to gazette the Aswa-Lolim valley as an elephant corridor raises conflicts between the LG, the local people and private land owners who have land allocations in the area.

biodiversity hotspots as well as long-term natural resources management and biodiversity options.

### **WHY IS THE LEGAL AND POLICY FRAMEWORK NOT HELPING?**

The current policy and legal framework is inadequate in many aspects to protect and enforce land and property rights of people in Northern Uganda in this post-conflict situation. Land law reforms in Uganda do not address the issue of access and use of land, where women predominate; instead legislation addresses owners of land. It is one thing to put in place a gender sensitive constitution and legal framework and quite another to be able to implement it for the benefit of women.

#### **1. Inadequacy of the Policy Framework**

The existing policies (the IDP Policy and draft National Land Policy), laws (the Constitution and the Land Act) as well as land administration institutions do not adequately provide for land issues pertaining to the return of IDPs. The frameworks are particularly inadequate in issues pertaining to land and property restitution, resettlement and compensation for the IDPs. Currently there is no established institutional framework to handle restitution (recovery of land and property), resettlement and compensation.

The design of the Peace Recovery and Development Program (PRDP) did not address the issues of land conflicts/disputes during displacement and subsequent return of IDPs. The PRDP only focuses on natural resources management (NRM) and does not address the issues of land conflicts stemming from boundary disputes, encroachment, or squatting which are all highlighted in various studies. The PRDP does not address the issue of customary tenure and the role of customary institutions even within the NRM. The framework of NRM does not adequately address the whole host of problems arising from tenure insecurity lack of adequate property rights, the main source of land conflicts. The PRDP does not address the need for increased resources and capacity building of land institutions in Northern Uganda, and yet these institutions are not only important for land conflict management but also for NRM.

Although the PRDP contains a commitment to the transformation of camps into viable communities and to promote ‘integration of camps and IDPs into urban areas’. This puts in conflict two sets of competing rights; the right of the land owners to reclaim their land and the right of the IDPs, forced onto the land in the first place, to remain there if they so wish. In cases of this nature compensation to the landowners is a must, although the Government appears to be doggy about this issue. The PRDP does not either have provisions for protecting or assisting IDPs who may be evicted by the landowner. The camp phase-out guidelines only state that, IDPs remaining in former camps may ‘be assisted to formalize their stay through the due process of law’ (Camp Phase out Guidelines for All Districts That Have IDP Camps” Office of the Prime

Minister). What this means in reality is that landowners and IDPs are left to negotiate an arrangement on a case-by-case basis.

The National Policy for Internally displaced Persons (NPIDP), 2004 places the responsibility of restoring land to the returning IDPs (restitution) on local governments without elaborating on the implementation mechanisms. The NPIDP requires local governments to resettle and reintegrate the returning IDPs by “acquiring or recovering their land in accordance with the provisions of the Land Act”. Where recovery of land is not possible, local governments are required to acquire land and allocate land to the displaced families. No strategies for this process are stated in the policy. In the NPIDP, the level of local governments and the specific agencies of local governments are not specified. The local governments have neither the technical capacities nor financial resources to undertake such enormous tasks. The NPIDP also assumes that IDPs would return to their places of origin and it does not make provisions for the IDPs who may be forced to stay in camps for ever or those who may not opt to return to their areas or origin.

The draft National Land Policy (NLP) upholds the rights of IDPs under the principle of enhanced equity and social justice in society. However, it lacks in-depth analysis of post-conflict land issues and proposes only one strategy in the entire document, i.e. “resettle all internally displaced persons in their areas of origin and guarantee their security of tenure”. This fails to address the desire of those who may prefer to remain in camps or around the IDP camps which places have over the years become urbanized and offer opportunities, facilities and services which may not be readily available in their places of origin.

## **2. Inadequacy of the Legal Framework**

Limitations set by the law<sup>39</sup> requiring spousal consent on all land transactions are not realistic or feasible and will face enormous problems in their practical implementation. Consent to land transactions on its own is unlikely to change the highly differentiated and multifaceted nature of land inequity for women or gender relations for that matter.

- i. The consent clause offers women in legally accepted marriages some protection, but it leaves out single or young women and the majority of rural women who are in co-habitation (socially tolerated but not legally accepted). Women in these unions consider themselves married for all intents and purpose. Other community members also regard them as married and they are the majority.
- ii. This protection is amenable to abuse; few women can read or write and the law fails to take into account the power relations in homes in Uganda; women especially in the rural areas lack knowledge of the law and the rights guaranteed; it fails to take into account the inadequate level of understanding of legal mechanisms secure rights. It is presumed that a

---

<sup>39</sup> in sections 39, 39A of the Land Act Cap 227

woman in a home is informed and can make an independent decision which is a fallacy, either their will be coercive extraction of the consent or women face the inevitable reality of being divorced, domestic violence etc. The majority of women are either illiterate, not in a position, out of fear of retaliation from their husbands, or simply not aware of such rights or protection

In addition is the widespread ignorance of statutory law on inheritance or succession coupled with varied traditional practices is at the root of problems for widows, girl-orphans, and children in general. Research showed that in 2007, 49% of the cases reported to the Administrator General's office dealt with issues of access to property and the main complaints were children and widows (FHRI, 2008). Very few people in the rural setting know about statutory law on the distribution and administration of the deceased's property. For example only 7% of husbands knew that in cases of intestacy, the Administrator General decides on inheritance administration<sup>40</sup>.

