

**A REVIEW OF LITERATURE ON POST CONFLICT LAND
POLICY AND ADMINISTRATION ISSUES, DURING
RETURN AND RESETTLEMENT OF IDPs:
INTERNATIONAL EXPERIENCE AND
LESSONS FROM UGANDA**

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EXECUTIVE SUMMARY

Since 1986, the region has been ravaged by war, which began with the Holy Spirit Movement of Alice Lakwena and its successor Lord's Resistance Army of Joseph Kony. Since 1996 attacks on civilians led to informal displacement. Actual massive displacement of people began with the declaration of protected villages in 2002 when military launched "Operation Iron Fist" to starve Kony of collaborators and informers from communities. The conflict has lasted over 19+ years, and displaced an estimated 2 million people (no systematic computation is available). The prospect of peace and security is now more in sight than ever before, whether people return and are able to reclaim their property is a key sign of peace and normality. In Teso region, resettlement has already happened, in Lango sub-region the process is picking momentum, while in Acholiland the current peace talks in Juba have brought the reality of return closer home.

In all this, it is anticipated that given the centrality of land to livelihoods and poverty reduction, it will inevitably become a centre of dispute and controversy. Five percent of Uganda's population is displaced, 66% of the displaced are below poverty line. Since 1997, the poverty gap between war-affected areas (northern Uganda) and the rest of the country has been widening. In the Poverty Eradication Act Plan (PEAP 2004/08), GOU commits to two actions; finalizing the IDP policy (already done) and implementation of post-conflict plan that respects rights of IDPs – yet to be done, however it is also acknowledged that not all IDP concerns can be resolved through PEAP.

Within the Land sector, the LSSP (Land Sector Strategic Plan: 2001-2011) which was never designed to address IDPs needs avails opportunities by embracing the framework for decentralized land administration and dispute resolution hinging upon devolution of power and enabling communities to participate in policy processes especially the formulation of the National Land Policy for Uganda. Currently at draft level, the National Land Policy principles recognize the need to place the land sector at its appropriate macro and micro economic level allowing for the separation of the function of land ownership, land use planning and land development. Within this the rights of IDPs to land are recognized as a factor that contributes to abandonment of production activities hence, a worsening poverty situation for the displaced population in Northern Uganda. This raises the need to restore stability in land relations and the resumption of livelihood activities, which the land policy can make better or worse, particularly the safeguarding of customary rights, law and institutions on land.

The National Policy on IDPs in Uganda, a first in Africa, aimed at integration and mainstreaming displacement issues in government planning and programming, is a positive response from the government of Uganda but is yet to deliver, because institutions or structures set under it are either under funded or unfunded hence lack capacity and resources to perform. In terms of land issues, this policy fails to address the issue of those who may want to remain in the areas of displacement given the opportunities offered in the new location and advantages of urbanization rather than return home. The IDP policy is a classic case of a policy without legislation to enforce it.

Legislation on land is also short on how the emerging (statutory) institutions in post-conflict northern Uganda, will integrate existing traditional ones that have been weakened by war and displacement, yet offer an option for amicable and reconciliatory ways of addressing land disputes and claims. Because within the traditional institutions dispute resolution is not about passing judgment but is a mediation process, within this is the whole question of compensation of communities and individuals who lost land to

operations of war such as displacement camps or military operations. The constitutional dispensation in Uganda does not tackle displacement arising out of war (only that attributed to natural hazards), nor does it accord IDPs affirmative action as a marginalized group; however it protects the sanctity of private property and sets conditions for dispossession which would serve well on matters of compensation in event of loss of rights or interests in land.

Customary tenure is the dominant land holding system for northern Uganda (covering over 90%); it comes with its attendant customary law for administration and dispute resolution, as well as institutions to enforce the customary norms and practices. In the review of various studies undertaken in Northern Uganda, it is acknowledged that glory of traditional institutions is long past in the wake of displacement and return; not only are they weakened, grappling and struggling for survival, but majority of the custodians of their norms or practice have vanished with the war; living behind a legacy of unwritten folklore and norms to fight for survival against statutory law enforced by modern institutions entrenched in law and policy. Attempts have been made (unsuccessfully) in law to codify the incidents of customary tenure; its sets and subsets of secondary interests are not captured yet they are the source of claims / counter claims and disputes in post conflict situations. Legislation has gaps that must be dealt with for effective delivery of rights and administration on land.

Where displacement has gone on for a long time, resettlement will be constrained by complexities and social frictions especially in circumstances where the elderly people have died and young or vulnerable claimants cannot adequately defend their land rights in their places of origin. The rights of vulnerable groups such as widows, children Persons Living with HIV/AIDS and Persons with Disability, are under threat by the powerful and well to do especially in the circumstances of weaken grassroots governance or clan systems. Long periods of displacement will inevitably affect people's property rights; causing clashes and conflict. While the clan used to effectively control access to and occupation of arable land, on return from the camps, the clan authority will be disrupted and will not have the same authority, effective cohesion, power and instrumentality.

When responding to needs of institutional frameworks, in post conflict land administration, it will be important, that a blend where feasible be allowed to emerge, producing a system that embraces the traditional clan system, accords statutory powers and functions of modern institutions such as Local Councils or Area Land Committees to the emerging blend. This not only recognizes the new changes brought by war but also the fact that the erstwhile clan bonds and traditional land authority systems may be mal-functional or dysfunctional, despite the fact that it may still have measurable influence in relation to socio-cultural functions, though not as an authority system over land resource use. It is expected that on return, resettlement will not be based on clan loyalties; given a much younger generation and diminished clan authority

It is also a fact that formal institutions for control and management of resources are ill-equipped and incapable of recognizing intricate needs of particular grassroots communities. On the one hand formal procedures are too involving and require literacy to be accessed and effectively used by the rights seeking public. On the other hand, the cultural context in Northern Uganda has invariably changed in irrevocable ways, since the establishment of camps and many ingrained norms of behavior have been destroyed. A number of threats to indigenous customary interests are evident (illegal occupation and logging by army, investors and government schemes) more so for the weak groups, fear of a scheme to grab Acholiland and land grabbing by neighbors and relatives is likely to intensify, the protection of the weak will decline. Risk of loss of land

under customary tenure is high because of lack of documentation and distress sales due to poverty.

There is recognition that land in post-conflict is often tackled in an adhoc manner rather than systematically using agreed guidelines and normative frameworks – policy. The relationship between land conflict and internal displacement is extraordinarily complex especially the cluster of secondary conflict which is an indirect result of primary conflict, these are exacerbated by: lack of a land policy, a dysfunctional land administration system and land grabbing/invasions. Henceforth, land is a critical element in peace building and economic reconstruction in post- conflict situations; relevant issues must be understood and given appropriate priority for stabilization. In re-building functioning land administration systems, one of the main challenges is to create institutions that meet claims for property restitution (from returning people, acquired land in displacement and those that lost land), and the establishment of certainty of such claims. Insecurity arises when there are competing claims over the same piece of land (uncertainties, inequities and disputes often arise), these are recognized as grievances. Competing claims are often characterized by a degree of conflict (e.g. Darfur, Sudan), supported by government or perceived to (Rwanda and Burundi) support one claim over another. Disputes also arise when other individuals occupy properties of returning populations (Rwanda).

In post conflict land policy three factors are of importance; tenure security, access and unequal distribution. Tenure insecurity is often addressed through clarifications, titling and registration initiatives, sometimes initiatives to demarcate and record tenure rights without granting title can improve security of tenure for customary and indigenous rights holders. Such approaches need to incorporate dispute mitigation and consensus-building measures. The nature of mediation and dispute resolution mechanisms are important. Experience has shown that many types of land disputes are best managed outside courts; since court's capacity to process claims efficiently and transparently is often constrained (mediation and arbitration are particularly useful in customary and community based mechanisms). Investment in agricultural infrastructure, technical assistance and creation of markets can compliment land policy approaches. Lack of knowledge on law and options available for redress creates tensions. Activities that focus primarily on strengthening the justice system and rule of law are relevant.

The questions that have to be addressed in post conflict land policy and land administration in Uganda, then revolve around whether Northern Uganda needs peculiar land law and policy, recognizing special effects of war and displacement or affirmative action? How to streamline statutory and customary systems in land policy? How to allow emergence of dispute resolution based on mediation and close gap left by inefficiency of the tribunals. Modification may be necessary to effectively deliver land administration functions clarifications, titling and registration initiatives, or demarcation and recording of tenure rights. Different options and frameworks will be suggested or will emerge in consultation with displaced communities in northern Uganda, the determinant factors will be capacity, resources and appropriateness of the systems or options evolved in address the land needs on return and resettlement.

1. INTERNAL DISPLACEMENT IN UGANDA

1.1 DEFINITIONS

An Internally Displaced Person (IDP) is someone who has been forced to leave their home for reasons such as natural or man-made disasters, including religious or political persecution or war, but has not crossed an international border. The term is a subset of the more general displaced person. There is no legal definition of IDP¹, as there is for refugee, but the rule of thumb is that if the person in question would be eligible for refugee status if he or she crossed an international border then the IDP label is applicable. IDPs are not technically refugees because they have not crossed an international border, but are sometimes casually referred to as refugees.

IDPs are “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border²”

This definition highlights two elements:

- The coercive or otherwise involuntary character of movement, prompted by a particular cause such as armed conflict, violence, human rights violations and disasters. These causes have in common that they give no choice to people but to leave their homes and deprive them of the most essential protection mechanisms, such as community networks, access to services, resources and livelihoods.
- The fact that such movement takes place within national borders implies that IDPs remain legally under the protection of national authorities of their country of habitual residence. IDPs should therefore enjoy the same rights as the rest of the population.

Principles in international law³ also define the ‘internally displaced’ as those who have left their homes and places of habitual residence involuntarily, whatever the circumstances, and have not crossed an international frontier⁴. Furthermore, they address the full range of rights that may become relevant for protection against displacement, during displacement and in the context of return or resettlement once durable solutions become possible⁵. In doing so, they reflect the fact that internally displaced people remain citizens of the country they are in and do not lose, as a consequence of being displaced, the rights granted to the population at large.

1.2 BACKGROUND

Uganda suffers from three distinct crises of internal displacement⁶ (south-western, northern and north-eastern border). However, the crises are interrelated. The influence of regional politics, the disadvantaged economic situation at the periphery of the country and certain historical patterns of abuse of civilian populations are common to all three of them. Conflict and violence have plagued much of Uganda since

¹ <http://www.unhcr.ch/html/menu2/7/b/principles.htm>

² UN Guiding Principles on Internal Displacement, Introduction, para. 2

³ As presented by the UN Council

⁴ Refugee Law Project, 2004 Faculty Of Law Makerere University

⁵ Internal Displacement Monitoring Centre, June 2006

⁶ Displacement in Karamoja which closely entangled in a history of colonial and post colonial regressive policies and shrinking access to pasture and grazing land for cattle, forcing movements across the border into Turkana Land in Kenya and the resultant repercussions or counter attacks are not included in this review

independence (1962). The most protracted of these conflicts has been the war in northern Uganda, largely in the Acholi region of Gulu, Pader, and Kitgum⁷. The history of war in Northern Uganda is long and complicated, and its root causes are embedded in Uganda's troubled past. The official starting point, however, is resistance in Northern Uganda to the overthrow of the Government of Tito Okello Lutwa by Museveni's National Resistance Army in 1986. Since then the war has undergone several transformations but it has almost exclusively been confined to the Acholi region – i.e. Gulu, Kitgum and Pader districts⁸.

For generations, the people of the northern region bordering the Sudan, notably the Acholi of the two largest districts Gulu and Kitgum, have had an adversarial relationship with the central powers in Uganda. Populations on both sides of the Sudanese border often have been used in attempts by the respective governments and their allies to destabilize each other. Forced displacement, both across borders and within, is thus a recurring historical phenomenon. Today a complex demographic patchwork exists in the north between Sudanese refugees, IDPs and local residents⁹ (many of whom had been living as refugees in the Sudan during the 80s).

Since 1986, the area has been the theatre of armed rebellion by the “Holy Spirit Movement” and its successor, the “Lord’s Resistance Army” (LRA), against the government of Yoweri Museveni. Since 1986, attacks on civilians led to informal displacement where villagers sought refuge with family members. While the actual conflict in northern Uganda started in 1986, the displacement crisis in northern Uganda began in 1996 when the government forced civilians into “protected villages”. As rebel activity increased, the Ugandan government sought to separate civilians from the rebels in order to reduce the LRA’s ability to benefit from suspected collaborators and to clear the territory in northern Uganda for unimpeded military operations thus forced encampment.¹⁰

In October 2002 a large-scale military offensive entitled “Operation Iron Fist” was launched, which further exacerbated the displacement crisis, in Acholiland, and the IDP population nearly doubled by the end of the 2002. The establishment of these camps was supposed to enable the Ugandan Army, the Uganda People’s Defense Forces (UPDF), to bring a swift conclusion to the war: by clearing out the countryside one would cut off rebel resources and give free rein to UPDF units. The entire operation was not meant to last for a long period of time. Several years later, however, people are still in the camps and their number has grown immensely¹¹. This operation was later re-launched and succeeded in weakening the LRA until 2004. The main exceptions are the case of LRA rear bases in Southern Sudan (officially closed in 1999 when the Ugandan and the Sudanese governments agreed with each other to stop supporting opposing rebel groups in either country) and the extension of the conflict into the Lira and Teso sub regions by roaming bands of LRA rebels after the launch of ‘Operation Iron Fist in mid-2002’¹².

In the Teso region, the majority of the present IDP camps were established as far back as 1979/80 when the Karamojong carried out one of the big cattle raids, thus over the years, with subsequent Karamojong raids, the displaced people run back to the camps from where they access their gardens during the planting and harvesting period and

⁷ Medicines’ Sans Frontier, 2004, Life in Northern Uganda, All shades of Grief and Fear

⁸ Boas and Hatloy, 2005, The Northern Uganda IDP Profiling Study

⁹ 178’000 refugees vs. 463’000 IDPs (September 2000, for the five districts of Adjumani, Arua, Gulu, Kitgum, Moyo)

¹⁰ June 2000: 520’000, September 2000: 450’000

¹¹ Boas and Hatloy, 2005

¹² Boas and Hatloy, 2005

then return to the safety of the camps at night¹³. This type of small scale displacement caused by neighboring Karamojong cattle rustlers in the Teso region has occurred for more than two decades and has resulted in several camps in Katakwi district. The Teso rebellion in 1985 also resulted in large scale displacement when people were forced into “protected” camps by the government in 1990. However, when the Lord’s Resistance Army entered the Teso region in June 2003, its confrontation with the government and locally formed militias caused an escalation in violence that massively displaced people, mostly in Katakwi, Kabermaido and Soroti districts. Mass killings, looting and burning of houses and land, and abductions of children became common.

Tens of thousands of people from villages in Soroti and Katakwi districts poured into Soroti town in search of safety. Kabermaido residents mostly fled to nearby village camps or trading centers, surviving without any assistance and facing severe shortages of food and water. By late 2003 the majority of the LRA left Teso region and moved into Lira district. A few months later, some of those who had sought refuge in Soroti town started to return home to rebuild their homes. The return process has been slow, and will take many more months. Many people still fear that the LRA or the Karamojong will return and destroy everything once again¹⁴.

The Rwenzori range in the southwest has been historically plagued by uncontrolled armed elements. Insecurity has been a “way of life” in this border zone with the Democratic Republic of Congo. This situation, however, deteriorated in 1996, due to cross-border attacks by a new armed group, the “Alliance of Democratic Forces” (ADF). In the southwestern district of Bundibugyo, which is geographically isolated and suffers from continuing insecurity, people moved into displacement settlements. Some of these IDPs used the settlements only overnight, when the security conditions allow it, return to their fields during the day is possible. In the less isolated districts of Kabarole and Kasese, improved security has led to the return of significant numbers of IDPs since early 2000¹⁵.

1.3 DISPLACEMENT

The conflict in northern Uganda has lasted 19 years and caused the displacement of an estimated two million people¹⁶. In Acholiland (Gulu, Kitgum and Pader districts), parts of Katakwi, Apac, Lira and Adjumani districts, approximately 1.7 million IDPs (IDPs) continue to live in squalid conditions in over 200 over crowded camps. There are an unknown number of IDPs living in refugee-hosting districts such as Adjumani, Moyo, Hoima and Masindi¹⁷. The IDP populations in Gulu, Kitgum and Pader represent 90 percent of the districts’ population¹⁸.

In the Lango sub-region, there are a total of 474,000 IDPs in Lira and Apac districts; and despite the restored peace in the Teso sub-region, there are 80-100,000 IDPs in Katakwi district, most of whom escaped Karamojong cattle raids. There is an estimated 200-300,000 IDPs living in urban areas such as Gulu, Kitgum, Lira and Kampala and in the neighboring districts of Adjumani, Masindi and Hoima. Therefore,

¹³ OCHA, Uganda , 2006

¹⁴ Medicines’ Sans Frontier, 2004, Life in Northern Uganda, All shades of grief and fear

¹⁵ OCHA, February, 2005

¹⁶ Uganda: Relief Efforts hampered in one of the World’s worst internal displacement crises: a profile of internal displacement situation, June 2006, Internal displacement monitoring centre, Norwegian Refugee Council

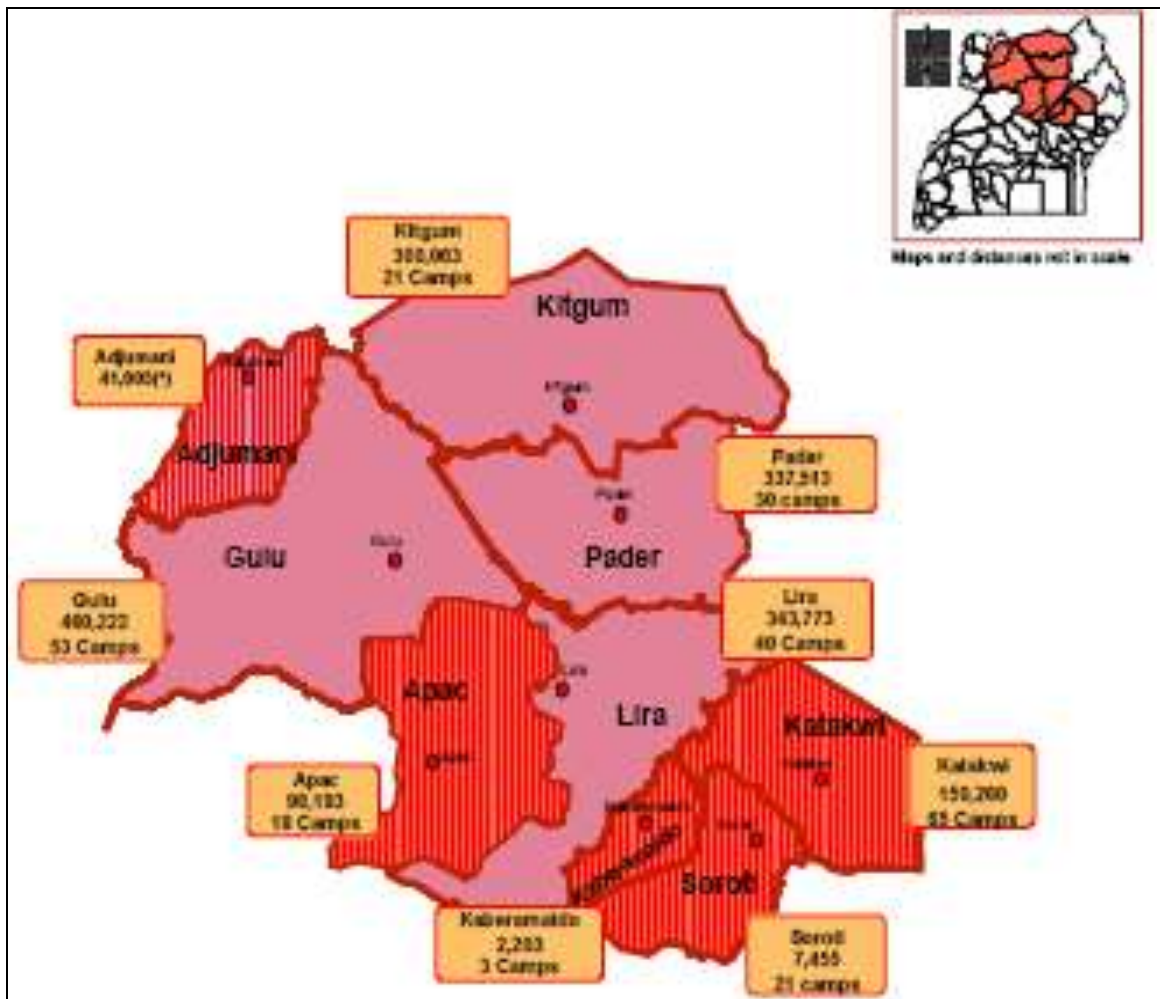
¹⁷ UNOCHA, 4 May 2004

¹⁸ UNICEF, February 2006, p.1

the global figure of IDPs in northern Uganda is estimated at between 1.9 and 2 million, with 1.4 million (in rural Acholi and Lango camps)¹⁹.

