

**POST CONFLICT LAND POLICY AND ADMINISTRATION: LESSONS FROM
RETURN AND RESETTLEMENT OF IDPs IN SOROTI DISTRICT:
IMPLICATIONS FOR PRDP, NATIONAL LAND POLICY,
LAND ACT CAP 227 AND NPIDPs 2005**



FIELD FINDINGS

By:

Margaret A. Rugadya (Lead Consultant)
World Bank UPI: 267367
Manager, Policy Analysis Unit, Associates for Development
Tel. +031-22384874, +0772-497145
Email: afdresearch@yahoo.com, mrugadya@afdresearch.org

Team Members:

Eddie Nsamba-Gayiyi
Executive Director, Consultant Surveyors and Planners

Herbert Kamusiime
Research Manager, Associates for Development

For the World Bank, Northern Uganda Recovery and Development Program (RDP)

January, 2007

Cover Photo: Obuku IDP Camp, Tubur Block Soroti District, September 2006

CONTENT

LIST OF TABLES, FIGURES AND PHOTOGRAPHS.....	iii
ACRONYMS.....	iv
EXECUTIVE SUMMARY.....	v
1 INTRODUCTION.....	1
1.1 BACKGROUND.....	1
1.2 OBJECTIVES OF THE STUDY.....	1
1.3 DELIVERABLES.....	1
1.4 METHODOLOGY.....	2
1.4.1 Data Collection Methods.....	2
1.4.2 Study Area.....	4
2. KEY FINDINGS.....	7
2.1 IDP SITUATION IN TESO.....	7
2.2 LAND CLAIMS AND CONFLICTS.....	9
2.3 INSTITUTIONAL FRAMEWORK.....	16
2.4 LEGAL FRAMEWORK.....	24
2.5 POLICY FRAMEWORK.....	25
2.6 OTHER STAKEHOLDERS ON LAND IN NORTHERN UGANDA.....	28
3. EMERGING ISSUES AND RECOMMENDED ACTIONS.....	29
3.1 GUIDELINES AND BEST PRACTICES.....	29
3.2 CRITICAL CHALLENGES.....	29
3.3 ISSUES AND RECOMMENDATIONS FOR TENURE SECURITY.....	30
3.4 INSTITUTIONAL FRAMEWORK: ISSUES AND ACTIONS.....	35
3.5 RECOMMENDED ACTIONS FOR POLICY FRAMEWORK.....	36
3.6 RECOMMENDED ACTIONS FOR LEGAL FRAMEWORK.....	37
3.7 ACTIVITY SEQUENCE AND FINANCIAL IMPLICATIONS FOR 3 YEARS FOR SOROTI DISTRICT.....	39
4. WAY FORWARD.....	41
4.1 OPERATIONAL CONSIDERATIONS.....	41
4.2 SUBMISSIONS FOR PRDP AND NATIONAL LAND POLICY.....	42
4.2.1 PRDP 2006- 2009.....	42
4.2.2 Draft National Land Policy.....	44
4.3 ISSUES FOR VALIDATION IN LANGO AND ACHOLI.....	46
5. ANNEXES.....	47
5.1 RESEARCH ISSUES AND QUESTIONS.....	47
5.2 PROFILE OF DONORS, DEVELOPMENT PARTNERS, CSOs AND OTHER50 STAKEHOLDERS IN SOROTI (IDP ISSUES).....	50
5.3 LEVELS OF IDP RETURN IN SOROTI.....	52
5.4 LEGAL AND POLICY FRAMEWORK FOR IDP RETURN.....	53
5.5 LAND MATTERS IN GOVERNMENT PLANS FOR IDP RETURN.....	57
5.6 BEST PRACTICES IN LAND POLICY FOR TRANSITION TO PEACE.....	63
5.7 LIST OF RESPONDENTS.....	66