The current Land Act does not sufficiently take care of post conflict land issues, although section 41 provides for the establishment of a Land Fund, to be used among other things to "resettle people who have been rendered landless by government action, natural disasters or any other cause. But the Land Fund, since its establishment, has lacked an appropriate administrative and institutional framework, resources and capacity. The Land Act and/or resettlement, which would clearly specify who qualifies to be compensated or resettled, and on what terms and conditions. The eligibility criteria, assessment criteria, verification of claims and execution of claims need to be sorted out. The 3 aspects of managing restitution and compensation that need to be clarified are verification of claims, determination of compensation/resettlement, and the assignment of institutional responsibility.

### **CONCLUSION:**

In Northern Uganda, which is largely under customary tenure the conflict has left women alone as heads of households. Women within a household (as a wife or daughter) may not have any ownership rights to land—only user rights. Therefore, when the family breaks down (divorce, death, polygamy) women lose even their access to land. In land distributions, women, because of their status as daughters, wives, or widows may receive less land than the males in the family. The assumption is often that these women will eventually marry and leave the land. It is clear that men and women have different opportunities to gain access to land. One of the effects of war has been an expected increased numbers of female-headed households; this is not likely to match land allocations on IDP return, which may continue to favor men. In many customary societies, women gain access to land through their husbands or male relatives. In the face of raising value of land and land scarcity women are facing a

---

<sup>40</sup> Abby J. Sebina-Zziwa, 1995

disproportionate decrease in access to land. This is likely to impact on profits and benefits that will be derived from investments made in land sued by women.

Structurally, even in situations that are not as unique as post-conflict northern Uganda , women have higher labour demands on their productive time, which is often offered unpaid for in family tasks, domestic chores and child rearing, programming their intervention need specific conciseness to balancing these additional reproductive roles with the ascribed productive roles . The link between HIV/AIDS and property rights is strongly mitigative in the sense that property rights endow a level of empowerment that enables women to manage the effects of HIV/AIDS, especially access to health care and nutrition. The degradation of social relations has occurred since camp life began; this factor has increased vulnerability for everyone through the fraying of social networks and the former relations of dependence and interdependence.

From the review it is clear that the root causes of vulnerability that ultimately lead to livelihood insecurity revolve around; land tenure and property rights; land rights administration and management; policy and legal framework, re-establishing an enduring property rights regime in land and biodiversity, requires addressing three inter-related issues.

- d) securing the essential ingredients of security and certainty of property rights;
- e) identifying potential conflicts and addressing them at their latent stage; and
- f) establishing a robust and dynamic institutional arrangement that handles land and biodiversity related transactions in a transparent and accountable manner

## **REFERENCES**

1. INTEGRATED STUDY ON LAND AND FAMILY JUSTICE, May 2008, by Margaret A. Rugadya, Eddie Nsamba-Gayiyya, Regina Lule Mutyaba, Herbert Kamusiime, J. B. Asiimwe and Valentine Namakula on behalf of the Ministry of Justice and Constitutional Affairs.
2. INCLUDED YET EXCLUDED; a Study of Women's land rights in the Districts of Pallisa and Kapchorwa, By Evelyn Nyakoojo and Jackie Asiimwe, for Uganda Land Alliance and Action Aid, 2005
3. POST-CONFLICT LAND POLICY AND ADMINISTRATION OPTIONS: LESSONS FROM NORTHERN UGANDA Volume 3, Study by Margaret Rugadya, Herbert Kamusiime and Eddie Nsamba-Gayiyya on behalf of the World Bank, 2006-2007.
4. LAND MATTERS IN NORTHERN UGANDA-ANYTHING GROWS; ANYTHING GOES, Post-conflict "conflicts" lie in Land, 2007 USAID
5. LAND TENURE, BIODIVERSITY AND THE POST-CONFLICT AGENDA IN ACHOLI SUB-REGION, RESOLVING THE PROPERTY RIGHTS

- DILEMMA, 2008 by Godber Tumushabe, Arthur Bainomugisha and Onesmus Mugenyi
6. LAND RIGHTS – THE UGANDAN EXPERIENCE , HUMAN RIGHTS REPORT FOR THE PERIOD JANUARY-JUNE 2008, By Foundation for Human Rights Initiative
  7. RETURNING TO UNCERTAINTY? ADDRESSING VULNERABILITIES IN NORTHERN UGANDA, 2007, UNDP
  8. WOMEN'S PROPERTY RIGHTS HIV/AIDS & DOMESTIC VIOLENCE – RESEARCH FINDINGS FROM IGANGA, UGANDA, 2008, By Associates for Development, Human Sciences Research Council, and International Centre for Research on Women
  9. LAND MATTERS IN DISPLACEMENT, By Civil Society for Peace in Northern Uganda (CSOPNU) in December 2004. Judy Adoko and Simon Levine
  10. RESETTLEMENT, LANDLESSNESS AND INTERNALLY DISPLACED PERSONS IN UGANDA, December 2005, By Reev Consult International for Ministry of Water, Lands and Environment
  11. NORTHERN UGANDA IDPs PROFILING STUDY, Office of the Prime Minister, Department of Disaster Preparedness and Refugees supported by UNDP
  12. NORTHERN UGANDA BASELINE SURVEY, By Uganda Bureau of Statistics (UBOS), on behalf of the Northern Uganda Social Action Fund (NUSAFF) under the Office of the Prime Minister conducted the Northern Uganda Survey between August and December 2004