In Gulu district there are more than 400,000 IDPs in 33 camps while there is another 85-100,000 IDPs in camps that were non-recognized camps until August 2004. In Kitgum district the total number of IDP in camps is close to 270,000 people (18 camps) while the number for Pader district is approximately 280,000 IDPs (12 camps). In the Karamoja region, however, 165,000 people remain displaced in camps in the Amuria and Katakwi districts due to insecurity caused by cattle rustling and the killing of civilians by Karamojong warriors. These incidents, as well as clashes with local militias, also caused recent displacement in Katakwi district²⁰.

Map 1: Northern Uganda showing IDP Populations as of Feb 2006, OCHA (Estimate of Displaced Persons is: 1,699,682)



1.4 RETURNS

Return is linked to peace and security. The IDPs are effectively displaced from their homes, but their displacement is only a short geographical distance. If peace comes to Northern Uganda, as many as one third of the IDP population, or approximately 400,000 people, may start moving out of the camps spontaneously. Another third will

¹⁹ OCHA, June 2005

²⁰ UNOCHA, 4 May 2006,

move if some assistance is given, while a final third will remain in the camps, at least for a while. The implications are that assistance providers will have to plan for at least three scenarios that may take place at more or less the same time and place²¹. Very few - only five percent - of the camp population lives in another district today than when they were born. One of four people live in the same place as they were born, and an additional 40 percent live in the same sub-county. This means that two out of three are living in the same sub-county as when they were born. Between 70 and 75 percent of the male population and that part of the female population that has not married, is currently living in the same sub-county as when they were born may remain in the camps. This is the case for 57 percent of the female population that has married. This indicates that women tend to move when they marry.

The IDP themselves express a wish to return given that there is security, that the Government approves the return, that there is school and health facilities and finally, that they are provided some resettlement packages. Previous research among IDPs has already shown that the vast majority of IDPs want to go back to their own land²² or have already gone back to their homes. The actual process of return is likely to be simple²³, since the returns commenced no major land issues have been pointed out. Most people are displaced only a few kilometers (on average six and a half kilometers or just two hours walk). The dimension which must not be underplayed, though, is the importance of individual families reclaiming their property for their future economic well-being. Whether people return and are able to find their property (especially traditional land) is absolutely crucial and is the key sign of the society returning to peace and normality²⁴.

Due to improved security in southern parts of Apac and Lira, and in Kaberamaido, Soroti and much of Katakwi districts, approximately 400,000 IDPs have returned or are returning to their villages in order to access their fields.²⁵ Movement of IDPs [in Teso region] started as early as late February [2004], from Soroti municipality to sub-county camps closer to their homes and land in Katakwi and Kaberamaido districts, where security was provided by the UPDF and Arrow Boys. In Soroti district, most of the IDPs who originated from the four affected sub-counties have returned, except those from Kapelebyong and parts of Amuria counties²⁶. In Katakwi district, the majority of IDPs are moving out to their gardens to cultivate, with the exception of those in the sub-counties of Obalanga and Morungatuny along the border with Lira district.

Inter-agency assessments led by UNHCR in December 2005 and by the District Disaster Management Committee in Lira district in March 2006 indicate that 55% of the IDP population in the central part of the district has either partially or permanently returned. Assessments also revealed three displacement camps where more than 70% of huts had been abandoned and occupants either temporarily or permanently returned to their villages. In Lira, due to the urban - rural migration of IDPs, rural camps such as Aloi, Ogur, Barr, Aler and Agweng continue to expand in size and population, while the urban camps are reducing in population²⁷.

From the recently concluded WFP population re-verification exercise, the IDP numbers in rural camps increased by about 29% (379,110 in May compared to 250,361 in October 2004). There was an almost corresponding percentage reduction of 24.79%

²¹ Boas and Hatloy, 2005

²² IOM found that three-quarters of people wanted to return to their homes.

²³ CSOPNU, 2004

²⁴ CSOPNU, 2004

²⁵ IOM, March 2006, p.12

²⁶ Internal Displacement Monitoring Centre, June 2006

²⁷ Light Force International, April 05 registration exercise

registered in the urban camps²⁸ confirming that most IDPs (78.6%) are moving from Lira town to rural areas. Some of the IDPs (10.5%) join rural camps from other rural camps or surrounding villages. The rural camps with a significant population increase include: Aler (50.7%), Orum (48.3%) Barr (46.2%), Apala (31.6%), Aromo (31%), Aloji (29.5%) and Agweng (29.2%). These sub-counties are considered relatively safe, although recent security incidences have marred the relative calm. Aler and Barr registered the highest number of returning IDPs because they are closest to Lira town.

In the Acholi districts of Gulu, Kitgum and Pader, a number of “settlement sites” have been reported. The sites have emerged as a result of population movements from larger camps to areas closer to home villages where access to land is better and military detachments provide some security²⁹. In Pader, no major changes were noted in IDP figures, although more accurate statistics are expected after the revalidation exercise scheduled for June. There were also no major changes in IDP numbers in Gulu and Kitgum³⁰.

²⁸ By Light Force International

²⁹ UNOCHA, 15 May 2006

³⁰ UNOCHA, 27 June 2005

2 REVIEW OF POLICY AND LAWS ON IDPs AND LAND IN UGANDA

2.1 INTRODUCTION

The centrality of land in the country's political economy is supported by a complex legal profile. This consists of an elaborate constitutional dispensation as well as a comprehensive regulatory framework³¹. This chapter reviews relevant existing legal and policy provisions on displacement and land issues in Uganda, pointing out the inadequacies and gaps that will have to be addressed for effective post conflict policy and land administration in Northern Uganda.

Uganda's legislation is both varied and specialized. Article 274 of the 1995 Uganda Constitution defines the sources of law applicable by the courts as the Constitution, Statutory law, customary law, equity, common law, and statutes of general application in force in England before 1902. These in the Constitution are termed "*existing law*", which should be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution³². It should be noted from the start that the laws relating to land do not expressly tackle rights to land of IDPs.

Patrick McAuslan³³ reminds us that "land laws have been first and foremost the products of politics, not of 'objective' considerations of what is best for economic or social or sustainable development." Land laws are, frequently, from a normative or aesthetic point of view, messy, incoherent, schizophrenic messes, because they are usually the result of intense political negotiation and trade-offs and conceal hidden agendas. And given this, one is often led to wonder if there is anything one can say meaningfully from a technical point of view about land law. After all, where a law has "defects" is it not safe to assume that this is not an accident, that there are vested interests behind each one of those defects? The unifying theme is the importance of grounding law in reality, a point that seems so obvious that it should not need to be made, but in practice is often ignored. It is equally obvious that the world is littered, today and throughout history, with the corpses of unimplemented or partially implemented laws.

2.2 DEFINITION OF CONCEPTS

Land is life. It is a surface that people live on, an economic asset, a point of access for other resources like minerals, territory for states and peoples, and a central element informing certain communities' identities and spiritual worldviews.

Key concepts associated with land include:

- Tenure: The statutory or customary regulation of ownership and access
- Policy: States' and customary authorities' intentions on land tenure, land use and land administration
- Reform: Major changes in the legal and institutional framework governing land tenure. This includes state-led, market-oriented or hybrid models of land reforms

Tenure types in western influenced property regimes categorize how people own, use, access and transfer land within a formal system. The main tenure classifications are private (individual), state (public), communal and open access³⁴. The key characteristics for tenure classification are the type of stakeholder, individual, group, or

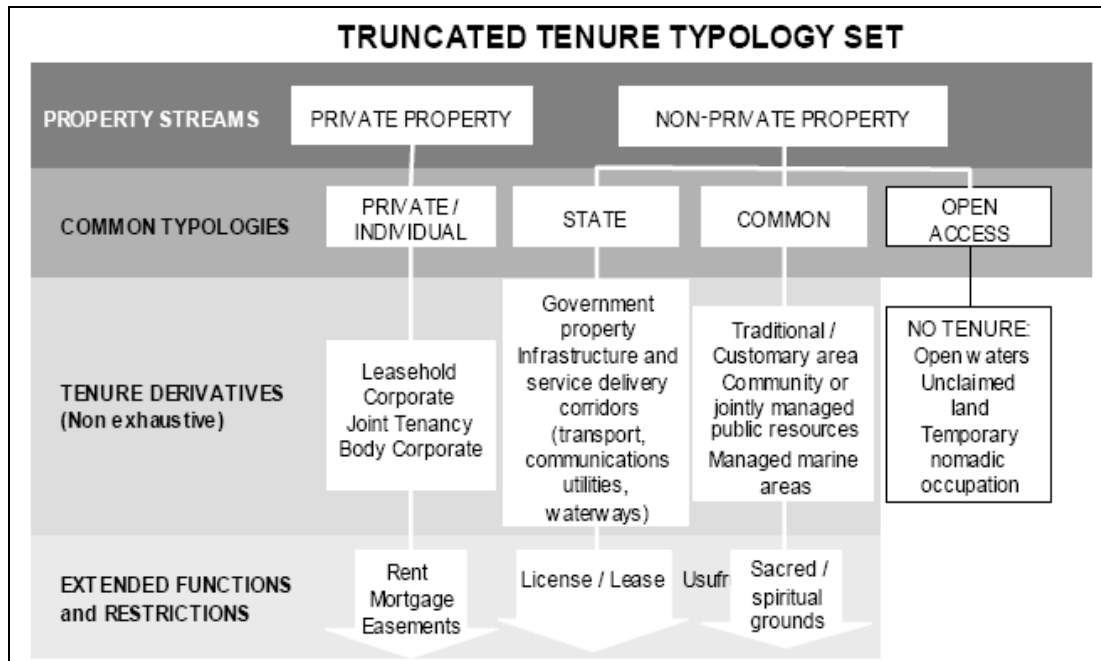
³¹ MWLE/ AfD, 2005, Issues Paper for the National Land Policy in Uganda

³² Rugadya Margaret, 2006

³³ Deninger, 2003

³⁴ FAO 2002, GTZ 1998

government based; and secondly, the constraints imposed on the set of ownership rights. Typological tenure analyses are appropriate in developed systems, however they do not capture all observable people and resource relationships, and overlook arrangements such as contract labour, nomadic pastoral allocations, share cropping and tenure systems of religious or de facto arrangements. Various forms of tenures create a complex pattern of rights and other interests. This leads to de jure (existing because of the formal law) and de facto (existing in reality) rights often clashing in resource scarce, conflict and post-conflict areas and between state and customary users³⁵.



Source: Dalrymple, Wallace and Williamson, 2004

Land is an important factor in the mediation of social, cultural and religious life in Uganda. Indeed land distribution not only mirrors political power but also determines relations of production between social classes in the country. As such access, control and management of land is an important human rights and social justice issue. This is particularly evident in areas controlled by traditional authorities where control of land remains an important incident of social domination. Protection of those who occupy and depend on land resources will therefore enhance justice as well as guaranteeing livelihood systems for a broad section of society. If not appropriately handled developing the policy on land and enacting the appropriate legislative framework for implementation can easily become a quagmire³⁶.

Conflicts, or disputes, are inherent to relations within and between societies. Yet there is increasing concern about the escalation of normal social conflicts into violent disputes, especially armed violence that may lead to open warfare. Key concepts associated with conflict are:

- Management: Helping stakeholders peacefully manage ongoing differences
- Resolution: Defusing a conflict permanently by addressing its roots causes
- Prevention: Staving off the escalation of conflict into violence before the fact
- Transformation: Defusing violence or preventing conflict escalation by transforming stakeholders' approaches, implementing reforms that address underlying causes and providing viable channels for the peaceful management of disputes

³⁵ FAO 2002

³⁶ Ministry of Water, Lands and Environment, 2006

2.3 POVERTY ERADICATION ACTION PLAN (PEAP)

Poverty Eradication Action Plan (PEAP 2004/2008) is accepted as Uganda Poverty Reduction Strategy Paper (PRSP) developed as a national strategy for reducing poverty and placing poverty at centre of the development agenda. Uganda's broad development goals are laid out in the PEAP 2004, which establishes the need to eliminate mass poverty, targeting a reduction of mass poverty to 10% of the total population by 2017. The Plan influences resource allocation and mobilization, and aims to transform Uganda into a middle-income country. The plight of IDPs is dealt with in Chapter 5 under Security, Conflict Resolution and Disaster Management. In this chapter, the PEAP acknowledges that Uganda continues to be severely affected by disasters and conflicts, much as disaster management and post conflict management is a precondition for improved human welfare necessary for achieving national development goals. It is also acknowledged that the widening poverty inequality since 1997 and the increase in poverty since 2000 are partly the result of persistent insecurity in parts of the North and East Uganda³⁷.

Nationally, over 5% of the population has been displaced and the effects on poverty spread beyond the distress suffered by the displaced. The persistent phenomenon of displacement implies that Uganda's disaster-management policy must be closely linked to issues of security and conflict resolution, these require strengthened interventions as one of the key ways to reduce poverty among the most disadvantaged and vulnerable populations³⁸, especially the conditions of life of internally displaced people need to be addressed both in the short run (while they are still displaced) and in the long run (by successful reintegration into normal life, including psychological recovery) it is currently estimated that 66% of the displaced persons live below the poverty line³⁹.

The commitment of government is stated in terms of:

1. Finalizing the IDP policy, to ensure freedom of movement for IDPs, as well as the delivery of basic services, and specifies entitlements to such items as food, shelter and clothing. For whatever choice they make, whether to return to their previous places of residence or migrate permanently, Government is charged with the responsibility of ensuring that post-conflict plan which respects IDP rights to security, livelihood, services and participation in decision making, including measures to facilitate resettlement and rehabilitation of the IDPs are in place.
2. The development of concrete plans to implement the IDP policy, in cooperation with key stakeholders including donors and civil society. Where appropriate, increased flexibility may be given to distressed districts to divert money from activities that are currently impractical to meeting the immediate needs of the IDPs. Better monitoring and improvement of conditions in the IDP camps is a key priority, with a particular focus on health and sanitation. Through stakeholder consultations, Government will implement appropriate long term measures to deal with the challenge of IDPs in the country

In the PEAP, IDP issues are not recognized as priority issues, thus the allocation of resources to IDP matters is also affected in the same breadth, it should however be appreciated that not all IDP concerns can be resolved by the PEAP alone, other

³⁷ MFED, 2004 Chapter 2

³⁸ MFED, 2004, PEAP 2004-2008

³⁹ UNHCR, 2005

processes, particularly in the political arena need to complement all efforts geared towards conflict resolution in the affected areas. Besides, communities should not only be seen as passive recipients of agreed policy actions but rather should be facilitated to become active participants in peace and disaster preparedness.⁴⁰

2.4 LAND SECTOR STRATEGIC PLAN (LSSP)

The Land Sector Strategic Plan 2001-2011 is the operational, institutional and financial framework for the implementation of sector wide reforms and land management including the implementation of the Land Act⁴¹. It is intended to guide government, the private sector and civil society in the management and use of Uganda's land resources. It is an integrated approach to the land sector, and is linked, among others, to the Poverty Eradication Action Plan, and the Plan for Modernization of Agriculture.

LSSP is designed to remove barriers to increased land utilization, created by unequal distribution of land access and ownership. The underlying principle is the realization that tenure insecurity and uncertainty of land rights among the vulnerable groups, including the IDPs affects productivity and use of land. It holds that the poorest groups in society are also the most insecure in their land rights⁴². LSSP further acknowledges that accessible and fair land dispute resolution is critical to tenure security especially for poor and vulnerable groups.

In the positive sense, LSSP lays down the framework for the development of land policy and legal framework, which addresses three main elements: tenure policy, land use policy and land laws. This is the framework within which land issues of IDPs can be addressed. In terms of service delivery, LSSP facilitates the decentralization of land services, the devolution of land management, and empowering communities and districts to make better use of their land resources⁴³, a system and principle that is ideal in delivering at lower levels of administration where the internally displaced are likely to approach for service.

Within the LSSP, the dispute resolution is system based on local courts at the lower level to improve the transparency and fairness of their decisions, with an upper tier of impartial appointed Tribunals set aside to consider high value cases and appeals. This strategy appears to be spot on in terms of the roles of local councils as emerging power institutions in dispute resolution despite their lack of sufficient and appropriate knowledge of the legal dispensation on land both in statutory and customary terms. Besides by taking this avenue, traditional institutions and systems of land administration appear to be technically thrown out or ignored at best. It is apparent, that the design of the LSSP preferred to leave matters of IDPs to be dealt with under rights under rights of marginalized groups (including women, children, tenants and pastoralists) emphasizing tenure security, access and use of land for productivity.

2.5 DRAFT NATIONAL LAND POLICY

In Uganda the centrality of land in the economy; the political ambiguity on the land question; the social and cultural complexity of the land question, particularly the fact that for many communities land relations are also social relations and the overall governance framework in which land issues are played out and resolved is important.

⁴⁰ In the New Vision June 20, 2006: The Government of Uganda plans to spend \$10 million to resettle IDPs in northern Uganda. When presenting the country's 2006/7 budget estimates to parliament. The issue is to find out, whether such an allocation in any way tackles the issue of land for northern Uganda

⁴¹ MWLE, 2000

⁴² MWLE, 2001

⁴³ Associates for Development / MWLE 2005

Secondly, account must be taken of other macro and micro-economic policies impinging on the land sector, these include policies on agriculture, poverty reduction, industrialization, the environment, infrastructural development and urbanization⁴⁴. Land policy can make things worse or better but it is only exceptionally a critical factor of conflict, even in countries and societies where the vast majority of the population depends on agriculture for its survival, and even in countries coming out of war⁴⁵.

The overall goal of land policy development is to agree on a framework which will ensure the sustainable utilization of Uganda's land resources for poverty eradication⁴⁶. In summary, the ultimate purpose of land policy development in Uganda is to provide:

- a permanent agenda for development and change in the land sector
- guidance for land governance
- an integrating mechanism for all land related sectors, and
- a framework for sustainable land use.

In the proposed National Land Policy⁴⁷, the land rights of IDPs are upheld under the principle of enhanced equity and social justice in society, committing the government of Uganda to:

- eliminate all discriminatory practices in the manner in which access, control and transmission of land rights are determined;
- ensure equity in the distribution of land through a system of land ceilings appropriate to deferent land use and ecological circumstances;
- ensure that public land resources, commons, and heritage sites, are not appropriated by the political class;
- recognize and strengthen the land rights of minorities and marginalized communities under their own indigenous property systems; and
- provide avenues for the speedy resolution of land disputes at all levels of social organization.