LIST OF TABLES, FIGURES AND PHOTOGRAPHS

Figure 1: Map showing Study Areas	4
Table 2: Study Population Description.....	5
Table 3: Study Respondents (FGDs).....	6
Table 4: Study Sites Profile	6
Image 1: Homestead being rebuilt after return, note the size of the Granary	7
Table 5: Estimates of IDPs by Districts (July, 2006)	8
Image 2: Meeting the returned IDP Community in Tubur Sub County.....	12
Table 6: Respondent's Views on Titling Customary Tenure.....	13
Image 3: Returned IDPs have resumed crop cultivation and use of land	14
Image 4: Women involved in Focus Group Discussions in Orieta B, Tubur Sub-County	15
Image 5: Research Team Meeting Members of the Soroti Circuit District Land Tribunal	17
Image 6: Interview with Local Council 3 Chairperson, Tubur Sub County	19
Figure 7: Land Disputes filed in the Soroti District Land Tribunal.....	20
Table 8: Performance of Soroti District Land Tribunal.....	21
Figure 9: Applications for Titles (Soroti District Land Office)	22
Table 10: Performance of Soroti District Land Office	23
Image 7: Members of Local Council 1, Orieta B, Tubur- Soroti with Research Team..	23
Table 11: Transformations on Customary Tenure in Teso	30
Table 12: Threats to IDP Land on Return and Resettlement	31
Table 13: Different IDP Categories and Land Issues	32
Table 14: Insight into Land Rentals and Sales.....	33

ACRONYMS

CSOs	Civil Society Organizations
DLB	District Land Board
DLT	District Land Tribunal
FGDs	Focus Group Discussions
GoU	Government of Uganda
IDPs	Internally Displaced Persons
LC 1	Local Council One
LC 2	Local Council Two
LC 3	Local Council Three
LC 4	Local Council Four
LC 5	Local Council Five
LSSP	Land Sector Strategic Plan
MoFPED	Ministry of Finance, Planning and Economic Development
MoLHUD	Ministry of Lands, Housing and Urban Development
MoLG	Ministry of Local Government
NLP	National Land Policy
OPM	Office of the Prime Minister
PRDP	Peace, Recovery and Development Programme

EXECUTIVE SUMMARY

The core objective of this study is to provide an input into the design of the Northern Uganda PRDP and National Land policy with respect to post-conflict land policy and administration framework. This study was undertaken in two phases; One: Literature Review which involved review of policy and law on IDPs in Uganda, highlighting issues and gaps; review of existing Studies on Land and IDPs in Uganda; Issues emerging from International best practice; lessons and experiences from Great Lakes region (Rwanda, Burundi and Democratic Republic of Congo) and International experience (from Cambodia, El Salvador and Bosnia). Two: Reconnaissance survey of One village in Teso (Soroti District, Orieta B Village, Tubur Sub County) for returned IDPs, Obuku Camp and Nakatunya in Soroti Municipality (for those still in displacement and urban resettled); Nyorobe Olio sub county to cater for rural resettled IDPs and Katakwi district for comparative purposes and capturing variations within Teso itself. The purpose was to identify: types of land conflicts and claims on return; their prevention, resolution and adjudication mechanisms including legal provisions, formal and informal institutions; gaps in policy and administrative framework for handling potential conflicts and claims; options for filling them and ; resources needed to undertake corrective actions

From the survey it emerged that Teso's IDP Displacement patterns are unique and varied (within Teso itself) and peculiar in relation to the rest of northern Uganda, thus findings in Teso (Soroti) need to be validated for the rest of northern Uganda given the fact that where return has happened, periods of displacement have been short and the social-culture context varies. The anticipated escalation in land claims and conflicts in the aftermath of IDP return has not happened. From the review of literature, a number of claims and conflicts anticipated were not found on ground (though likely to be in the rest of Northern Uganda); specifically, no IDPs found their land occupied by squatters on return; no boundary conflicts (except extended cultivation with no intention of grabbing) happened, persons are able to locate their boundaries and land on return.

However, there is evidence of widespread distrust, suspicion and fear of government's intentions on land leading to speculations of land grabbing based on evidence of state sponsored or stage backed land grabbers (mainly the pastoral *Bahima*), the spill over effects of speculation from Acholi and Lango regions in relation to the motive of decongestion and set up of satellite camps, coupled with instances of the army cultivating IDPs' land in absentia and without their consent. Rumors are also perpetuated by the media and CSOs pointing to proposed urbanization of camps and proposal on rural growth centres under the department of housing and urban development of the Ministry of Land, Housing and Urban Development. It is clear that threats to land tenure security are arising from suspicions and fears fuelled by speculative release of information by different stakeholders and absence of definitive political will to state a clear government stand on land in northern Uganda.

It is the finding of this study that in the aftermath of IDP return, customary tenure has transformed in terms of institutions and practices. Contrary to earlier practices, household heads are now "owners" not "trustees" of rights in land, therefore the power base of this tenure has shifted from the clans to the household heads. Land sales are now possible with justification to clan but not approval; the clan is merely informed and is not a sanctioning authority. Common property resources and other common land resources are at the greatest risk with the trend of being annexed by neighbors at the expense of the community escalating. Local Councils (1-3) are emerging power institutions in land administration and dispute resolution on customary tenure replacing clans and eroding their authority and legitimacy. This study recommends that efforts and reforms should be geared towards integration of the traditional institutions with the statutory ones rather than option for either of them the replacing the other. Land

administration and dispute resolution on customary tenure ought to start with the clan at the grassroots.

In the event, that recovery and reconstruction programmes consider certification or registration of customary tenure they are going to face an uphill task in implementing such an undertaking because of the high suspicion the community has for any titling or certification initiatives, instead considerations should be made for Codification of Customary tenure. However, should it become inevitable and certification or registration are considered, then it will be prudent to ensure that it is undertaken under family ownership and reform of the procedures for formation of Communal Land Associations is undertaken so that common property resources and communal land which is at the greatest risk of being grabbed (by powerful individual, elites, army and others with dubious intentions) is registered first in order to safeguard it.

It was found that the anticipated increase in land sales has not taken place; instead an increase in land rentals is taking place (mainly in form of sharecropping, cash rentals, or lending) without any form of regulation. This vibrant rural land-rental market needs a certain level of regulation to safe guard the interests of the vulnerable groups who are actively engaging in it. In urban areas, slum dwellers are replacing IDPs in camps that are being evacuated, while some IDPs settled outside the camps; in road reserves and other peoples' private land. The emerging squatter situation is creating complications for urban development, planning and control. In addition, some IDPs are not interested in return due to the urban opportunities hence the need to absorb them in the urban centres. Widows are the largest number of persons remaining in the camps (approximately 5% of total displaced population is yet to return) engaging in petty trade due to uncertain land rights. For such groups considerations for restitution or resettlement will have to be made under clearly formulated guidelines.

Decentralized land administration structures as laid out in the Land Act are sufficient to handle post-conflict situation but the entire framework is almost non-functional because human resources (manpower), institutional structures and equipment are lacking. Specifically, apex institutions are constituted (District Land Board District Land Office) but they suffer from operational inefficiencies, limited service provision to urban areas and low demand for their services in rural areas. Root institutions (Area Land Committees) are non-existent and non-functional, creating a vacuum that LCs and Clans have attempted to fill. Restoring these institutions to functionality by availing resources and staffing should be a priority in the recovery and development programmes for northern Uganda. In addition to availing resources under PRDP to these institutions, it will be imperative local governments consider them priority areas in resource allocation long term sustainability.