In terms of specificity of policy statements and strategy under the theme of "Land, Peace and Security", the policy recognizes that competition over land, caused, among others, by population growth, resource depletion, and scarcity is the cause of conflict, insecurity and environmental stress in many parts of Uganda, this is exacerbated by trans-boundary conflict.

An important consequence of conflict is increased poverty due to abandonment of agricultural and livestock activities, quite apparent in Northern Uganda, making the need for restoring stability in land relations and the resumption of sustainable livelihood activities, a critical component of the national land policy of Uganda⁴⁸. It is proposed that this may be achieved by:

- striving towards the speedy resolutions of conflict with her neighbors;
- protecting all land owning communities from external and internal encroachment, seizures and other forms of invasion by hostile agencies;
- promoting residential harmony between and prevent ethnic cleansing among various land communities;
- resettling all IDPs in their areas of origin and guarantee their security of tenure;
- investigating and resolving all historical land injustices,
- Establishing people – based institutions for the management of land resources in post-conflict situations.

⁴⁴ Associates for Development / MWLE 2005

⁴⁵ Deninger, 2003

⁴⁶ Associates for Development / MWLE 2005

⁴⁷ Draft to used in country wide consultations commencing in September 2006

⁴⁸ MWLE, 2006

- institutionalizing mechanisms for socially and culturally acceptable resolution of land disputes on a long term basis

For intent and purpose, the policy sets the framework for tackling land issues in displacement under the theme of “Land, Peace and Security”, without necessarily focusing on the post conflict era, rather it addresses land in emergency situations, it will be important to draw clarity for the minds of policy implementers and writers of law, who eventually deliver the intent of the policy to the IDPs to consider both emergency and post conflict era.

The policy’s emphasis is on resettling IDPs in their areas of origin, this fails to address the desire of those who may prefer to remain in camps or areas where camps have previously been established. This is because the areas where camps are located have over the years become urbanized and currently offer opportunities, (which may not readily be available in the places of origin) to certain classes of people (especially the youth).

In terms of land administration, the only envisaged institution mechanisms seem to focus on dispute resolution and does not address the rather important aspect of delivery of land services and ascertainment of rights. It is important at this level that land administration is distinctively addressed from conflict resolution, rather than rely heavily on either of the two, since they are complimentary in nature and the smooth functioning of one determines the efficiency of the other.

Just as the LSSP, the draft Land Policy also fails to address the role of traditional land administration systems and how they will relate with statutory mechanisms put in place (considering the fact that a specific study was conducted to address this particular issue in the policy⁴⁹). It is not clear how and where the two will meet and how they will meet (the terms or conditions). It is imperative that such overtones are dealt with to avoid redundant policy or shelved policy.

2.6 NATIONAL POLICY FOR IDPS

Uganda launched Africa's first national policy to improve the lives of approximately two million IDPs, intended to ensure that they enjoy the same rights and freedoms under the constitution, as all other Ugandans. The national policy for IDPs claims to promote integrated and coordinated response mechanisms to address the effects of internal displacement through cooperation between relevant government institutions and development and humanitarian agencies and other stakeholders.

It also aims to assist in the safe and voluntary return of IDPs and to develop sectoral programs for rehabilitation and reconstruction of infrastructure and support sustainable livelihood projects⁵⁰. To meet its objective, the IDP Policy attempts to mainstream IDP issues into all aspects of government planning and programming. While the adoption of the IDPs Policy is considered a positive achievement, it has yet to succeed in improving situations endured by IDPs because of a number of issues elaborated below:

1. Resources and Capacity at National and District Level

Generally, the institutions and structures are generally under (or un) funded, lack resources and capacity to perform their tasks, they do not meet on a regular basis and consequently have achieved little. The Government of Uganda has primary

⁴⁹ Reviewed in the Next Chapter

⁵⁰ People’s Daily on Line , February 25 , 2005

responsibility to provide the necessary resources to implement its national IDP policy, the resources needed to operationalize the IDP Policy are considerable⁵¹ these resources are yet to materialize in the affected districts. Donors ought to explore how budget support can be used to encourage the GoU to fulfill its obligations. At the district level, the policy mandates that District Disaster Management Committees (DDMC) act as the lead agencies in responding to and providing for the needs of displaced persons. Yet the Committees, constituted by all relevant heads of local government as well as humanitarian actors, do not have the resources or the capacity to implement the IDP Policy and thus have been unsuccessful in ensuring that displaced persons are able to fully exercise both their social and livelihood-related rights⁵².

2. Integration with District Operations

While the IDP Policy mandates the DDMC to establish a district disaster management fund, in Katakwi district for example, local authorities have received no instructions from the central government as to where and how they were expected to find the resources to enable them to implement the many activities mandated by the IDP Policy⁵³. The IDP policy does make provision for disaster-prone districts to recruit a full time District Disaster Preparedness Coordinator, many of whom have already been recruited and are operational in the affected districts. However because the Coordinators are funded by an outside agency, research in the Teso region has shown that many within the local government were confused about the Coordinator's role in relation to the rest of the district structure⁵⁴. Anecdotal evidence also indicates that Coordinators are not integral members of the local government and lack authority and credibility to make decisions⁵⁵.

3. Collaboration with Central Government

Another concern relates to government's participation in implementing the Policy – in Lira district for example, for three months government representatives failed to attend the District Disaster Management Committee meetings⁵⁶. The highest level committee, the Inter-Ministerial Policy Committee consisting of various government ministers, which is mandated to meet in Kampala as needed, is non-functional as it has yet to convene its first meeting⁵⁷.

4. Policy without Legislation is ineffective

The development of the IDP policy has been an extremely positive step on the part of the GoU, as the immediacy, scale and horror of the situation of internal displacement in northern Uganda clearly requires an effective, functioning and practicable government strategy for alleviating the effects of displacement as quickly as possible. Unfortunately however, being only a policy, the provisions of the NPIDP are rather toothless given the absence of enabling legislation⁵⁸.

5. Long-Term Solutions and Compensation

The current policy, which has drawn extensively on the Guiding Principles for Internal Displacement, meets most of the requirements that a national policy should include. One area where it could be strengthened is with respect to the search for, and

⁵¹ GoU, April 2005, p.7

⁵² UNHCR, October 2005

⁵³ DANIDA, August 2005, p.27

⁵⁴ DANIDA, August 2005, p.14

⁵⁵ UNHCR, October 2005, p.2

⁵⁶ UNHCR, October 2005, p.1

⁵⁷ UNHCR, October 2005, p. 1

⁵⁸ CSOPNU, 10 December 2004, p. 43

implementation of durable solutions is more comprehensively dealt with in the policy⁵⁹. Secondly, the policy does not address a number of pertinent issues such as compensation to the host communities for the damage to their land or acknowledgement of their contribution; there is no systematic policy on access to land for all IDPs while they are in camps. Unfortunately this policy makes people even more suspicious of the government's intentions and is not sustainable⁶⁰

2.7 CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995

Objective XIV⁶¹ of the National Objectives and Directive Principles of State Policy, stated in the Constitution of Uganda, reflect the pledge to endeavor and fulfill the fundamental rights of Ugandans to social justice and economic development by ensuring maximum social and cultural well being, the recognition, even if the specific pledge to protect rights of IDPs is as well articulated as that of women and persons with disability⁶². This oversight is appropriately covered under article 45, which explicitly makes it clear that non-mention is not exclusion for those not mentioned enjoying the rights, duties, declarations and guarantees relating to human rights in article 20. The oversight aside, objective XXIII, limits itself to natural disasters and obliges the state to unleash its machinery to deal with such hazards, including general displacement of people or serious disruption of normal life⁶³, once again putting aside persons internally displaced due to war as is the case in Northern Uganda.

In articles 26(1) and 26(2)⁶⁴, the fundamental right of every person to own property individually or in association with others, in addition to protecting the right of every person not to be deprived of personal property without compensation is guaranteed. The guarantee is without bias to persons internally displaced since all persons are equal before and under the law. In view of this Constitutional right, no enabling legislation under this Constitution should deprive a proprietor or owner of land of his/her interest in the property. These articles provide the major premise under which the loss of property and in this case land could be addressed in post conflict land administration, though no affirmative actions or treatment is offered to IDP as one would have expected. This therefore implies that there is no legal compulsion for the law to explicitly tackle land issues for IDPs, except out of political will, or as a socially and economically defined problem.

However, under article 32(1)⁶⁵ the State is obliged to take affirmative action in favor of marginalized groups based on gender or other reason created by history, tradition or custom, for the purpose of redressing existing imbalances. The imbalance in this case would be defined in terms of deprivation of rights of ownership, access and use of land by IDP, under the circumstances of war. The limiting factor here is that in the subsequent articles (32 1-6, 33, 34, 35, 36) the marginalized groups are described or given face, without any room for distortion. Certainly Internal displacement by war such as in Northern Uganda does not appear to be part of the equation at the moment.

The Constitution of Uganda under article 237 (and section 2 of the Land Act Cap. 227) vests all land in Uganda in its Citizens under four tenure systems; freehold, leasehold, mailo and customary tenure. The significance of this article is in its recognition of

⁵⁹ UN OCHA, 31 August 2003

⁶⁰ CSOPNU, 2004

⁶¹ Constitution of the Republic of Uganda, 1995, page 6

⁶² In the subsequent objectives XV and XVI, of the Constitution

⁶³ Constitution of the Republic of Uganda, 1995, page 7

⁶⁴ Article 26 of the Constitution provides that every person has a right to own property, either individually or in association with others

⁶⁵ Constitution of the Republic of Uganda, 1995

customary tenure as a legal tenure for the first time, since the constitutional dispensation on land emerged in Uganda. However, the shortcoming arises in the Land Act Cap. 227, which attempts to codify tenure by describing its incidents though they are not static in time or space, but change or respond to changes in the environment, a factor that allow it to continue its evolution un-abated in practice, developing sets and sub sets that the law is unable to tackle and inevitably presents practitioners with a clash of statutory and customary law⁶⁶. In codifying the customary tenure, its resilience and its ability to mutate in different conditions and circumstance is overlooked, a factor that has over the year worked the minds of legislators, scholars and policy analysts alike and is still problematic today. This factor will definitely re-surface in identifying claims and defining land rights of IDPs.

In terms of land administration and institutions, the Constitution under Article 238 – 240 establishes the land institutions, thus the Uganda Land Commission and the District Land Boards. It also prescribes the functions for each of these institutions. While the Constitution prescribes the membership, procedure and terms of service of the Uganda Land Commission, it gives Parliament power to enact legislation prescribing the same for the District Land Boards. Article 243 provides for the establishment of Land Tribunals and streamlines the jurisdiction of these tribunals to be the determination of land disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the Uganda Land Commission or other authority with responsibility relating to land. The jurisdiction also includes the determination of any disputes relating to the amount of compensation to be paid for land acquired⁶⁷. These in terms of statutory requirements provide a sufficient framework for delivery services in post conflict administration. However the issue of how they are resourced and their technical and human capacity to deliver must be dealt with, given the fact that they are non-functional in most parts of Northern Uganda.

2.8 LAND ACT CAP. 227 AMENDED BY (AMENDMENT) ACT 2004

The parameters of the Act are defined within the Constitution, which set the mandate for its evolution, holding it to defining tenure regimes especially customary tenure, recognizing the variant ways of handling it and providing for management of communal rights and resources. The Land Act defines the incidents of customary land tenure to include its territorial or clan nature, existence of rules and regulations governing community, family and individual access to land, and perpetual ownership of land. The Act also provides that customary land tenure may be converted to freehold by individuals, families or communities on application to a district land board. These incidents however do not clearly define the essential characteristics of customary tenure, namely, that access rights to land is a function of community, lineages and family membership; that such access is specific to a function or group of functions; that allocation of land and control of its use are part and parcel of community governance; and that trans-generational rights to land are protected⁶⁸.

It establishes Certificates of Customary Ownership (CCOs) which is proof of ownership, however these not yet being issued, weakening people's ability to protect their land; and the conversion of CCOs into freehold titles, this does not recognize the difficulties of converting concepts of customary ownership into modern titles and the financial and cultural barriers that exist. The Land Act provides for the establishment

⁶⁶ Margaret Rugadya, 2005

⁶⁷ Margaret Rugadya, 2005

⁶⁸ MWLE, 2006, Draft Land Policy

and management of Communal Land Associations (CLA)⁶⁹. The CLA provisions have not been embraced except in isolated cases in Masindi but not for the rest of Northern Uganda. The formal procedures concerning the formation and operations of the CLA are too involved, and require a reasonable degree of literacy and “external” assistance in terms of provision of information and guidance. Thus, the CLA provisions of the law have not been taken advantage of virtually anywhere in the country⁷⁰. This is followed through by the accusation that although the Land Act Cap. 227 recognizes customary tenure, it goes ahead to establish state institutions to manage customary land thereby undermining the clan institution to hear cases of land conflict.

At a broader level, the threat to people’s land rights stems from the fact that the laws governing customary tenure remain unwritten and so changes taking place are not recognized, debated and changed. For example, the clan’s role in protecting land from sale and protecting the rights of women and children is weakening and has not been effectively replaced by state laws. Those most vulnerable to the changes are women and children. Vulnerability of peoples’ rights will stem from the attitude of policy makers wishing to convert customary tenure from a system of land rights and responsibility shared within the household to that of an individual owner of land. This is proposed through the acquisition or the issuing of a title to “the head of the family”. The risk is for the male head of the family taking the land as his sole property and selling it. There is also a risk from IDPs occupying other people’s land and assuming ownership and selling it when the people with the land rights are away in other camps.

When people ran into camps they did so “sequentially” with people from the more rural areas moving and settling on land nearer urban centres. Some of these people now misinterpret a section of the current land law to say that if they live on someone else land for more than 12 years, they become the owners of the land. This is likely to lead to conflict. Children born in camps and are orphans will rely on the good will of their older relatives to show them their father’s land. With the level of poverty and the weakening of the clan, it is possible that the very people to protect the orphans will be the people to grab their land. Widows who are not “inherited” by husbands’ relatives or who have no children or male children will be vulnerable to land grabs especially now that clan protection has weakened.

However, the formal land administration and dispute management institutions under the Land Act, 1998 do not integrate the existing traditional land administration institutions and this constitutes the major lacuna in administration. Most land rights administration services are spread over some sixteen departments and offices of the Ministry of Lands, Water and Environment, the Ministry of Justice and Constitutional Affairs and in regional and district offices. The main institutions for the administration of the land are District Land Boards⁷¹ and the Sub-County/Division Land Committees. Each district is required to have a District Land Office, which provides technical

⁶⁹ By any group of persons who wish (s.15). The purpose for such a CLA would be connected with communal ownership and management of land, whether under customary law or otherwise. The district registrar of titles is meant to keep a public register of associations, and to exercise a broad and general supervision over administration of the associations within the district (s.15 (3)). He or she can from time to time give directions to any officers of an association. There is in the land act an elaborate procedure of “incorporation” of the CLAs, determination of the group leadership, and reaching a constitution to govern members (ss16-18).

⁷⁰ John Kigula and Augustus Nuwagaba, 2005

⁷¹ The functions of the District Land Board include: Holding and allocation of land in the district which is not owned by any person or authority; facilitating the registration and transfer of interests in land; causing surveys, plans, maps, drawings and estimates to be made by or through its officers and agents; compiling and maintaining a list of rates of compensation payable in respect of crops, buildings of a non permanent nature and any other thing that may be prescribed; reviewing every year the list of rates of compensation, dealing with any other matter which is incidental or connected to any of the above functions.

services, with its own staff, or arrange for external consultants to the District Land Board⁷². On the other hand, there is the Sub-county/Division Land Committee, whose functions in relation to land include determining, verifying and adjusting on the boundaries of the land⁷³. Such functions are carried out by the Committee before forwarding to the Recorder⁷⁴ an application for the grant of a certificate of customary ownership

The Land Act established the land dispute settlement institutions, which are: the District Land Tribunal⁷⁵, the Parish/Ward, and sub-County/Division Executive Committee Courts (LC II & LC III courts). There is also established the position of a mediator for each district. The lowest courts to hear land matters are the Parish or ward executive committee courts. A ward in an urban council is the equivalent of a parish in a district council. The parish or Ward executive committee courts are ordinarily referred to as "LC II Courts". An appeal lies from the LC II court to the LC III court (the sub-county or division executive committee court). From the LC III court an appeal lies to the District Land Tribunal, and from this tribunal to the High Court. Land Tribunals are under funded and not very effective, there will therefore be a vacuum within which conflict and land rights abuse is flourishing⁷⁶.

2.9 DECENTRALIZATION LAW

Decentralization in Uganda is based on a four-tier structure of elected local governments, the most significant being at district and sub-county level. Fiscal decentralization is critical to its success. However, the ability of the Districts to sustain themselves through fees and personal taxation has proved impossible⁷⁷. The Land Sector Strategic Plan links improvements in land administration and management to the potential to increase in local government revenue and therefore, contribute to empowering communities to make choices concerning improvements in land management in their areas, by shifting locus of decision making away from individuals to local elected bodies.

The Constitution decentralizes the land administration function as detailed in the land Act above. The lead ministry for the delivery of land services is the Ministry of Lands, Housing and Urban Development, through the Directorate of Lands. The ministry remains with the functions of quality assurance, policy formulation and offering of technical assistance⁷⁸. As pointed out under the Constitution, decentralization and subsidiarity, in land policy as in other areas of public policies, are no mere technical processes. They have political consequences and the latter must be factored in if one is to assess the equity and conflict outcome of any given policy.

⁷² The District Land Office is made up the district physical planner, the district land officer, the district valuer, the district surveyor and the district registrar of titles

⁷³ The Sub-county/Division Land Committee assists the land District Land Board in an advisory capacity on matters relating to land, including ascertaining rights in land, and performing any other functions conferred on it by the land act or any other law. The committee may, act as a mediator, and has all the functions of a mediator as set out in the Land Act.

⁷⁴ For issuing certificates of occupancy and certificates of customary ownership, the Recorder is at the sub-county, each gazetted urban area or division of a city. The Recorder in a rural area is the sub-county chief, while for a gazetted urban area the Town Clerk is the Recorder; and for a division of a city, it is the Division Assistant Town Clerk. The recorder is responsible for keeping records relating to those certificates.

⁷⁵ For each district the Act established a District Land Tribunal, consisting of a Chairperson and two other members. An appeal lies from the decision of a District Land Tribunal to the High Court. The Magistrates' Courts do not have jurisdiction over land matters.

⁷⁶ CSOPNU, 2004

⁷⁷ Rugadya Margaret, 2005

⁷⁸ Rugadya Margaret, 2005

3. REVIEW OF EXISTING STUDIES ON LAND AND IDPS

3.1 INTRODUCTION

This part of the report critically reviews studies undertaken in Uganda on land matters and displacement or post conflict land administration. It highlights the policy issues and recommendations proposed under each of the studies as well as the land administration issues that are of relevance in assessing means and ways of delivering land justice in post conflict situations. All studies reviewed are undertaken in northern or north eastern Uganda.

3.2 LAND MATTERS IN DISPLACEMENT

This study was carried out by Civil Society for Peace in Northern Uganda (CSOPNU) in December 2004. It was conducted in Acholiland covering the districts of Gulu, Kitgum and Pader and had the following major findings:

1. Land Ownership

The vast majority of land in Acholiland is owned through customary tenure, with rules that have developed over generations. Nearly all cultivated land falls under private ownership at family or household level. There are large areas of land which are used for purposes other than cultivation and are managed for the benefit of all clan members. Land is for the benefit of the wider family or clan and therefore transfers of ownership either through inheritance, redistribution among family members, 'loaning' land to outsiders or sales of land have to be carried out with that interest in mind and with the approval of the clan elders. There is widespread belief that land is held communally in Acholiland. However the vast majority of families own their farmland either in extended family units or at the household (nuclear family).