Despite elaborate provisions in law District Land Tribunals are barely functional on account of being grossly under-resourced. Land Tribunal structures were inadequate to tackle dispute resolution because of; the circuiting concept (for Soroti Circuit had 6 Districts); inadequate allocation of resources and facilitation (leading to resource scramble with other institutions in the judiciary); accumulating backlog due to low rate of case resolution. Today, the institutional vacuum on dispute resolution is more pronounced since the tribunals are closed and magistrate courts have taken over. LC 2 as courts of first instance on land disputes are not operational, in practice LC 1 is, and amendments Land Act need to recognize this. The clan is often, the first point of reference before LC 1 and holds legitimacy to people despite not being mainstreamed in the land justice system. Iteso Culture Union (Emiomor) together with CSOs are moving to re-instate powers of clan over land through Ordinances adopted by LC 5 in all district of Teso, but lack capacity and resources, such initiatives need to be supported in the recovery programme, because in the absence of statutory authority and institutions, the traditional institutions have successfully handled the mantle of land

justice and land administration. All this was achieved with a glaring absence of legal aid and high levels of ignorance of land law, therefore the non-conventional methods promoted by the clans where mediation and reconciliation rather than judgment are emphasized have delivered the peaceful return of IDPs without incidents of land disputes in Soroti

In this study, it has emerged that there is no established institutional framework to handle restitution (recovery of land), resettlement and compensation issues. The IDP policy mandates local governments on restitution but these have neither resources nor technical capacity to undertake this, no national (executing) agency is responsible for compensation, yet it is a state function. This necessitates review and appropriate allocation of responsibility preferably to the Ministry of Lands, Housing and Urban development. In addition, the same ministry needs to clarify land transaction fees of between 10%-20% charged by Local Councils its legality and use, even though in practice the public pays to avoid backlash.

Assessing policy and law on land in conflict and post conflict situation rotates and revolves around four major principles which are the defining parameters on property rights;

- (i) commitment to protect land (property) and possessions;
- (ii) commitment to resettle and reintegrate IDPs on return by acquiring land or;
- (iii) by availing mechanisms for recovery (restitution) of IDPs' land and
- (iv) compensation in event of loss of land or property.

In terms of policy, none of the national strategies and plans for the recovery of Northern Uganda considers land issues as an essential component of the agenda, e.g. in restoration of state institutions to functionality (PRDP); land administration and dispute resolution are not party. It is recommended that agenda setting for land issues in post conflict recovery and development programmes should be priority action number one (including clarity of issues to be tackled, roles allocation for stakeholders) given the centrality of land in ensuring that communities do not descend into land related violence on return. The (Draft) National Land Policy's main focus on IDP returns is limited to place of origin, leaving the option of resettlement not tackled and the delivery of land services as well as ascertainment of rights.

The existing legal framework on the other hand is not sufficient for post conflict land matters, it would be important to amend the 1995 Constitution so that permissible grounds for Government to invoke powers of eminent domain for compulsorily acquisition of land include resettlement. Land Act Cap 227 provides for Land Fund for (among other things) "resettling people rendered landless" section 41. However guidelines or principles to apply for resettlement are lacking and since its establishment the Fund has lacked appropriate administrative and institutional framework; resources and capacity to fulfill its mandate. Provisions for compensation in Land Act are insufficient, as section 72 limits compensation arising out of official encampment to damages and losses on private land and exempts encampment by authorized security forces. The Land Acquisition Act (which is the principle law on compensation) is outdated and inconsistent with the constitution. Modalities for making compensation claims are not detailed and the principles or basis of assessment for compensation needs to be clarified (determining quantum), verification of claims and executing agencies. Rules for treating compensation claims and disputes (note northern Uganda has customary tenure; therefore no land records; nature of evidence) and whether compensation should be tackled legally or politically needs to be dealt with. A number of laws need to be amended to ensure that they are responsive to restitution, resettlement and compensation for IDPs on return.