2. Loss of Land

There are a number of threats to land such as illegal occupation and logging particularly by army officers or private investors and government schemes such as security through Production Programme (which plan to use uncultivated land for mechanized farming). The other threat is land grabbing by neighbors and relatives, particularly of land belonging to widows and orphans and encroachment by sub-county offices. Land grabbing by relatives and neighbors is likely to intensify and protection for the weak (orphans, widows) will no doubt decline.

There are real fears that the war is being used to disenfranchise the Acholi people of their land. Communal land (*olet, tim, aker*) is most at risk as it consists of large tracts of land not physically occupied but communally owned. There is a particular risk of expropriation of the hunting grounds and grazing lands, which are communally owned by clans or sub-clans. Many communities have lost the use of their land: either because it has been occupied by defense forces or IDP camps or they have been forcibly displaced.

People who hold their land by customary tenure, without documentation, risk losing their land permanently in many different ways and for a number of reasons:-

- for 'development' (schools, hospitals)
- for trading centers (many camps were established around existing trading centers and new trading centers have emerged in the sites of other camps often close to sub-county headquarters)
- by gazetting (threat of degazetting the vast *Lipon* hunting grounds which the local people consider the private property of several clans)

- leases given to investors (private grazing and hunting grounds)
- through fraud
- to relatives and neighbors
- from voluntary sales
- in conflict between customary and state legal systems (the risk that those with better access to titling will take over land from those holding land under customary tenure either with no documents or with certificates of customary ownership)

3. Land Administration

The cultural context has changed irrevocably, with clan influence weakened (effectively since 1986), but more significantly since everyone was put in camps. Social dislocation, increasing individualism, and a desire for money as a form of wealth, will have combined to destroy many ingrained norms of behaviour (respect for clan elders, protection of widows, respect for neighbors' boundaries). The social breakdown, caused by displacement to camps, will almost certainly have weakened the clan's ability to enforce its traditional rules of protection. The LCs, at all levels do not know what the land law says or their roles in the land judicial process. The LC1 was given no legal authority over land matters, though he or she is taken by most people to have higher authority than the customary legal system. In practice the LC2 and LC3 Courts are not handling land matters. The interface between the modern and traditional/ customary systems of land tenure needs to be clarified and streamlined.

4. Dispute Resolution

There are two parallel legal and judicial systems in place for dealing with land issues, that of customary tenure and that of the state administration. Dispute resolution in the traditional system is based on mediation rather than passing judgment by local leaders who bring to bear a wide range of information on the context of land disputes. People do not know their rights to land and they are often frightened to claim them and are distrustful of the justice systems. Laws for protection of people's land rights do exist, but the machinery for implementing them is lacking. Access to the justice system is difficult and at the lower ends is poorly equipped to deliver and enforce justice.

5. Displacement and Return

Three quarters of IDPs questioned were found to be less than 6 kilometers from their land and their return is likely to be straight forward. However, almost half of IDPs expressed fear about their ability to regain their land. A major vulnerability which will be faced by many returnees (particularly orphans and widows) will be the loss of their land through illegal land grabbing. Although boundaries will be easy to recognize, conflicts over land are likely to be many and serious, because of a combination of factors such as greed, poverty and the destruction of the social system that used to regulate relationships between people. Another longer-term potential cause of landlessness is likely to be the increase of land sales due to poverty.

The study also made the following key recommendations:

1. Awareness on Land Rights

People need to be helped to assert their rights to their land by increasing their awareness on land law and abilities to seek justice. People may be unaware of their rights or are frightened (or intimidated) from claiming them and may not have access to the legal system because they cannot afford the costs. Civil Society Organizations (CSOs) should carry out mass education campaigns on land rights, compensation and processes of law. CSOs & NGOs should take up land right cases directly because of people's lack of access to the judicial system. This will set precedents both in law and as examples to others, who will then be encouraged to take action to claim their rights.

2. Land Administration and Dispute Resolution

The traditional land tenure administration systems need to be supported so that they can implement the law and protect people's rights. This study therefore recommends that the land law be amended to recognize traditional institutions as authority actors on matters of adjudication for land held under customary tenure except where there are instances of customary rules being unconstitutional. The Land Act stipulates clearly that land held under customary tenure is subject to the rules and procedures as laid down by each tribe or clan, however it does not allow for the traditional authorities refer to, to take charge of land, instead institutes statutory institutions at the expense of the traditional ones.

Local governments & Ministry of Lands need to actively promote implementation of the Land Act, supporting the institutions of customary tenure and ensuring that judicial process works to protect people's rights. CSOs need to engage in advocacy to resolve some of the inconsistencies in the land law e.g. inclusion of traditional institutions. Prioritize support to institutions of customary law and emphasize their role in solving land disputes, particularly as they deal with the majority of land disputes.

Clarify the role of village councils in administering customary land sales and establish the necessary court system (LC2 & LC3 courts) and train the local councils in land and clarify their roles. And the systems and procedures need to be instituted for the registration of Communal Land Associations to protect ownership of communal land. Compile a public register of all publicly owned land in each district in order to alleviate people's fears that their land could be considered as vacant, and therefore vested in the District Land Boards (DLB)

3. Titling and Codification

This study strongly advances the case for registered customary rights, by recommending the issuance of Certificates of Customary Ownership (CCOs) to protect people's land rights. It also acknowledges the need for codification of customary land law as a way of assisting traditional leaders (especially the *Rwoti Kweri* and clan elders) in upholding customary law, by giving them principles, rules and precedent on which to rely in decision making and delivery of justice.

4. Loss of Land

Reassure people that rumors about land expropriation are unfounded through unequivocal statements at the highest level. Ensure that the civilian population has access to land to secure their livelihoods and that their rights to their original lands are protected. Make unequivocal statements at the highest level on some of the misunderstandings and rumors that abound, such as making it clear that the war is not being used to disenfranchise the Acholi people of their land. Pay compensation to those people who have lost their access to land through war. The status of de-gazetted land should be clarified: once the State relinquishes the hold on land in trust for the people in the public good (e.g. as a national park), it ceases to have rights over the land and the land should return to its original customary owners from the time of gazetting, or, if there are none, it should be vested in the District Land Board.

3.3 RESETTLEMENT, LANDLESSNESS AND IDPS IN UGANDA

This study was carried out by REEV Consult International (December 2005) for the Ministry of Water, Lands and Environment, as one of the studies to fill information gaps in the drafting of the National Land Policy. This study was carried out in four districts of Kibaale, Kyenjonjo, Gulu and Nakasongola. In the cluster of northern Uganda, the study only covered Gulu District. It had the following key findings:

1. Loss of Land

Lack of effective land policies and inadequate regulatory frameworks and weak enforcement are major factors accounting for clashes, conflicts and tensions on land in Uganda. Displacement of people has been massive, and gone on for so long, the resettlement back home would present such complexities and social frictions and clashes that would further adversely affect people's lives and property, particularly land ownerships and occupancies. Some persons now do not remember where they came from because the elders (parents) have died or disappeared as a result of the war and the young ones do not know where they came from. Therefore some people who have never owned land are likely to claim such vulnerable people's land and cause more conflict and clashes over land. Boundary land conflicts are likely to intensify as a result of people forgetting to locate their land pieces and boundaries⁷⁹.

Regarding land rights and resettlement on return by IDPs there is fear (by the study team) of a situation whereby the vulnerable people; widows, children, people living with HIV/AIDS and the disabled, might be taken advantage of by the relatively powerful and well-to-do, who might dislodge their land claims. This is the more so in the weak grassroots LCs and a disrupted clan system on account of war and displacement.

2. IDP Policy

It was recognized that the IDP Policy provides an appropriate institutional framework to handle IDPs' situations in the places to which people are displaced and on return to home areas. However, there is lack of enabling policy for resettlement in Uganda (no clear guidelines on and identification, management & resettlement procedures).

The study made the following key recommendations:

1. Land Administration and Dispute Resolution

Local-level and district-level land administration and dispute resolution institutions need to be strengthened and reinforced to get adequately responsive to the demands of the individual land consumers that will increase as they seek to assert their individual rights to land. The strengthening would include a special recruitment drive to fill vacant positions; logistical support; bicycles, motor-cycles; vehicles; equipment; home radio sets on which awareness information will be relayed; infrastructural development (land office, land tribunals, sub-county, and village council buildings) and financial enablements to personnel in the respective institutions.

2. Compensation

Persons whose lands were used by Government to establish IDPs camps should be compensated. Their lands have been utilized for developmental purposes like school construction, health centers and water sources.

3. Traditional Systems

While the clan system 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 displacement of people, will not have the same effective cohesion, power and instrumentality to superintendent over arable land. Likewise, hitherto communal natural resource areas: wetlands, forests, common lands, streams and rivers, whose access and utilization used to be controlled by the clan authority system are likely to be subjected to open access situations, with a "no man's land" mentality.

⁷⁹ The claim by the CSOPNU study of December 2004 that this is unlikely is speculative and untenable

It is therefore recommended that in particular localities where this is feasible, a system of CLAs be enabled to take root and institutionalized in a way that embraces clan system. Clan-based CLAs should be accorded the land powers and functions of the Sub-county land committees, as well as the LC1 & LC2 land dispute resolution powers and functions, as the case may be.

4. General Recommendations

The MoLHUD⁸⁰ and the MoLG will need to identify areas in the Land Act and the Local Governments Act that need urgent revision and amendment to adapt such laws to the peculiar Northern Uganda situation of resettlement of IDPs back home. The Northern Uganda Social Action Fund (NUSAF) should be re-oriented to further provide services to IDPs on return. Presently NUSAF's mandate does not embrace resettlement.

3.4 INTEGRATION OF TRADITIONAL LAND ADMINISTRATION INSTITUTIONS IN THE LAND ACT AND MANAGEMENT OF CPRs IN UGANDA

This study was carried out by REEV Consult International (December 2005) for the Ministry of Water, Lands and Environment, as one of the studies to fill information gaps in the drafting of the national land policy. This study was carried out in four districts of Mbarara, Masindi, Gulu and Arua. In the northern Uganda cluster it covered the districts of Arua and Soroti. The study had the following key findings:

1. Ownership and Management of CPRs

Findings about the existing nature of community-accessed land/resources (Common Property Resources) in the North & Eastern Uganda are that communal access and use falls into 2 broad categories: (1) clan-controlled arable land, to which individual families have rights of occupation and use, with the overall superintendency of the clan leadership, particularly in terms of settling land disputes and allocation of land. It is family-owned land falling in the traditional 'administrative zone' of a particular village, corresponding to a clan territory. (2) Areas of un-gazetted forest, swamp-land, and hill tops are held by the village as a whole.

The study identified no particular traditional authority system for the management and control of common pool resources; un-gazetted forests; hill tops; wetlands, valley bottom land, wetlands; river/stream bank wetlands, lake-shore swamps, and the pastoral corners. The community-accessed and utilized natural resource endowments are now virtually under the deleterious open access situation, as there are no location-specific authority-systems to enforce rule-driven common property arrangements over the resources. In the absence of a defined authority system as a "repository and oracle; of the rules of access and use of the CPRs, they have been subject to deleterious exploitation and are increasingly under the threat of total individualization.

In the past the clan leadership, the chief and the community as a whole enforced rules of access and utilization of CPRs. In the past generation (last 35 years or so), a range of factors:- high population pressure; market economy impacts; political unrest, even education have served to erode the in-built structure and rules of the local communities for the sustainable and effective management of CPRs. CPRs require a well-defined user-group; community consensus about the use of the common resource; an institutional structure to manage the CPRs; a set of rules to regulate resource use; user knowledge of the rules and their rights in the resources; a well defined dispute resolution process to regulate and enforce their rights; and a means to enforce sanctions for violation of the rules.

⁸⁰ Previously Ministry of Water, Lands and Environment

2. Land Administration

War conditions have brought about new changes and challenges to clan control over arable land as clan customary land. As a great many clan leaders and former neighbors might have died during the war, and many may re-locate to other areas, the erstwhile clan bonds and authority-systems may be malfunctional or dysfunctional. The study identified only a moribund clan system that is indeed dysfunctional, as the traditional land administration institution that used to manage and control and access, land use, and occupation, particularly in Arua and Soroti. The day-to-day superintendency over land allocation, use and occupation of arable land has not been subject to clan authority in Arua & Soroti, in the past decade or so. The young generation that has acquired land through inheritance and purchase, has no reverence for the erstwhile clan authority in relation to land

In Arua and Soroti, it was found that the clan head and clan leadership may still have measurable influence in relation to other socio-culture functions, but they are now dysfunctional as an authority-system in the superintendence over arable land; land access and use allocation; regulation of use, and settlement of land-related conflicts. The evolutionary winds of change, characterized by high population pressure, market economy impacts; education; and intermittent war conditions, have rendered the clan system a moribund institution in the control and management of land and the related resources.

The existing formal institutional structure for the control and management of the resources, viz, the DLBs the Land Committees, the District Natural Resources Departments; the District and Local Environment Committees, the LC system, and the DLTs are ill-equipped and incapable of recognizing the intricate needs of particular grassroots communities in the day-to-day regulation of their CPRs, and respond to these in a manner that would ensure the warding off of external threats to CPRs, and maintain a coherent body of rules and internal authority-systems.

3. Law and Policy

CPR malfunctions and disputes are all-too-often caused by poor design of the very laws, rules, institutions, and procedures that are intended to regulate CPR. Hastily, ill-informed design of these is detrimental. The provisions in the Land Act on communal land Associations are not fully appreciated by the communities, and indeed by the members of the DLBs themselves. The formal procedures concerning the formation and operations of the CLA are too involved, and require a reasonable degree of literacy and "external" assistance in terms of provision of information and guidance. Thus the CLA provisions of the law have not been taken advantage of, virtually anywhere in the country.

4. Returns and Resettlement

In the areas with war conditions, Gulu, Pader, Kitgum, Lira and Apac it is expected that on return from the IDP camps, the peoples' resettlement will not be based on clan loyalties, and in the resettlement of quite strange neighbors and quite a young people, the erstwhile clan bonds and clan authority system might be malfunctional or dysfunctional.

The study made the following key recommendations:

1. Land Administration

In Northern and Eastern Uganda, where the traditional clan authority system;

- (a) has had supervisory, allocative, and land conflict resolution functions regarding family arable land; and

- (b) used to control and regulate access to and use of common property land/resources, such as hill tops, forest land, swamps,
- (c) policy and legal provisions should be made to re-vest the powers and functions of the Sub-county land committees to the traditional clan authority system.

The Land Act should be amended to clarify and make specific the powers of the DLBs, the Land Committees, the Recorder and the LCs in relation to specified categories of the CPRs. The Land Act, the Local Governments Act, the National Environment Act be revisited to purposely and pronouncedly provide for the creation of CPRs involving the resource user-communities of categorized types of resource. District Councils should promulgate relevant bye-laws concerning general categories of CPRs, and assigning specific CPR custodianship and superintendency functions to the already existing LCs in the localities.

2. Communal Land Associations

The Land Act be amended to make the intensive procedure of establishing the CLAs simplified. Since we can no longer afford to sit by and wait for a reasonably “informed and able” group of resource users to come forward and register a CLA, it is imperative that a completely new and equipped Task Force be charged with obligations to kick-start and carry out CPR innovations, that would see the creation of CPR arrangements through actual, decisive mobilization in the districts.

The Land Act should be revised to vest the original land/resource conflict resolution powers and functions in the clan-based CLAs. The present original land dispute resolution powers and functions for the LC2 should remain to be exercised in the rest of the country where the clan-based CLAs are not in operation. Let CLAs be modified; vest all land in the clan as a CLA and the CLA constitution can give to individual families the rights acceptable to the CLA membership. The modified CLAs will incorporate beneficial clan elements and have the potentiality to gain root. Registration of the CLAs should be done at the sub-county level with the Recorder (sub-county chief), instead of the far-off District Registrar of Titles, as required under section 16 of the Land Act

3. Management of CPRs

The natural resource to which communities have rights of access and use cannot be left primarily under management by the existing formal structure, which most times, does not appreciate the internal logic of the grass roots CPR users, and is ill-equipped to superintend resource access and use. Special mechanisms should be put in place for enabling the location-specific user communities of the respective resources to fund CPRs arrangements, with an authority system that revolves around the LC leadership in the locality.

3.5 NORTHERN UGANDA IDPs PROFILING STUDY

This study was carried out under the auspices of the Office of the Prime Minister, Department of Disaster Preparedness and Refugees supported by UNDP. It was conducted in Acholiland covering the districts of Gulu, Kitgum and Pader. This study profiled a number of social economic aspects of life of IDPs. In relation to land it had the following key findings:

1. Land Ownership

Currently, the Acholis have not only been forced to abandon their land, and have lost most of their cattle, their social institutions are also endangered. Prior to the war, the Acholi people were organized in chiefdoms. A chief, called *rwot* headed each

chiefdom. The *rwot* was the *won lobo*, the 'father of the land' in its territorial aspect. In most villages this figure of authority co-existed with the *won ngom*, the 'father of the soil'. The meaning of the 'soil' is here first and foremost as a source of food, but connected to it is also a series of rites, both concerning passage and healing. The *rwot* and *won ngom* therefore had important social duties. They were responsible for the welfare of people and nature, for fertility and above all for rain. Together they formed a ritual wholeness. They guaranteed the fertility and well-being of their area, and in doing so they also purified the chiefdom of witchcraft and sorcery.

Most land in Gulu, Kitgum and Pader is held under customary tenure. People own land simply because they have always lived on it and therefore have been regarded as the 'owners' of their land. They have no official papers proving that they own the land. Local rules governing land have never been written down, probably as these rules were constantly changing as they adapted to new circumstances. These rules were developed under conditions which were very different from those prevailing today. First, until one or two generations ago, a person could 'claim' land as his own by settling and using free virgin land. Many villages were established as little as 50 years ago when groups of people settled in forested areas and became the owners of sometimes-large holdings of land.

2. Loss of Land

Today, there are reasons to believe that there is in fact very little free land left in Gulu, Kitgum and Pader. This would not always be obvious as all land owned by someone was not cultivated in all seasons. Prior to the displacement, land was used for grazing, some kept as forest (e.g. as hunting grounds and for the collection of forest products), and yet other pieces of land would be kept fallow in a system of shifting cultivation and rotational cropping. People, however, know very well who owned what land. In a village, boundaries were known as they were 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 over time, such as the lines of field refuse (*kingingi*) which develops into durable borders. The problem is that the longer people have been kept away from their land, the less relevant such practices will be. Border signposts such as the *kingingi* will have disappeared, and the fact that the field will mostly be completely overgrown will also make it hard to recognize natural border posts between different pieces of land owned by different people and families. Some people will simply have forgotten the actual borders; some will be too young to remember and some will try to take advantage of the confusion of the matter to try to enlarge their property.

3. Land Administration and Women's Rights

In the past, the local leader, the *Rwot Kweri* would have been called upon to solve border disputes. This institution will also be important in the case of a return situation, but leaving this issue only to local institutions may be a recipe for heated land controversies as the old order will not re-establish itself quickly, if at all. The Acholi population coming out of the camps will be a different population than the one who went into the camps. This will particularly be the case for those who have spent the longest time in the camp while simultaneously being kept away from their land for a long time.

Finding pragmatic solutions to these challenges is important both for men and women, but the situation may be more difficult for female-headed households than for households which include a man as the head of the household. Traditionally, land was allocated and managed by the *grandfather* who provided plots to each male family member according to the need and the perceived ability to use the land. Men controlled the land, but women also had rights. A woman had rights to use the land of her parents, prior to marriage, and after marriage, her husband's land. No husband

had the right to prevent his wife from using his land, and if he died, his wife still had user rights to his land: she could use it as she saw fit and pass it on to her children. If somebody tried to take this right away from her, she could appeal to the elders who then could intervene on her side in the dispute. If she remarried she had the right to her new husband's land, but she relinquished user rights to her departed husband's land as she only belonged to the clan by marriage.

This means that prior to the displacement in Acholiland the family structure protected wives, widows and their children against attempts to interfere with their right to use land. The question is if this tradition will be able to protect them in a chaotic return situation. The materials of this study does not provide an answer to this question but, given the levels of widow-hood we find, it is of huge importance that this is considered now and not later. At the very least, it points to the importance of trying to organize an orderly and well-planned return in a gradual manner.

This study concludes that land is survival (i.e. the living), land is the future (i.e. the generations to follow) and land is the past (i.e. the dead). These elements must stay connected to each other if harmony and tranquilly are to be preserved. However, all stakeholders should be aware that such a long lasting camp experience has forever changed Acholi society. When peace returns to Northern Uganda, nothing will be the same as prior to the war.

4 BEST PRACTICES, EXPERIENCES AND LESSONS

Land is often a significant factor in widespread violence and is also a critical element in peace-building and economic reconstruction in post-conflict situations⁸¹. Why land is so important is because it is a wealth and survival asset and a central element in the varied and most basic aspect of subsistence for many, particularly the poor in societies characterized by complex social relations of production⁸². Klaus Deninger points out that as countries emerge from armed conflict; they face multiple land-related challenges associated with post-conflict reconstruction and peace consolidation. Relevant land issues must be clearly understood and given appropriate priority because successful management of these issues can be critical to stabilization efforts⁸³.

The importance of land issues in post-conflict reconstruction and peace consolidation is often not recognized early enough and, even when it is recognized, it is often politically or practically unfeasible to effectively address those issues in the immediate post-conflict period. Conflict over housing and land policy can be prevented by thinking ahead and preparing for problems in advance (e.g. when the 'primary conflict' is still going on), planning strategically, integrating short-term measures into long-term objectives in order to demonstrate immediate impact, and identifying the true dimensions of activities needed and appropriate resources for the task.

4.1 INTRODUCTION

The relationship between land conflict and internal displacement is extraordinarily complex. As in other conflict dynamics, land is tied to a complex network of issues ranging from power relationships to economics and from symbolic attachments to systemic inequities. According to Dan Lewis, Chief of UN-Habitats Disaster, Post-Conflict and Safety Unit, housing, land and property rights (HLP) are sources of conflict because of the effects of (a) displacements and return of populations, (b) perceptions of 'victors and victims' and the changed access to HLP that result, (c) human rights issues, and (d) tangential issues which surround this highly complex cluster of problems. He has identified the important concept of 'secondary conflict', which arises as an indirect result of the impacts of the primary conflict.

Factors which typically exacerbate secondary conflict include:

- Lack of a land policy
- A dysfunctional land administration system
- Land grabbing/invasions
- General breakdown in law and order (including land use planning)
- Overlapping rights and claims to HLP
- Destruction of houses
- Ambiguous laws⁸⁴.

The linkage between land and conflict cannot be ignored – although peace-making often still fails to grasp the centrality of conflict over land in civil war, or at least to ensure that routes to remedy are explicitly laid down in peace agreements⁸⁵. This visibility hampers both post-conflict resolution and reconciliation, which is currently the case in Sudan. Unsurprisingly, conflicts simmer and may help restart war at the

⁸¹ USAID, 2005

⁸² Deninger, 2003

⁸³ Deninger, 2003

⁸⁴ Zimmermann, 2003

⁸⁵ Hurwitz et al. 2005

slightest provocation – currently the case in Afghanistan, Zimbabwe, Burundi and the Democratic Republic of Congo - and threatening to be the case in Sudan.⁸⁶ It is fair to say that land policy, as an element of peace-building missions, tends to be under-rated and has received little attention in the literature⁸⁷. Yet land policy clearly plays a fundamental role in recovering from conflict, and ensuring that further conflict does not follow;

- In the first instance, land policy must deal with the immediate chaos of property destruction and population displacement caused by conflict. Returning populations require shelter and incentives to return to their original areas. Disputes over land need to be minimized. A functioning system of land administration needs to be rebuilt.
- Secondly land policy must work to create institutions and laws to meet claims for property restitution. Such claims will come from returning people, those who acquired land during displacement, and those who lost lands during displacement. Establishing certainty of claims will require resolution of these claims. Without that certainty, investment will be deterred, reconstruction slowed, and social and political stability put at risk.
- Third, land policy fundamentally shapes future social and economic structures. This is the long-term aspect of land policy.

It is important to recognize that, unless immediate issues of property destruction and refugee return are handled well, resolution of more long-term issues relating to property restitution and land administration in general will be greatly hampered⁸⁸. Land administration as an operational and institutional tool in post conflict societies is considered a major component in reconstruction and underpins human settlement and home security; resource and infrastructure planning; market development; and eventually government capacity for raising revenue⁸⁹.

4.2 CORE ISSUES AND BEST PRACTICE

The core issues in relation to conflict and land are: “security of tenure”, “access to land” and “equitable distribution of land”⁹⁰. These core issues are not objectively given, universal, or independent from one another. They are socially constructed and framed; their meaning changes according to the social, geographic and historical context, and they are inter-related. It goes without saying that the accruity of these problems and their very existence implies that they be socially recognized and framed as realities and issues in a given social context⁹¹.

4.2.1 Access to Land

There has been increasing interest in recent years in the possible links between land access issues and violent conflicts. Access to land has a number of meanings. In its most basic form, it points to the ability of willing farmers or breeders to obtain land on which to plant and harvest or pasture on which to graze their herds. Defined as such, lack of, or inadequate access to land is a very common problem. Demographic and natural factors play a role in limiting access, but social and political dynamics are also very important⁹².

⁸⁶ Unruh 2004, Huggins et al. 2005, Alden Wily 2003a, Johnson 2003, Alden Wily forthcoming

⁸⁷ Fitzpatrick, 2002

⁸⁸ Fitzpatrick, 2002

⁸⁹ van der Molen 2004

⁹⁰ Visaounlad, 2003

⁹¹ Deninger, 2003

⁹² Daudelian, 2003

Access should not be thought of as strictly related to ownership per se, as it covers the whole range of property rights and arrangements, from grazing rights, share cropping, usufruct, and all possible forms and modalities of leasing. Some degree of conflict typically characterizes a situation involving competing claims to the ownership or use of the same piece of land. In some cases, government involvement that supports (or is perceived to support) one side over another can significantly increase tensions (e.g. Rwanda and Burundi). In Uganda and Kenya, warring clans of pastoralists facing resource scarcity kill each other during cattle raids as they search for productive grazing land and reliable water sources. In Mozambique, land disputes between immigrant charcoal burners, local farmers and grazers have caused violence and property damage. Many of these disputes result in forced displacement, destruction of property and loss of life. Competition and conflict can also occur when people are resettled into an area already held or occupied by others.

Today, a “menu” of approaches helps facilitate broader access to land and engender greater equality in economic opportunity. Increasingly, market mediated and community-managed efforts are being explored including land rental market facilitation⁹³. Another variation in approach to improving land access is the allocation of immediately available or accessible state-owned land.

4.2.2 Tenure Security

Land tenure insecurity has many faces – from the returning refugee widow who is unable to wrest her husband’s land from his family, to the community evicted by a land-hungry warlord, to the drought-defeated smallholder who has sold his last plot for food and cannot find a landlord willing to enter a sharecrop arrangement. It may also be a case of clan heads carving up local pasture for new cultivation, land that poorer villagers thought was theirs to share, that the government thought was its own to distribute, that visiting nomads thought was theirs to graze – and often have documents to “prove” it - documents that may conflict with others issued at different times, with the law, or with human rights and justice norms. At this point in time, multiple claims, each with its own historical legitimacy, may exist over the same land. The law, and the documents or testimony it generates, is plural, complex, uncertain, incomplete and currently unenforceable. At every turn, there is a need to rethink norms for a sustainable future while reconciling with the past⁹⁴.

Interrogation of the causes of tenure insecurity is imperative not just for peace but for fighting poverty. While assurance of stable access to land is clearly not a sufficient route out of poverty on its own, insufficient land to live on and insecure access or rights over land are well-recognised factors in sustaining poverty.⁹⁵ Insecure tenure or access probably afflicts millions of people - and for reasons that are largely avoidable, since tenure insecurity is first and foremost a socio-political condition that grows from chronic to severe and may eventuate into outright dispossession in the face of changing policies.

The issue of embeddedness is inherent to the question of security of tenure, for the latter results from its inscription into a sound and reliable institutional context. It is related in other words to social and political regulation or, as current fashion would have it, to governance⁹⁶. Tenure security is critical for a number of reasons; among many others, it may for instance have an impact on investments, which are often discouraged by insecurity, access to credit, which is facilitated by sound titles,

⁹³ Deninger, 2002

⁹⁴ Wily, 2003

⁹⁵ FAO 2003 *passim*

⁹⁶ Daudelian, 2003

incentives for resource conservation, which grow with security, as well as crop selection, which are constrained by insecure tenure, institutions matter here perhaps more than in any other area of land policy.

While generalization on this scale is no doubt risky, tenure is possibly becoming less secure than ever before. It finds itself caught between the common—but not universal—breakdown of customary systems and attempts by weak national states, to replace or do away with them. The situation is difficult in poor transition countries, such as Cambodia, where the basis of traditional systems has been broken and new legal regimes are shaky⁹⁷. It appears, however to be most critical in Africa, where “the laws and customs which have in the past assured farmers’ land rights are under pressure, while the states that claim to replace them rarely have enough administrative capacity⁹⁸ to replace them, when they are not simply “failed,” or “informal”. In many instances, moreover, it is state actions themselves that create insecurity by instituting a legal pluralism that enable some to challenge customary systems by resorting to state authorities⁹⁹.

The OECD DAC Guidelines on Helping Prevent Violent Conflict refer to land issues as a root cause of conflict; USAID’s guidelines on Conducting of A Conflict Assessment note that land is an important tool in violent political struggles between elites; and UN-HABITAT and FAO have both started to develop conceptual frameworks for understanding the impacts of conflict on land administration, and addressing these impacts in the post-conflict context¹⁰⁰.

Tenure insecurity also arises in post-conflict situations where people have competing claims to the same plot of land. Well-designed post-conflict activities can help resolve this type of tenure insecurity. Land can also be a proximate cause of conflict: e.g. when land disputes, tenure insecurity or inequality in land access is recognized as grievances, which (often in combination with other factors) can motivate violence. Tenure insecurity is generally addressed through tenure clarification, land titling and registration initiatives. Depending on the circumstances, initiatives that demarcate and record land tenure without as far as granting formal titles can improve tenure security for customary or indigenous rights holders. Approaches that incorporate dispute mitigation and consensus-building measures and that work to clarify rights by legal reforms are needed.

4.2.3 Distribution of Land

The likelihood of violent conflict increases substantially when gross inequities characterize land-holding patterns, particularly when a large landless or land-poor population has limited livelihood opportunities¹⁰¹. Land-holding inequities, combined with other drivers of violence, have been critical elements in many conflicts throughout history. Examples include the Mexican Revolution of 1912, the Spanish Civil War in 1936-1939, Chinese revolution that brought the Communists to power in 1949, Cuban revolution in 1959, Vietnam conflict that ended for the US in 1975, and the civil war in El Salvador in the 1980s. Land-holding inequities also represent an underlying factor in the violence that has occurred more recently in countries such as Zimbabwe, Brazil, Nepal, Guatemala and Venezuela; and could potentially impact the situation in South

⁹⁷ Daudelian, 2003

⁹⁸ Deininger, 2001

⁹⁹ Lavigne Delville-2000:100

¹⁰⁰ USAID, 2005

¹⁰¹ Uganda should take serious lessons here. It is not uncommon to find individuals involved, such as conflict entrepreneurs, who manipulate a disgruntled population to achieve personal political or material gain (as the cases of Rwanda and Burundi)

Africa. Land scarcity, in the absence of off-farm livelihood options, is often a structural cause of conflict in parts of Africa.

Unequal distribution is the most traditional topic in the debate about land and violence and it is the issue that has driven most attempts at land reform. This problem is central to the discussion of land in the Americas but it is also acute in Southern Africa, particularly in Zimbabwe and South Africa, where a small minority of people still control most of the land that is proper for agriculture. Collective property, in particular state farms and state-sponsored cooperatives, used to be a significant component of the discussion of distribution, but market mechanisms now universally dominate policy initiatives and attention is now focused on the impact of liberalization on the distribution of land between small and large land owners¹⁰².

Beyond the basic construct of access, security and distribution, the rest is very much context dependent. The three issues are often profoundly inter-related: Weak tenure security often feeds concentration, environmental degradation and thus often leads to landlessness or confinement to land of poor quality. Debate on the latter; however, suggests that such inter-relations are possibly case-specific and that they need to be verified empirically in each case¹⁰³.

4.3 EXPERIENCE IN THE GREAT LAKES REGION

Africa's Great Lakes region has in recent years experienced political strife, armed conflict and population displacements with severe humanitarian consequences. While these events have clearly revolved around political struggles for the control of the state, recent research has pointed to the significance of access to renewable natural resources as structural causes and sustaining factors in struggles for power in the region¹⁰⁴. Contested rights to land and natural resources are significant, particularly in light of land scarcity in many areas and the frequency of population movements. In this review it is clear that in Rwanda (focusing on the potential contribution of the new land policy to national stability), in Burundi (in relation to the return of refugees and the resettlement of IDPs), and in the Democratic Republic of Congo (DRC), the role of land policy and land administration is significant.

4.3.1 Rwanda

In Rwanda, unequal access to land was one of the structural causes of poverty which was exploited by the organizers of the genocide. The Belgian administration had given the conflict an ethnic character. In addition to generally privileging Tutsi above Hutu within the administration, they made changes to land tenure regimes which altered the client-patron contracts governing labour relations and access to land, causing resentment. The 1959 'Social Revolution' involved violence against Tutsi, many of whom fled and their lands were re-allocated to others. The post-colonial government claimed to have dismantled feudal structures and created a more equitable system of land ownership, but the new state elite lost no time in misusing their power to access land and cheap agricultural labour¹⁰⁵. By 1984, approximately 15 per cent of the land owners owned half of the land¹⁰⁶. Those buying land tended to be in commerce, government, or the aid industry, rather than full-time agriculture.

Limited access to land, exacerbated by its inequitable distribution, and by tenure insecurity (brought about by frequent episodes of population displacement and

¹⁰² Daudelian, 2003

¹⁰³ Daudelian, 2003

¹⁰⁴ Daudelian, 2003

¹⁰⁵ Chris Huggins, et al, 2005

¹⁰⁶ Uvin, 1998

subsequent re-distribution of land by the state), have been described as key aspects of the 'structural conflict' - patterns of economic domination and exclusion that create deprivation and social tension, and prepare the way for violence. During the genocide, violence was directed not just at Tutsi, but also at Hutu involved in land disputes¹⁰⁷. Political leaders distributed false maps showing Hutu-owned fields which would supposedly be grabbed by Tutsi after the Rwandese Patriotic Front (RPF) gained control.¹⁰⁸ Even to day, many people still consider land disputes to be at the heart of most conflicts between households, and a number of organizations have estimated that at District level, at least 80 per cent of disputes reported to administrators' center on land, and in certain areas the figure is as high as 95 per cent¹⁰⁹.

The National Unity and Reconciliation Committee, conducted consultations across the country, found that land disputes are 'the greatest factor hindering sustainable peace'¹¹⁰. Forced displacements have also greatly affected Rwanda, with some two-thirds of the population having experienced internal displacement or exile. Those exiled from 1959 onwards began to return in 1994, while most of those fleeing after the genocide returned in late 1996 or early in 1997. These influxes resulted in multiple claims over ownership of farmlands, buildings, agricultural and forest products.

The case of Rwanda is a particularly stark illustration of the link between inequality in the distribution of land assets and the outbreak of conflict. Hence, as Storey puts it: "a structural adjustment programme which explicitly sought to tilt the balance of the economy away from the state and towards the private sector was very likely to be interpreted in ethnic terms". According to André and Platteau, this urban-based rivalry, sharpened by the effects of structural adjustment, is the main reason for the outbreak of civil strife in 1994. However, the situation in rural areas, characterized by fierce competition for land but no ethnic-based inequality, played a key role in turning a low-level conflict into genocide. One lesson here is that land inequality is not necessarily a source of conflict, but that it can be an aggravating factor when associated with extreme poverty and vanishing opportunities¹¹¹.

Modern Rwanda provides an example of the ambiguity of policies aimed at promoting the early stages of the transformation of an agrarian system, and the haziness of policy options facing decision makers. In Rwanda, government policy, influenced by the 1993 peace accord, directed people to share land resources, and opened up public lands (such as Akagera National Park) for resettlement. The government also extended an 'emergency' villagization programme under the National Habitat Policy (NHP)¹¹² into a more widespread settlement policy, often involving some degree of coercion.

At present it is impossible to determine the long term potential effects of current NHP presented as an endeavor by the RPF to:

- i) deflect the potential for conflict linked to the return of refugees in a context of land scarcity, and to
- ii) Modernize the agricultural sector dominated by isolated scattered farms, by creating villages gathering farmers (and potential laborers) while clearing land for

¹⁰⁷ Huggins, et al, 2005

¹⁰⁸ Huggins, et al, 2005

¹⁰⁹ Dalrymple, Wallace and Williamson, 2004

¹¹⁰ Huggins, et al, 2005

¹¹¹ Huggins, et al, 2005

¹¹² According to the government of Rwanda, one of the rationales for the NHP was that conflict over land ownership was threatening peace, especially in the Eastern region where most refugees had returned. Although this may have been the case, the method adopted remains controversial.

cultivation (thus “freeing” young people in rural areas from the “traditional” constraints of farm labour).

It is difficult to reach firm predictions regarding its potential effects on new land-related conflicts. However, two preliminary conclusions may be drawn:

- i) the “conflict prevention” dimension of this programme may be questioned when its very nature involves state violence targeted at the poor;
- ii) Donors could have reacted to the forced nature of the NHP, and attempted to foster a less violent, possibly participatory approach¹¹³.

Rwanda has drafted a national land policy, which acknowledges that a significant share of land is in the hands of rich elites mainly from urban areas. In response the draft policy lays out mechanisms for achieving consolidation of plots¹¹⁴ and describes how land may be allocated to the landless. There may be advantages of economies of scale via e.g. mechanization on consolidated plots, but there is little evidence to underpin this, and the mechanisms to promote consolidation remain unclear. The policy suggests that consolidation will result in some people losing their lands but being compensated. Even so, there are few alternative livelihood sources in these areas¹¹⁵.

The policy also defines the 'landless' to whom land might be allocated, specifically as 'old case' refugees who have returned: Rwandans who fled the country in 1959 or later and stayed outside the country for more than 10 years. Whilst these people were severely affected by land problems, yet in reality the issue of landlessness is much wider than this (involving processes of impoverishment amongst all social groups, in a context of extreme land scarcity), and will continue to expand as relative land scarcity increases. Firm criteria for selection and allocation need to be set in place and a balance struck between centralized authority over the process and local authority. The policy also states that in addition to the 'old case' refugees, land from the reserve will be given to, 'those who place an application for it, having a consistent plan of development.' There are fears that this may open the way for land acquisition by the corporate sector to the detriment of peasant livelihoods.

4.3.2 Burundi

Inequitable access to land has long been one of the structural causes of conflict in Burundi¹¹⁶, and contributes to poverty and grievances against the government and elite groups. Ninety-three per cent of the population is rural and dependent on agriculture for subsistence, and over 80 per cent of rural households have less than 1.5 hectares of land. Landlessness stands at about 15 per cent nationally, but at 53 per cent for the Twa, a marginalized minority group and so are women who are barred from inheriting land by succession rules. Rural areas have extremely high population densities, although it varies quite broadly at the commune level, from 41 per sq km to 526. Fragmentation is also reaching extremes; many people in the most densely populated areas inherit barely enough land to build a house on¹¹⁷. A weak and corrupt state apparatus has made possible the illegal appropriation of state land by rich individuals and state dignitaries.

The biggest tensions and the strongest insecurity are related to the issue of the refugees who left the country beginning in the 1970s and whose lands have since

¹¹³ Pons-Vigon and Solignac Lecomte, 2004

¹¹⁴ the average Rwandan household possesses five plots, rising to about 10 in some areas

¹¹⁵ Chris Huggins, et al, 2005

¹¹⁶ Lind and Sturman, 2002

¹¹⁷ Chris Huggins, et al, 2005

been occupied. Their return hovers like a threat over a significant part of the country and the state has not taken measures that promise to facilitate their re-integration or some form of compensation for them or for current occupiers who would be displaced. Every wave of conflict generates new movements of refugees and reproduces the problem. The return of the refugees, and situation of internally displaced people, will hinge on the way land scarcity and land ownership disputes are managed. Some of those in Burundi who were away from their lands for long periods had difficulty in gaining access to land, especially those who fled the country in 1972¹¹⁸. Following government confiscation, the new owners were issued with title deeds - in some cases, land may have changed hands several times. Under the 1986 Land Code, someone occupying land for 30 years can claim re-allocation.

The Land code is broadly in line with the concepts of land tenure security and the need for land markets, as championed by the World Bank, the FAO (Food and Agricultural Organization), and other institutions in a number of countries. Customary aspects are to be 'replaced' with a modern system, through universal land registration. Land redistribution is not being considered – instead, it is envisaged that land markets will redress some imbalances¹¹⁹. The key issue facing post-conflict Burundi is that of access to land. With more than 90 percent of the population dependent on agriculture for their livelihoods, such access defines their ability to engage in subsistence and cash economy.

The country's land scarcity problem will be exacerbated by the return and repatriation of thousands of refugees and IDPs, and threatens to be a major source of instability for the new state. To some degree all Burundian refugees and displaced persons have been the victims of land expropriation¹²⁰. The 1993 experience demonstrated the dangers of a rushed repatriation process that is not prefaced by a conflict resolution mechanism on land claims. Displacement itself can further exacerbate hostilities as members of the local community might view new incoming populations with suspicion. It has to be remembered that the cycles of violence that have characterized Burundian life have entrenched a culture of distrust and fear which is a major challenge for national reconciliation¹²¹.

The recognition of the currently informal Certificate de Possession (issued at commune level) will bring increased security of tenure at local level. However, this move towards formalization of land documentation will require a well-designed policy which will facilitate formalization but will not result in those without papers being dispossessed by those able to take advantage of money, literacy, and connections." This process will require a large injection of resources, unlikely to become available in the near future. For this reason, a more realistic evaluation of a continued role of customary law would be useful¹²². It is also important to remember that severe pressures on the land market make it a prize area for the abuse of power.

Small urban elite is in a position to 'buy' out the rural poor, to the extent that selling land may be the only means to meet cash needs for healthcare or food for the majority of the impoverished. Yet, while it is understood that primary policies and legislation regarding the post-transition period must be set in place before overall 'reconstruction' gets underway, the lack of implementation of the recommendations agreed to under the peace accord does not bode well for the immediate future¹²³. Therefore, the legal

¹¹⁸ Dalrymple, Wallace and Williamson, 2004

¹¹⁹ Jooma, May 2005

¹²⁰ Jooma, May 2005

¹²¹ Jooma, May 2005

¹²² Jooma, May 2005

¹²³ Jooma, May 2005

and regulatory vacuum that currently exists with regard to fundamental issues such as land tenure is a major indictment against the transitional government.

4.3.3 Democratic Republic of Congo (DRC)

The complex conflicts in the Eastern DRC have numerous sources. In addition to various economic and political issues, ranging from the military and economic strategies of western powers and neighboring countries, the weak nature of the state in DRC, and the historical relationships between ethnic groups, these include natural resources of much greater value, and much more 'lootable' character, than agricultural or pastoral land - such as diamonds, gold, cobalt, cassiterite, and coltan¹²⁴. Nonetheless, land remains important for several reasons:

1. First, insecure or insufficient access to land in many parts of the East is a significant factor in the impoverishment of thousands of rural people and is seen by many as a 'structural' cause of conflict.
2. Second, in the case of Ituri territory, contested purchase and expansion of agricultural and ranching concessions have been identified as one of the proximate causes of violence; and the same may be true in Masisi.
3. Third, the present conflict has radically changed land access patterns, through a number of mechanisms including forced displacement and shifts in the level of authority enjoyed by different customary and administrative leaders. Conflict is producing new competition for land, as part of a wider renegotiation of the local economic space and re-drawing of ethnic, class, and other 'boundaries' between groups. Land is no longer merely a source of conflict, but a resource for its perpetuation.

In the DRC, a 'modern' system of land administration for white settlers, enabling them to establish their plantations, was superimposed on traditional systems, with compensation paid to the customary leaders (*mwami*), rather than to the people, and leading eventually to an undermining of both the customary and statutory systems¹²⁵.

Colonial promotion of migration also generated conflict over resource access. After the First World War, the Belgians brought Rwandese farmers into parts of Eastern DRC (such as Masisi) to provide the necessary labour for the newly created agricultural plantations and mining centres. When denied equal access to land after independence, they finally started purchasing land, but local chiefs continued to expect customary tribute¹²⁶. This explains the first major conflict: the '*Guerre des Kinyarwanda*', which lasted for two years. It was the first rebellion against chiefly abuse and the first step of a spiral of unending local violence.

The independent Zairian state introduced a land law emphasizing individual ownership in 1973, removing the legal status from land occupied under customary rule. This enabled those in political or economic power to appropriate any land not yet titled. The traditional authorities became the privileged intermediaries for the sale of land. Rewarded with ministerial posts and newly armed with Zairian citizenship, immigrants from Rwanda were able to concentrate a large number of former colonial estates in their hands¹²⁷. In Ituri territory, similar developments could be observed. Here, it was members of the Hema who profited from their easy access to education and to employment opportunities within the local colonial administration, the mines and plantations.

¹²⁴ Huggins, et al, 2005

¹²⁵ Pons-Vigon and Solignac Lecomte, 2004

¹²⁶ Huggins, et al, 2005

¹²⁷ Dalrymple, Wallace and Williamson, 2004

With a peasant population under growing stress in the land-scarce areas of Eastern DRC, one might have expected more (or earlier) protest or regular outbursts of violence by peasant farmers against those responsible for land alienation. To understand why this did not happen, the traditional authorities need to be the focal point of analysis. In order to guard their position, and avoid blame for land sales, ethnic discourse proved to be a perfect instrument¹²⁸. This significantly raised ethnic tensions. In North Kivu, a wave of inter-ethnic violence which erupted in March 1993, lasted for more than six months and killed between 6,000 and 10,000 people, while more than 250,000 people were displaced.

The fragile 1993 peace settlement in North Kivu lasted until the arrival of more than one million Hutu refugees from Rwanda and the settling of the ex-Armed Forces of Rwanda (ex-Far) and Interahamwe militia in camps in Masisi and the Ruzizi Plain. A new coalition between the refugee-leadership and militias shifted the balance of power, creating the concept of 'Hutu-land' and leading to persecution of the local Tutsi population¹²⁹. Historical analysis of land access dynamics before 1994 suggests that even if the conflict-related changes could be rectified, and 'law and order' restored in Eastern DRC, a return to the status quo will not lead to an equitable outcome. Only a reform of land laws and institutions, along with some form of land redistribution, could achieve that.

This review makes clear the fact that the main land issue in the great lakes region for decades has been security of tenure and access. Competition over land exacerbated by the destabilizing effects of 'modernization' and enforced or spontaneous migration, is more commonly a source of conflict than generally supposed. Reallocations of land during conflict, or the profit from sale or use of land can provide a means of sustaining such conflict¹³⁰. Post-conflict access to land for many people can be fundamentally altered, through massive forced population displacement. More insidiously, conflict changes social relationships in profound ways, and perceptions of mutual rights and responsibilities in relation to land between individuals, social groups, and the state are altered due to changes in perceived legitimacy of institutions and obligations¹³¹.

A range of important questions remain about the nature of policy reforms necessary to address land issues in order to prevent violence, during and following conflict. The transition between 'conflict' and 'post-conflict' is rarely clear: the causes of conflict may never be fully resolved; and violence itself may continue sporadically well past the official declaration of 'peace'¹³². Transitional governments which seek to be inclusive or conciliatory by incorporating former belligerents, are, in reality, often characterized by wide differences in vision and development objectives, and these may translate into struggles between military and civilian leadership, or between different ministries. Much more research is needed on the politics of policy-making in such difficult institutional environments.

4.4 INTERNATIONAL EXPERIENCE

In this review experience is drawn from Eastern Europe, Asia and Latin America, as regions that share similar or comparable circumstances to Uganda and a large part of sub-Saharan Africa. Asia's land policy landscape is dominated by problems of access related to high densities of population in agricultural areas, although landlessness per

¹²⁸ Uvin, 1998

¹²⁹ Huggins, et al, 2005

¹³⁰ Uvin, 1998

¹³¹ Margaret Rugadya, 2006

¹³² Thompson, 2003

se has only recently become a major problem. Landlessness is a fast growing problem, as is fragmentation¹³³. The problem is made worse by a growing concentration of land ownership, which itself feeds off the insecurity of tenure related to states administrative failings and corruption.

Land administration projects in South East Asia primarily concentrate on delivering security of tenure to privately held land for fast, simple and unambiguous title registration. Securing large areas of rural land for communally settled groups and sustainable local resource management has been overlooked in land administration designs in Asia.¹³⁴ These issues of accommodating people on the ground are overshadowed by foreign investment, large corporation and corrupt local government interests. There is also a very fuzzy area concerning the recognition of 'indigenous' groups and a range of debates about various orthodoxies and approaches in common property discourse¹³⁵. Often the problem lies in the formal classification of 'indigenous' groups. A number of African nations are well advanced in identifying communal type tenure registration solutions in rural communities¹³⁶. Due to various environmental and social variables which make these societies, unique solutions cannot simply be reassigned into Asian scenarios; however, aspects of the formalization and institution building process could possibly be applied.

In Latin America, concentration of land holdings overwhelms other issues and redistributive land reform has been a core part of the policy debate for decades. The situation of "natives" varies greatly across countries¹³⁷. The conflict over land is a long-lasting one, since Latin American "indigenous" people have been deprived of most of what they had (not only land) since the 16th century. However, access and security of tenure over their now small land has been an ongoing subject of political, sometimes violent struggle. Their political and economic weakness means that they have usually been unable to retain their land when it was seized for the constitution of large agricultural estates (or of mines), and have been the victims of violent retaliation when they tried to resist¹³⁸.

4.4.1 Cambodia

Cambodia is still dominantly an agricultural society and issues of land have crucial impacts on most people's life. In 1975, after the revolution by the Khmer Rouge, the post-colonial society was completely reformed. The new leaders introduced an agrarian, totalitarian communism of a scale not seen before or after by the rest of the world. The individual ownership of land was banned, cities emptied and people were forced to live in communes that engaged massive irrigation projects¹³⁹. The chaos of post-war Cambodia left tens of thousands of families involved in land disputes with then military and the government, claiming land either seized or turned into concessions (for forestry or agriculture), most often in fighting areas that had been under continued military control for a long period of time. Frustrations seemed to reach a climax in the late 1990s, when demonstrations signaled a real threat to post-war peace¹⁴⁰.

A new Land Law was drafted in a transparent manner and eventually passed in August 2001. On the whole, the process was deemed a success, today disputes are less

¹³³ van der Molen 2003

¹³⁴ Dalrymple, Wallace and Williamson, 2004

¹³⁵ Dalrymple, Wallace and Williamson, 2004

¹³⁶ Pons-Vigon and Solignac Lecomte, 2004

¹³⁷ Dalrymple, Wallace and Williamson, 2004

¹³⁸ Pons-Vigon and Solignac Lecomte, 2004

¹³⁹ Törhönen and Palmer, 2004

¹⁴⁰ Törhönen and Palmer, 2004

violent than they were, tensions have lessened, public scrutiny has reduced the ability to resort to violence, etc. Key factors of success include:

- i) framing responses in the governance realm, with mutual monitoring, dissemination of information, etc. ensuring a system of checks and balances;
- ii) the participatory nature of the working group process; an unusual degree of co-ordination among donors. All worked under a single umbrella and through a lead agency, among others.

Cambodia currently provides a perfect example in dealing with problems of post conflict land administration. This is a cautious success story which shows that a lot can be done if there is a unified aim and will¹⁴¹. Cambodians can be credited for recognizing a number of critical problems, and making a good progress in addressing them. The following main lessons are learned:

- (a) that systematic first registration with modern legal, technical and social standards can be feasible. The Cambodian case shows that things can be done cheaply while still maintaining appropriate quality. The key is to engage the community and to develop a locally suitable application for mass surveys and data collection.
- (b) That a post-conflict situation is likely to boost the momentum for community participation. The Cambodian communities have been very eager to carry out the land registration. The process has rightfully been taken as a step towards stability and normalization, towards the “good old days”.
- (c) That the donor community can play an important role in supporting the creation of common policy for land issues. In Cambodia, it proved possible and successful to unify donors and the NGO community for supporting the Government’s policy making.
- (d) A post conflict country making progress in land sector is likely to experience a donor honeymoon. The current situation in Cambodia is that a vast number of donors would like to be involved in the land sector development. The interest has long ago overcome the Government’s resources to handle the support.
- (e) It is possible to make a successful land administration project in a post conflict country, but little is still known about how to establish a sustainable land administration system in such a country. The real results in Cambodia will be seen in years, if not in decades, to come. Most donors still fail to see the difference between a system and a project. A responsible donor support moves from the honeymoon to a long, happy marriage.
- (f) The issues of access to land and secure tenure may not any longer be matters of peace and war, in Cambodia today as was the case a few years ago, but they continue to be key issues for stability.

4.4.2 El Salvador

Agrarian issues have been at the heart of social and political conflicts in El Salvador. The 12 year civil war which wracked El Salvador from 1980 to 1992 arose in part from efforts to address the pressing questions of land and rural poverty. In 1992, the Peace Accords negotiated between the Salvadoran government and the rebels of the Farabundo Marti National Liberation Front (FMLN) established a land transfer program to provide small plots of land to some 35,000 families in an effort to re-integrate former combatants into civilian life¹⁴². The aim was to reduce the concentration of landholding (redistributed about 30 percent of the country’s cropland) and increase substantially the number of individuals who own small plots or share in the ownership of cooperative lands. These changes addressed the perception of inequity among the most active and organized sectors of the rural population and contributed to reducing political

¹⁴¹ Daudelian, 2003

¹⁴² Foley, Vickers and Thale, 1997

tension in the countryside significantly. But they have not fundamentally altered the economic insecurity of rural life in El Salvador.

Landlessness, access to land, and rural poverty were issues that helped generate the war, and the United States of America and the Salvadoran government pursued land reform programs significantly, even if they were perceived as flawed, they did help change the face of Salvadoran agriculture and landholding patterns, they are at least credited with the fact that political tension in the countryside was reduced because the short-term demands of organized *campesino* groups for land redistribution have been at least partially addressed¹⁴³. Agriculture no longer employs the majority of economically active Salvadorans, and agriculture is no longer the largest contributor to the country's gross domestic product. But about half the population of the country still lives in rural areas, and agriculture continues to be the largest single source of employment.

The agricultural economy has stagnated, growing only 2.5 percent a year since 1991, while the overall economy grew an average of 6.7 percent a year. Small farmers, including those who hold land as a result of the land reform and land transfer programs, are in economically precarious positions. Many small farmers, along with those who own no land, must work as day or seasonal agricultural laborers on bigger farms. And many larger farms (including both cooperatives, medium and large private farmers), including producers of livestock and of basic grains, are making little profit. Non-farm rural employment is scarce, and there is no government policy for stimulating rural, non-farm employment¹⁴⁴. The viability of rural smallholders, of the cooperatives that benefited from the land reform, and of the rural sector as a whole, is not assured.

Landholding patterns have changed and a significant minority of the rural population has acquired ownership of a plot of land. But under current conditions, substantial numbers of the beneficiaries of the land reform programs will fail financially and run the risk of bankruptcy and economic marginalization or foreclosure¹⁴⁵. More broadly, if the peace process has succeeded in part by addressing, however imperfectly, the concerns of the rural poor for access to land, an economic policy that threatens the viability of the land reform beneficiaries, without offering meaningful alternative sources of income, will weaken *campesino* support for the democratic political process. In a country emerging from civil war, this is a dangerous and potentially destabilizing trend. El Salvador demonstrates that the World Bank's approach to agricultural policy was not developed with sufficient sensitivity to the needs of El Salvador's peace process, particularly the need for political stability in the countryside. It also demonstrates that the Bank's rhetorical commitment to participation is not matched by its practice on the ground¹⁴⁶.

The implementation of the peace accords in El Salvador was a major test of the ability to foster the redistribution of assets. On the crucial issue of property rights, Salvadoran elites accepted limited transfer of land to former combatants in war zones, but rejected comprehensive agrarian reform to assist dislocated and impoverished popular sectors. In this manner, elites refused to assume direct responsibility for the costs of war and denied a greater role for mass organizations in resource allocation¹⁴⁷.

¹⁴³ Pons-Vigon and Solignac Lecomte, 2004

¹⁴⁴ Dalrymple, Wallace and Williamson, 2004

¹⁴⁵ Pons-Vigon and Solignac Lecomte, 2004

¹⁴⁶ Pons-Vigon and Solignac Lecomte, 2004

¹⁴⁷ Everingham Mark, 2002

4.4.3 Bosnia

Before the war urban areas were generally ethnically mixed, but rural areas tended to be dominated by one ethnic group, closely linked through representation in the administration of larger districts. Because of Bosnia's heterogeneity and tolerance, *ethnic cleansing* was the only way for extreme nationalists to consolidate their power¹⁴⁸. After almost 4 years of fierce fighting the Dayton Peace Agreement (1995) put an end to the war but embodied a contradiction in itself: it created two ethnic statelets within one unified whole while at the same time calling for the right of the refugees and displaced persons to return to their pre-war home.

It was largely through ethnic cleansing campaigns that 40% of the 4.4 million pre-war inhabitants became refugees or displaced persons¹⁴⁹. About 1.2 million of those were granted asylum in other countries of the former Yugoslavia, Western Europe and elsewhere. About another million individuals, representing roughly a third of the remaining population, were displaced from their homes but remained within the territory of Bosnia and Herzegovina. Another 80,000 people were displaced in the early months of 1996, following the transfer of territory, which had been agreed upon in the Dayton Peace Accords, in particular the suburbs of Sarajevo.

The constitution of the State of Bosnia and Herzegovina permits and guarantees private property¹⁵⁰, it also grants all refugees and displaced persons the right to freely return to their homes of origin¹⁵¹. Property rights, which people have been deprived of in the course of ethnic cleansing, have to be restored or compensated in cases where they cannot be restored. All statements or commitments made under duress, particularly those relating to the relinquishment of rights to land or property shall be treated as null and void¹⁵². At present these demands of the constitution are performed by the institutions of the state with varying degrees of intensity and effectiveness, to say the least.

Every change regarding property interests or *de facto* use of property (purchases, gifts, exchanges of privatized apartments, houses or land and claims for restitution) complicates the situation further and makes it even more difficult to achieve certainty about the property title. The incomplete and incompatible registers today cannot meet the demands of a modern and changing society. Economic progress will be obstructed until it becomes possible legally and *de facto* to own property. Not to mention the stability that clear ownership gives the thousands of households who do not know where they are going to live tomorrow¹⁵³. Therefore it is crucial that the necessary changes are made. Even if adapting the registration systems now seems costly, the costs of not doing so would be far greater.

4.5 KEY INSIGHTS: ISSUES AND LESSONS LEARNT

Conflict and access to land are linked in two main ways; control over land and natural resources may constitute a key factor underlying conflict; conversely, conflict may severely affect land tenure or access. Where rapid demographic growth is not accompanied by increases in productivity or by new opportunities to acquire income from non-agricultural activities, competition over land increases, and may be manipulated by elites to gain or maintain power. Thus, competition over scarce land, together with lack of off-farm opportunities, frustration and lack of hope for the youth,

¹⁴⁸ Daudelian, 2003

¹⁴⁹ Zimmermann and Hübner-Schmid, 2000

¹⁵⁰ Article 2

¹⁵¹ Article 3

¹⁵² Article 4

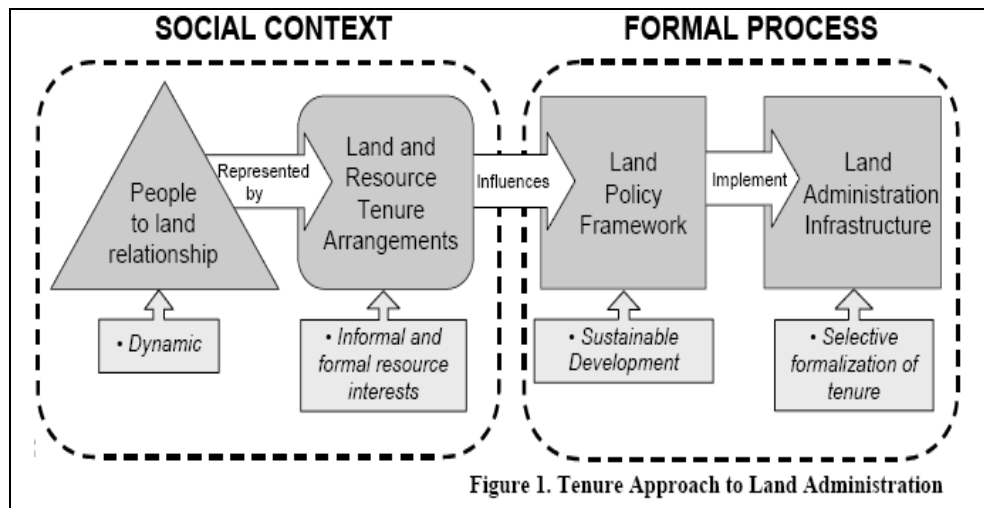
¹⁵³ Daudelian, 2003

may create a context of instability where other trigger factors such as politically manipulated class or ethnic tension can subsequently lead to violent conflict¹⁵⁴.

In Rwanda, for instance, unequal access to land was one of the structural causes of poverty which was exploited by the organizers of the genocide, during which violence was directed not just at Tutsi, but also at Hutu involved in land disputes¹⁵⁵. Issues of access to land may also feed conflict in countries with a history of very unequal land distribution¹⁵⁶. In Guatemala, a lengthy civil war erupted in 1954, after previous attempts to redistribute land were reversed. Similarly, in Colombia, conflicts over land are among the root causes of the violence that affected the country in the second half of the 20th century. In post conflict situations, the following issues and lessons are of significance:

1. Formalization of tenure

Identification, classification and securitization of tenure are necessary if access to land and investment incentives for the poor, as a poverty reduction strategy, are to be achieved through land administration tools. Secure tenure in land and resources is achieved if a persons' interest in land can be successfully defended when challenged. This includes protection against risks, particularly eviction, and not living in fear or threat of having claims denied¹⁵⁷ or loss of land under government pressure or under pressure of elites with both economic and political power.



Source: Kate Dalrymple, Jude Wallace and Ian Williamson, 2004

Focus on land policy development and institutional strengthening has improved land administration model designs in post conflict situations. In the past, policy tools were rights centric and relied heavily on instrumental legal order, delivering selective registration and issuing formal individually recognized land ownership titles. Land policy now is more reflective of existing tenure arrangements, provides more sustainable direction and should steer towards formalization strategies rather than impose them¹⁵⁸. Land policy that is increasingly more sensitive to existing land arrangements, provides more sustainable directions and guides formalization strategies rather than imposing them. Land tenure, has to be

¹⁵⁴ FAO 2005

¹⁵⁵ Huggins et al. 2005

¹⁵⁶ Deininger 2003

¹⁵⁷ Augustinus, 2003

¹⁵⁸ Dalrymple, Wallace and Williamson, 2004

freed from its property rights focus and opened to a more comprehensive understanding of land tenure practices in the social context of informal and formal arrangements¹⁵⁹. Tools with a social component are often difficult to accommodate within rigid formal systems because of diverse and dynamic arrangements, biased interpretations and limited availability of innovative devices that might avoid the crude assimilation of tenure systems and culture.

The political implications of the formalization of tenure are just as ambiguous as its economic impact. Formalization can lessen access to land by depriving some social categories of property rights¹⁶⁰. It can weaken security by introducing legal pluralism or challenging the legitimacy of customary arrangements without offering effective alternatives. Finally, it can lock in an unequal distribution of land holdings, as it threatens to do in Cambodia.

2. Context-Specificity

Conflicts have major implications for land tenure systems. First, the chaos generated by wars may weaken the customary or local institutions managing and administering land rights, thereby generating widespread tenure insecurity, fostering land disputes, and enabling elites to grab land. Secondly, wars leave a legacy of landmines preventing productive use of substantial areas of land for many years after the end of hostilities. In many countries, protracted conflict has significantly reduced the performance of the agricultural sector and of the economy as a whole¹⁶¹. Thirdly, armed conflicts create large numbers of refugees and displaced persons, with little or no access to land in the areas to which they flee. After the end of the armed conflict, competing land claims by returnees and by new occupants may generate further disputes.

Land policy is embedded in specific political, social, cultural and ecological contexts that condition the nature of its outcomes, be they economic, environmental or conflict-related. This embeddedness needs to be factored in the design and implementation of policy and considered at various levels, from the national to the regional and the local. This does not imply that land policy and administration is best designed and implemented at the local level or national level, only that the specific outcomes of a given measure at each level must be considered. To give an example here, it might well be the case that fair gender outcomes are more likely, in a given country, with centralized conflict-resolution mechanisms instead of local ones. Decentralization and subsidiarity in land policy as in other areas of public policies are in other words no mere technical process. They have political consequences and the latter must be factored in if one is to assess the equity and conflict outcome of any given policy.

3. Weak States and Political Nature of Land Policy

Land policy is a political issue. It is not possible to disentangle its determinants and impact from the material and political interests of the individuals and groups involved. Politics needs to be factored in from the start¹⁶². Informal politics, corruption and administrative inefficiencies are factors of tenure insecurity and, as a result and in themselves, they leave much space for highly unequal access to national land and concentration of land holdings. Land titling programs by weak states contaminate customary systems and result in the in-formalization of land

¹⁵⁹ Dalrymple, Wallace and Williamson, 2004

¹⁶⁰ Daudelian, 2003

¹⁶¹ Deininger, 2003

¹⁶² Daudelian, 2003

tenure and deepening tenure security, which impacts on concentration¹⁶³. Approaches that develop relevant, appropriate and, preferably sustainable job or livelihood opportunities can significantly diminish pressures related to land inequities (e.g. investing in agricultural infrastructure and micro-finance initiatives)

4. Restitution and Compensation

Addressing access to land issues is a key step towards the consolidation of peace¹⁶⁴. This may include the regularization of existing land occupation and use. It may also include securing access to land for demobilized soldiers and for displaced populations, adjudicating amongst overlapping land claims of different groups, and re-establishing effective land institutions and land information systems. In Burundi, the 2000 peace accords guaranteed returnees access to their property or adequate compensation¹⁶⁵. Similarly, the Dayton Peace Agreement signed in 1995 for Bosnia and Herzegovina provided for the return of refugees and for the restitution of property¹⁶⁶. On the other hand, the peace accords agreed upon for Rwanda in 1993 stated that only those who had been out of the country for less than ten years could claim land¹⁶⁷.

Tensions may arise between restitution of property and achieving peace. Returnees may find that their land is occupied by others and recovering their property may entail displacing the existing occupants¹⁶⁸. Disputes typically appear when other individuals or groups are found occupying the properties of a returning population (e.g. Rwanda and Burundi)¹⁶⁹. In such cases, the returning population may be forced to occupy alternative properties that are not actually theirs which can instigate another set of dispute and secondary complications. This may slow the pace of return, as evidenced by the experience of the former Yugoslavia. There, competing claims on residential property have made their way to international human rights institutions (e.g. the case *Blecic v. Croatia*, decided by the European Court of Human Rights). Addressing the underlying land-access factors that contributed to conflict is essential if long-term peace is to be achieved. In Guatemala, the peace accords required land distribution as a critical element of the post-conflict strategy, though progress with implementation has been limited¹⁷⁰. Special attention must be paid to the needs of female-headed households, widows and orphans particularly vulnerable groups that can be very numerous in post-conflict situations¹⁷¹.

5. Management of Disputes and Claims

In many cases, land disputes while not the primary source of conflict are among the many factors that lead to an escalation of violence. In Eastern DRC (Democratic Republic of Congo, formerly Zaire), for instance, conflict has numerous sources. Among these, access to land is an important factor. Here, the deep causes of conflict include massive in-migration by different ethnic groups seeking land; the dispossession of increasing numbers of small farmers as a result of land sales by chiefs; uncertainty and confusion over whether migrants would be given the status of citizens of the DRC; and political manipulation by

¹⁶³ Daudelian, 2003

¹⁶⁴ Wily 2003

¹⁶⁵ Huggins et al. 2005

¹⁶⁶ FAO 2005

¹⁶⁷ Huggins et al. 2005

¹⁶⁸ FAO 2005

¹⁶⁹ Huggins, et al, 2005

¹⁷⁰ Deininger 2003

¹⁷¹ Deininger 2003; Huggins et al. 2005

rival parties and personalities¹⁷². Conflicting claims commonly emerge over time as a result of contradictions, gaps, and uncertainties in a country's land law and policy regime. It is important to keep in mind that there are nearly always multiple sides in a conflict situation, often with different perspectives and wielding what they believe to be legitimate claims¹⁷³. Care must be taken to approach interventions with neutrality and not to "demonize" or "sympathize" with one party or another, risking a politicized process.

The nature of mediation and dispute resolution mechanisms are important factors in determining whether parties involved in a conflict will resort to violence: if they are seen as partial or ineffective, violence is likely¹⁷⁴. Experience has shown that many types of land disputes are best managed outside the courts. Limited court capacity to process land claims efficiently and transparently is a serious constraint in many places. Thus, alternative dispute resolution processes, especially mediation and arbitration, can be useful, while customary and community-based mechanisms for conflict resolution may be relevant in some cases¹⁷⁵. In post-conflict settings, investment in agricultural infrastructure, technical assistance, and the creation of market linkages can complement land policy approaches by creating and supporting new income-generating opportunities.

Lack of knowledge or understanding about the law and land rights (frequently a problem in poor communities) can also contribute to tension and conflict. Community-based legal assistance, advice, and orientation initiative that work with local people and organizations can be effective in addressing these problems. Building the capacity of local communities or civil society organizations can help people participate more effectively in local decision-making and planning process relevant to land.

Linking legal advice and orientation to processes that will protect land rights or resolve land conflicts is extremely important and is often done in conjunction with public information and education campaign. Activities that focus primarily on strengthening the justice system and rule of law may have relevance to land issues, such as targeted institutional strengthening or capacity building to promote more efficient handling of land disputes¹⁷⁶. Initiatives and other support could focus on the formal justice or on non-judicial conflict-resolution mechanisms.

6. *The political sustainability of inequity*

The relative autonomy of conflict *and especially of "peace"* in relation to grievances has a massive implication for conflict- or peace-oriented policies: inequity is politically sustainable. The cases reviewed and much of the literature shows that most land-related inequities are unlikely to lead to significant conflict. This is spectacularly the case with gender in general, but also with ethnic groups, both cases in which the number of people affected and their proportion of the population are extremely large. The need to prevent conflict, in other words, is not a sound political basis on which to base reforms aiming for broad access, secure tenure and fair distribution of land holdings. Broad access, secure tenure and fair

¹⁷² Mathieu et al. 1998; Huggins et al. 2005

¹⁷³ Rugadya, 2006

¹⁷⁴ Dalrymple, Wallace and Williamson, 2004

¹⁷⁵ Experience in East Timor and Kyrgyzstan shows that building on socially legitimate informal institutions was an effective way of managing a large number of post-conflict land disputes.

¹⁷⁶ Dalrymple, Wallace and Williamson, 2004

distribution must be valued independently of their possible—albeit unreliable—impact on the probability of conflict.

Specific difficulties often encountered in post-conflict situations include: the inequities faced by women (particularly those widowed or separated from husbands) and orphaned children who are denied inheritance rights; the return of refugees and internally displaced people, often without titles or other proof of ownership; the status of environmentally sensitive areas, especially where there is land pressure due to sudden refugee returns; and the need for management of local inter-communal relations where civilian populations have often been the victims of violence, and where land claims have an inherently 'communal' nature¹⁷⁷. It is often desirable to implement rapidly some elements of post-conflict land reform in order to avoid problematic issues 'festering' over time and triggering more conflict at a later date, and activities such as information-gathering, training and identification of relevant personnel can be done even in the emergency phase. However, the process of land reform is time-consuming, partly because countries frequently lack an effective legal framework in respect of tenure, and systems for participatory policy-development¹⁷⁸.

7. *An institutional approach*

The context of land policy is time sensitive, i.e. it has to be responsive to changes, a policy that claims conflict-awareness needs to constantly monitor the political impact of land policies as mediated by their contexts. This calls for the establishment of mechanisms especially devoted to doing that in the agencies responsible for the design and implementation of land policy and/or in the agencies that finance and support the latter.

Land policy can make things worse or better but it is only exceptionally a critical factor of conflict, even in countries and societies where the vast majority of the population depends on agriculture for its survival, and even in countries coming out of war. There is clearly no blueprint for an effective and efficient land administration system that nation's policy makers can "pull down and use". As with any business proposal, any specific solution must be moulded to meet the needs of its beneficiaries and work within the capacity and limitations of the local institutional and social environment. This message is now built into the revised land policy agenda where more weight is given to multi-disciplinary approaches to designing systems for administration and management of land and natural resources¹⁷⁹.

¹⁷⁷ Dalrymple, Wallace and Williamson, 2004

¹⁷⁸ Huggins, et al, 2005

¹⁷⁹ Dalrymple, Wallace and Williamson, 2004

5. EMERGING ISSUES AND RESEARCH QUESTIONS

5.1 PROFILE OF IDPs

From the background, it is clear that two major issues have to be disentangled, in order to appropriately respond to land issues in post conflict situations in Uganda:

5.1.1 Issue One: Categories of IDPs: Different Problems and Options

IDPs cannot be handled as a homogenous group on land matters, depending on locality and ethnicity, the dynamic on land tend to play themselves out differently for different groups. It therefore implies, that the best starting point would be in defining the different categories of IDPs (either as ex-combatants) and teasing out the different land issues that each group faces, consequently the appropriate solution or options for each category. In all existing literature on the northern Uganda conflict, no such systemic categorization of IDPs has happened yet, upon which specific plans can be drawn to address problems as per category given the fact that different categories may have varied definition of issues on land, responses and options, as such their recommendations for policy and law may also differ based on different perceptions and conditions they are experiencing. The study will have to deal with the question of;

- (a) Categorization of IDPs and the peculiarity of their problems and issues on land matters differs and must be dealt with differently depending on locality and other factors, such as cultural norms and practices
- (b) Assess the social protection needed for IDPs vulnerable groups
- (c) Need for specific focus on gender issues (i.e. gender discrimination with respect to land rights and use)

5.1.2 Issue Two: Accurate Baseline Information

Appropriate and accurate planning is based on accurate information, on existing conditions that a particular plan is out to address. In the case of IDPs in northern Uganda, the scale of displacement is estimated, there are no baseline figures to establish the exact level of displacement and returns, all figures presented are based on specific records of service providers and relief agencies enrollments. It should be noted that some displaced person may not seek the services of humanitarian or relief agencies, though displaced. In such a circumstance it becomes difficult to determine the scale of land issues to be dealt with. The estimates could be far off or way below, in either circumstance they are a hindrance to appropriate planning of post conflict response on land issues. The planned field survey will have to tackle the issue of estimates and verify the percentage of IDPs planning to return to their homelands when peace arrives. Previous Studies have estimated the figure at 75% to 80%.

5.2 POST CONFLICT POLICY AND LEGISLATION

In the assessment and evaluation of the suitability of existing law and policy on land in post conflict situations in northern Uganda, the following issues have arisen:

5.2.1 Issue One: Governments' Plans and Intent

This addresses the need to know more about governments' plans for the lands in northern Uganda, given the spell of rumors and the need to have political clarity on development in Northern Uganda. The question to respond to are:

- (a) Are the holders of rights in northern Uganda clear about their land rights? How, why and what should be done?
- (b) Does government have the political will to address the relevant land and property issues in northern Uganda?

5.2.2 Issue Two: Constitutional and Legal Dispensation

Overall, there is need to address the following specific issues on the constitutional and legal dispensation on land and property rights in post conflict situations for northern Uganda:

- (a) Whether Northern Uganda needs peculiar land law and policy recognizing special effects of the war and displacement? (Such issues as compensation).
- (b) Does the Constitutional dispensation have to consider affirmative action in terms of displacement caused by war in Northern Uganda rather than natural hazards as currently is?
- (c) How will policy restore stability in land relations for productivity and poverty eradication in post conflict northern Uganda?
- (d) For the IDP policy to deliver, what enablements are necessary (guidelines etc)? Is there a policy gap on involuntary resettlement framework (resettlement of IDPs or squatters evicted from land previously owned by IDPs)?

5.2.3 Issue Three: Customary (Traditional) and Statutory (Modern) Law

Currently the Law: presents a complex web of interlocking and overlapping systems of rights drawing their legitimacy from both indigenous customary law and statutory law. The study has to find out whether:

- (a) It is a question of choice over which should have supremacy over the other?
Or
- (b) How do you make the two legal regimes work together or compliment each other (integration)?
- (c) The Constitution of Uganda legalizes customary tenure but also avails avenues for its demise by providing for conversion to freehold
- (d) Address the clash between statutory system and the customary land tenure system for sale of communally owned land

5.2.4 Issue Four: Tenure and Land Use

Over 80% of land in Uganda (more than 90% in northern Uganda) is held on customary tenure, this situation is unlikely to change in the foreseeable future. For IDPs, two distinct problems arise: access to land in displacement for their survival and livelihoods; and potential future problems on their return in relation to definition and allocation of rights in land as well as use of land as a resource. The Customary system of land holding in the face of modern freehold and state tenures faces stiff competition rather than cooperation (as history ably shows us). In the case of post conflict, northern Uganda the following need to be disentangled:

- (a) Is Customary tenure and its varied presentation across; localities and cultures understood both in conflict and post conflict situations; explore the systems and procedures instituted for innovatively understanding customary tenure
- (b) Identifying and Confirming Customary Claims and Rights: Promoting Certificates of Customary Ownership or titling (systematic or sporadic) or registration through communal land associations; note the resilience of customary practices on property rights definition and land use even when titled or registered.
- (c) Land rights delivery based largely on memory and folklore which are no less authoritative versus that based on written law; which serves the land sector better? How about the complex web of secondary and communal tenure rights?
- (d) Unplanned urban settlements and land conflicts especially in urban and peri-urban areas of towns

5.2.5 Issue Five: Claims and Compensation

This will concern itself with identification of the likely types of land conflicts and claims that may rise during return. According to the CSOPNU study (2004) 50% of IDPs expect to face problems in regaining access to their land on return:

- (a) Identification of hypothetical / predictable types of claims suggested by the current fears and speculation over land in northern Uganda
- (b) Levels of understanding of the rights and the public perception, which need to be clarified through sensitization
- (c) Establish the capacity the capacity for verifying, assessing and adjudicating expected claims; in case they are untrue demystify such allegations, accusations and claims.
- (d) Assess the threats, government or private actions that are fuelling tenure insecurity (fears and speculations) over land in northern Uganda
- (e) Investigate the origins and causes of the widespread rumors and fears, Are they founded or baseless real or imagine or perceived?
- (f) Compensation for private land housing IDP camps and land occupied by armed forces (where military detachment are established)
 - Compensation for trees reportedly cut down by soldiers for commercial or other purposes
 - Compensation for land and natural resources degraded by the armed forces or IDPs in the vicinity of IDP camps

5.3 INSTITUTIONAL FRAMEWORK

The Framework for the delivery of land services is one of the areas that must be explored to ensure, that it is in position to deal with returns and resettlement of IDPs.

5.3.1 Issue One: Dispute Resolution

Disputes are often part and parcel of the continuous process of constitution and reconstitution of social and cultural relations in specific community settings¹⁸⁰. No specific recognition is given to indigenous mechanisms of dispute processing or customary law as a normative framework under customary land tenure.

- (a) Is there adequate institutional capacity to manage or resolve land disputes? What type of land conflict resolution mechanisms need to be strengthened (e.g. tribunal, courts, informal systems, alternative dispute resolution processes). The capacity of the courts for this task must be considered and interventions that may be required.
- (b) In particular assess the scope and scale or potential of land disputes and the role and capacity of traditional / customary institution in resolving land disputes
- (c) Role and capacity of local council courts in land dispute resolution (their adequacy and functionality) as alternatives since they already have local legitimacy
- (d) Investigate the weakened clan system; whether it is moribund, malfunction or dysfunctional
- (e) Challenges of linking local/ traditional practices of conflict resolution to the formal justice system
- (f) The introduction of land tribunals does not seem to have injected clarity into those matters, since capacity to process land claims efficiently and transparently is a serious constraint in many places. Assess the Capacity of District Land Tribunals to expedite resolution of land conflicts
- (g) Many types of land disputes are best managed outside the courts; alternative dispute resolution processes, especially mediation and

¹⁸⁰ MWLE, 2006

- arbitration, can be useful while customary and community-based mechanisms for conflict resolution are absolutely relevant
- (h) Traditional Institutions: Is it Modification or Replacement?

5.3.2 Issue Two: Land Administration

Bridging the gap between the rhetoric of good governance reform and implementation is generally huge in post-conflict situations. The steps to take must respond to the questions and Issues below:

- (a) Is the institutional framework under decentralization sufficient to tackle post conflict land administration? At what cost?
- (b) The clan authority system has been disrupted by the war and displacement of people, will not have the same effective cohesion, power and instrumentality to superintendent over arable land and common property resources
- (c) Where statutory institutions have been introduced, they are either far for persons to access, under staffed and with capacity to deliver at lower levels, mainly without acceptance from the local populace.
- (d) As an option and where this is feasible, could the system of CLAs be enabled to take root and institutionalize in a way that embraces clan system but accorded the land powers and functions of the area land committees?
- (e) Clarify the role of LCs in land administration (sales)
- (f) Role and capacity of land committees at sub-county level
- (g) Assessment of the capacity of District Land Office to deliver the necessary land services (are specific institutional roles not provided)
- (h) Traditional Institutions: Is it Modification or Replacement?

5.3.3 Issue Three: Other Actors and their Interventions (Humanitarian Agencies, INGOs and CSOs)

There are several initiatives by humanitarian agencies, development partners and NGOs on the issue of land in post conflict that will have to be:

- (a) Defined and shared (on-going, planned or executed for learning purposes)
- (b) Assessed in order to identify and consider any potential connection, complimentarily with new intervention on post conflict situations
- (c) Coordinate with the Protection Cluster under UNDP and especially the sub-cluster on Human Rights which is also looking at land issues for returning IDPs

5.4 IDENTIFICATION AND EVALUATION OF OPTIONS

The team is to also suggest options for intervention in the Northern Uganda Land Question by putting across suggestion and options. It will include putting energy and time to:

- (a) What kinds of interventions are ideal, possible or recommended?
- (b) Are the human capacities regarding land and property issues adequate or do they need to be strengthened? If so, in what areas do they need to be strengthened?
- (c) Are the local capacities sufficient for the kinds of interventions that are needed?
- (d) What time framework would be involved in addressing these issues (immediate/urgent, short term, medium and long term)
- (e) What level of interventions is required? Are interventions needed at the national level (national government agencies, law, policy, national projects etc) and at local level (community based initiatives, byelaws) or in some combination of both at national and local levels?

5.5 RESOURCES AND COSTS

Assess the resources and costs implications for implementing the post conflict land framework:

- (a) Estimation of required human resources
- (b) Estimation of financial resources needed to establish the required institutions and or make them fully functional
- (c) Who are the critical actors or stakeholders other than government

ANNEX 1: INTERNATIONAL CONVENTIONS AND COVENANTS

Below is a list of relevant international conventions and protocols with dates of accession or ratification by the Government of Uganda, in order of their entry into force.. The information below is correct as of December 2005.

Convention	Short Form	Date of Accession (a) or Ratification (r)
Geneva Convention relative to the Protection of Civilian Persons in Time of War	GCIV	18 May 1964 ^{r/a}
Protocol relating to the Protection of Victims of International Armed Conflicts	Protocol I	13 Mar 1991 ^{r/a}
Protocol relating to the Protection of Victims of Non-International Armed Conflicts	Protocol II	13 Mar 1991 ^{r/a}
Convention relating to the Status of Refugees [1]	Refugee Protocol	27 Sep 1976 ^a
Protocol relating to the Status of Refugees	1967 Protocol	27 Sep 1976 ^a
International Covenant on Economic, Social and Cultural Rights	CESCR	21 Apr 1987 ^a
International Covenant on Civil & Political Rights	CCPR	21 Sep 1995 ^a
Optional Protocol to the International Covenant on Civil and Political Rights [2]	CCPR-OP1	14 Feb 1996
Second Optional Protocol to the International Covenant on Civil and Political Rights	CCPR-OP2	<i>not a party</i>
International Convention on the Elimination of All Forms of Racial Discrimination	CERD	21 Dec 1980 ^a
Convention on the Elimination of All Forms of Discrimination Against Women	CEDAW	21 Aug 1985 ^r
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [3]	CAT	26 Jun 1987 ^a
Convention on the Rights of the Child	CRC	16 Sep 1990 ^r
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict [4]	CRC-OP-AC	6 Jun 2002 ^a
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	CRC-OP-SC	18 Jan 2002 ^a
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families [5]	CMW	1 Jul 2003 ^a

Declarations and Reservations

[1] *Declarations:*

"(1) *In respect of article 7:* The Government of the Republic of Uganda understands this provision as not conferring any legal, political or other enforceable right upon refugees who, at any given time, may be in Uganda. On the basis of this understanding the Government of the Republic of Uganda shall accord refugees such facilities and treatment as the Government of the Republic of Uganda shall in her absolute discretion, deem fit having regard to her own security, economic and social needs.

(2) *In respect of articles 8 and 9:* The Government of the Republic of Uganda declares that the provisions of articles 8 and 9 are recognized by it as recommendations only.

(3) *In respect of article 13:* The Government of the Republic of Uganda reserves to itself the right to abridge this provision without recourse to courts of law or arbitral tribunals, national or international, if the Government of the Republic of Uganda deems such abridgement to be in the public interest.

(4) *In respect of article 15:* The Government of the Republic of Uganda shall in the public interest have the full freedom to withhold any or all rights conferred by this article from any refugees as a class of residents within her territory.

(5) *In respect of article 16:* The Government of the Republic of Uganda understands article 16 paragraphs 2 and 3 thereof as not requiring the Government of the Republic of Uganda to accord to a refugee in need of legal assistance, treatment more favorable than that extended to aliens generally in similar circumstances.

(6) *In respect of article 17:* The obligation specified in article 17 to accord to refugees lawfully staying in the country in the same circumstances shall not be construed as extending to refugees the benefit of preferential treatment granted to nationals of the states who enjoy special privileges on account of existing or future treaties between Uganda and those countries, particularly states of the East African Community and the Organization of African Unity, in accordance with the provisions which govern such charters in this respect.

(7) *In respect of article 25:* The Government of the Republic of Uganda understands that this article shall not require the Government of the Republic of Uganda to incur expenses on behalf of the refugees in connection with the granting of such assistance except in so far as such assistance is requested by and the resulting expense is reimbursed to the Government of the Republic of Uganda by the United Nations High Commissioner for Refugees or any other agency of the United Nations which may succeed it.

(8) *In respect of article 32:* Without recourse to legal process the Government of the Republic of Uganda shall, in the public interest, have the unfettered right to expel any refugee in her territory and may at any time apply such internal measures as the Government may deem necessary in the circumstances; so however that, any action taken by the Government of the Republic of Uganda in this regard shall not operate to the prejudice of the provisions of article 33 of this Convention."

[2] *Reservation:*

"The Republic of Uganda does not accept the competence of the Human Rights Committee to consider a communication under the provisions of article 5 paragraph 2 from an individual if the matter in question has already been considered under another procedure of international investigation or settlement."

[3] *Declaration:*

"In accordance with Article 21 of the Convention, the Government of the Republic of Uganda declares that it recognizes the competence of the Committee against Torture to receive and consider communications submitted by another State party, provided that such other State Party has made a declaration under Article 21 recognizing the competence of the Committee to receive and consider communications in regard to itself."

[4] *Declaration:*

"The Government of the Republic of Uganda declares that the minimum age for the recruitment of persons into the armed forces is by law set at eighteen (18) years. Recruitment is entirely and squarely voluntary and is carried out with the full informed consent of the persons being recruited. There is no conscription in Uganda.

The Government of the Republic of Uganda reserves the right at any time by means of a notification addressed to the Secretary-General of the United Nations, to add, amend or strengthen the present declaration. Such notifications shall take effect from the date of their receipt by the Secretary-General of the United Nations."

[5] *Reservation:*

"The Republic of Uganda cannot guarantee at all times to provide free legal assistance in accordance with the provisions of article 18 paragraph 3(d)."

Regional Instruments

- Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention, 1969)
- African (Banjul) Charter on Human and Peoples' Rights (1981)
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (1995)
- African Charter on the Rights and Welfare of the Child (1990)

National Law and Policy

- Control of Alien Refugees Act (1960)
- The Constitution of the Republic Of Uganda (1995)
- The Refugees Bill (Draft) (2003)
- National Policy for IDPs - (2004)

Other Relevant Documents

- Universal Declaration of Human Rights (1948)
- The Addis Ababa Document on Refugees and Forced Population Displacements in Africa (1994)
- Guiding Principles on Internal Displacement (1998)

ANNEX 2: UN GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

One of the most important contributions of the mandate of the UN's Secretary-General's Special Representative on Internally Displaced Persons, has been the development of international standards for IDPs in the UN Guiding Principles on Internal Displacement which were presented to the UN Commission on Human Rights in 1998¹⁸¹. The UN Commission and the General Assembly in unanimously adopted them, welcomed their use, and encouraged UN agencies, regional organizations, and NGOs to disseminate and apply them. Individual governments have begun to incorporate them in national policies and laws, international organizations and regional bodies have welcomed and endorsed them, and some national courts have begun to refer to them as relevant restatements of existing international law.

The Guiding Principles address the specific needs of IDPs worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration. The Principles identify the rights and guarantees which, when fully observed and respected, can prevent arbitrary displacement and address the needs of IDPs in terms of protection, assistance and solutions. In keeping with its focus on needs, the Principles are structured around the phases of internal displacement. They address the full range of rights that may become relevant for the protection against displacement; protection during displacement; the framework for humanitarian assistance; and protection during return, resettlement and reintegration once durable solutions become possible. The Principles reflect and are consistent with international human rights law and international humanitarian law. There are a compound amalgamation of concepts, rights and obligations for the IDPs.

The Guiding Principles facilitate a broad understanding of protection, which encompasses "all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. international human rights, international humanitarian law and refugee law¹⁸²". This ought to ensure the cessation; non-recurrence and prevention of violations and those victims of violations are provided with effective remedies including reparation, rehabilitation or compensation. From a rights perspective, it is important to stress that such protection must not be limited solely to the survival and physical security of IDPs but should cover all guarantees provided by international human rights law, including protection of property¹⁸³, access to documents and participation in elections (even before return to the habitual place of residence)

All the rights enshrined in the Guiding Principles are equally important, as mere survival without dignity is intolerable, whereas dignity cannot be enjoyed without survival. The Principles make it possible to systematically analyze and identify the main protection needs and facilitate the task of determining actions needed and assigning respective roles and responsibilities to the different stakeholders. The Principles draw their authority from the fact that they are based upon, reflect and are consistent with international human rights law, and international humanitarian law, as well as international refugee law where it can be applied by analogy¹⁸⁴.

¹⁸¹ Sergio Vieira de Mello, Under-Secretary-General for Humanitarian Affairs

¹⁸² Refugee Law Project, 2004

¹⁸³ Internal Displacement Monitoring Center, June 2006

¹⁸⁴ See Annex on International Law: Conventions and Covenants that Uganda is signatory to, rights of IDPs

The Principles restate, in greater detail, many of the existing legal provisions which respond to specific needs of IDPs. Experience shows that their connection to existing law is recognized and acknowledged by many governments, which, at the same time, prefer to discuss their application without having to consider the issue of legal obligations. For this and other reasons, it is doubtful, at least for the time being, whether turning the Guiding Principles into a binding UN Convention would be feasible or even desirable¹⁸⁵.

Guiding Principle 21 states that:

“No one shall be arbitrarily deprived of property and possession”¹⁸⁶

“(2) The property and possessions of IDPs shall in all circumstances be protected, in particular, against the following acts; (a) pillage; (b) direct or indiscriminate attacks of other acts of violence; (c) being used to shield military operations or objectives; (d) being made the object of reprisal; and (e) being destroyed or appropriated as a form of collective punishment”¹⁸⁷

“(3) Property and possessions left behind by IDPs should be protected against destruction and arbitrary and illegal appropriation, occupation and use”¹⁸⁸

Guiding Principle 28 states that:

“1. Competent authorities have the primary duty to establish conditions, as well as provide the means, to allow IDPs to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled IDPs”¹⁸⁹ and

“2. Special efforts should be made to ensure the full participation of IDPs in the planning and management of their return or resettlement and reintegration”¹⁹⁰

Guiding Principle 29 states that:

“2. Competent authorities have the duty and responsibility to assist returned or resettled IDPs with recovery, to the extent possible, of the property and possessions they left behind or were disposed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall assist these persons in obtaining appropriate compensation or other forms of just reparation or shall themselves provide such recompense”¹⁹¹.

¹⁸⁵ OCHA 23 May 2001

¹⁸⁶ The contents reflect several provisions of human rights instruments. Thus, Article 17 UDHR states that “(2) No one shall be arbitrarily deprived of his property”

¹⁸⁷ Paragraph 2 sets forth a non exhaustive list of acts that violate the right to own, use and enjoy property in all circumstances, and thus reflect the core of property rights as embodied in various provisions of humanitarian law that are applicable at the universal level

¹⁸⁸ The principle states the duty of authorities not only to refrain from violations but to provide protection against violations by others.

¹⁸⁹ ILO Convention No. 169 concerning Indigenous and Tribal Peoples states explicitly that “whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist” (Article 16(3)). The duty of the competent authorities to allow for the return of IDPs can be based on freedom of movement and the right to choose one’s residence

¹⁹⁰ Paragraph 2 is not only important in ensuring that such movements are voluntary, but also will greatly facilitate return or resettlement

¹⁹¹ Whereas Principle 21 addresses the right of property during displacement, this paragraph deals with an aspect of this right which becomes relevant at the time of return or resettlement. Returnees have right to restitution for their property or to compensation for its loss. The Inter-American Commission on Human Rights has recommended payment of just compensation to returning IDPs for the loss of their property, including homes, crops, livestock and other belongings. The Dayton Peace Agreement for Bosnia and Herzegovina (DPA) established a Commission for Real Property Claims of Displaced Persons and Refugees in Annex 7, with the explicit mandate to decide in a final and binding manner any claims for real property where the property has not voluntarily been sold or otherwise transferred during the war period. 1991-1995. Claims may be for return of the property or for just compensation in lieu of return

Guiding Principle 15 states that:-

“(d); internally displaced people have the rights to be protected against forcible return to or resettlement in any place where their life, safety, liberty or health would be at risk”¹⁹².

Guiding Principle 9 states that:

“States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands”¹⁹³

Guiding Principle 2 states:-

That “1: These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved”¹⁹⁴

“2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law”¹⁹⁵

Application of the Principles in Uganda

Uganda adopted a national policy on Internally Displaced Persons has in August 2004¹⁹⁶: This policy drew extensively on the Guiding Principles for Internal Displacement:

- (a) The policy recognizes that IDPs should enjoy, in full equality, the same rights and freedoms under the Constitution and all other laws, as do all other persons in Uganda
- (b) The policy sets out to establish an institutional framework for IDP protection through local government
- (c) Government has undertaken training on the Guiding Principles and they are available the in local languages

¹⁹² This is a novel principle with no direct antecedent in existing instruments. Protection against forcible return to situations of danger is well established in the refuge law principle of non-refoulement, and in major human rights protections relating to torture and the deportation or extradition of aliens. This subparagraph meets an important need by applying, by analogy, the authority of existing refugee-and alien-related human rights law to the field of internal displacement

¹⁹³ Article 13(1) of ILO Convention No. 169 concerning Indigenous and Tribal Peoples recognizes that “governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship”. Thus, when relocation of such peoples is deemed necessary, Article 16 (3) of ILO Convention No. 169 stipulates that “the people shall have the right to return to their traditional lands, as soon as grounds for relocation cease to exist. If Return is not possible “these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to the lands previously occupied by them, suitable to provide for their present needs and future development (Article 16 (4) ILO Convention No. 169).

¹⁹⁴ This principle advocates the widest possible scope of observance for the Guiding Principles and emphasizes their impartial and neutral nature. By stressing that their observance does not affect the legal status of anyone, para/ seeks to pre-empt their use for political ends. This para goes beyond human rights provisions which usually impose direct obligations only on states and state actors. Certain human rights norms place such obligations upon non-state actors as well. Humanitarian law applicable in situations of non-international conflicts (common Article 3 Geneva Conventions and Protocol II) binds not only state actors but all parties to the conflict.

¹⁹⁵ The para underscores that Guiding Principles constitute a minimum standard and that more favorable provisions of human rights law, humanitarian law or domestic law shall not be restricted, modified or impaired by their application. Thus the Guiding Principles can never provide any valid arguments for limiting rights and guarantees going beyond them.

¹⁹⁶ Internal Displacement Monitoring Centre, 2002

However, a study undertaken by OCHA in 2002 revealed that as far as the Principles are concerned in Uganda, the establishment of the “Protected Villages” which may have been justifiable on grounds of military exigency in 1996 (under the principles of the Geneva Convention), their prolongation into 2002 would seem to be inconsistent with international humanitarian principles. In relation to this principle, several UN evaluations¹⁹⁷ have pointed to the fact that Uganda has consistently promoted the concept of “Protected Villages” as an “imperative military reason”, whose substance has receded or diminished in recent years. While the security may vary considerably from one area to the next, making the blanket prolongation of forced encampment to seem arbitrary and reflect a failure to fully examine possible alternatives¹⁹⁸.

¹⁹⁷ Internal Displacement Monitoring Centre, June 2006

¹⁹⁸ Internal Displacement Monitoring Centre, June 2006

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