1 INTRODUCTION

1.1 BACKGROUND

Between 1.7 and 2 million people remain internally displaced in northern Uganda as a result of the conflict between the government and the Lord's Resistance Army (LRA); continued insecurity caused by Karamojong warriors has resulted in new displacement in the eastern part of the country¹. However, since the beginning of 2006, events relating to northern Uganda have moved at a sharp pace. Government of Southern Sudan's interest in the resolution of the conflict in northern Uganda has led them to adopt a mediatory role between the government of Uganda and Lords Resistance Army (LRA); both parties have shown unprecedented commitment to peace talks in Juba. The return of peace will imply return of IDPs to the homes, in some areas it is already commencing, in Teso region over 90% return has been achieved, in Lango sub-region the process is picking momentum, while in Acholi land the reality of return closer seems more visible now than ever before.

Return and resettlement will present such complexities, social frictions and clashes that will adversely affect people's lives and property, particularly land ownership and occupancies. An important consequence of conflict is increased poverty due to abandonment of agricultural and livestock activities, which is presently apparent in Northern Uganda, making the need for restoring stability in land relations and the resumption of sustainable livelihood activities, a critical component of any programmes for recovery and return.

1.2 OBJECTIVES OF THE STUDY

The core objective of this study is to inform the Northern Uganda Recovery and Development Program (PRDP) and the national Land Policy with respect to post-conflict land policy and administration framework. This will include legal provisions and institutions, needed to ensure a peaceful return of the Internally Displaced Persons (IDPs) to their places of origin in the north². More specifically the study identifies:

- the types of land conflicts and claims that are likely to arise during the return of IDPs;
- their prevention, resolution or adjudication mechanisms, within the context of the current land policy and administration framework, including its legal provisions, formal and informal institutions;
- the gaps in the current land policy and administration framework for handling potential land conflicts and claims, and the options available for filling such gaps;
- the resources needed for implementing the relevant actions and policy measures;

On this basis, the study will formulate recommendations for actions and policy measures by government and others for assuring a smooth transition. The study adds value to previous studies by identifying the most plausible types of land conflicts and claims that may arise during return and the currently missing prevention and resolution mechanisms to be put in place before and during return.

1.3 DELIVERABLES

Two major outputs are expected:

One: Identification and Evaluation of Options:

An outline of possible for intervention in the Northern Uganda Land Question by putting across options. It will specify;

- (a) What kinds of interventions are ideal, possible or recommended?

¹ RLP, 2006

² "Return" is the process of one going back to his home or place of origin. "Resettlement" is the process of starting a new life in a place other than one's home or place of habitual residence within the same country

- (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?

Two: Resources and Costs

An assessment of 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

This report therefore provides information on the following:

- a. The typical IDP plans with respect to lands during post conflict returns, that is whether they tend to return to claim back their land, live on the land and use it, or sell it to move on to other livelihoods, etc.;
- b. The types of land conflicts and claims that characterize post conflict return and resettlement of IDPs (see the attached concept note for details);
- c. their prevention, resolution or adjudication mechanisms, within the context of the existing land policy and administration framework, including its legal provisions, formal and informal institutions;
- d. the gaps in land policy and administration framework for handling potential land conflicts and claims, and the options available and used for filling such gaps;
- e. the resources needed for implementing the relevant actions and policy measures;
- f. Other interesting and relevant issues

On this basis, the analysis formulates recommendations for actions and policy measures by government and others for assuring a smooth transition in Northern Uganda.

1.4 METHODOLOGY

This study was structured as a reconnaissance survey of one village community where IDP return has taken place. It involved collecting exploratory data on post conflict land policy and administration issues and lessons in a community where displacement occurred and return/ resettlement has taken place.

1.4.1 Data Collection Methods

The design of data collection instruments was based on findings, issues and research questions that arose from review of literature. These were discussed and pre-tested, and later applied. In Soroti district, a number of methods were applied in the collection of data.

Focus Group Discussions:

These were held with the following categories of respondents to discuss their roles, constraints, and their views and answers regarding the main research questions:

- (i) With Soroti District Local Government staff and the District Disaster Management Committee which responded to specific issues put across in the research

questions, this was preceded by sensitization sessions on the purpose and expected outcomes of the information being collected.

- (ii) With the various groups of community members in Tubur sub county which was sampled to be part of the study and representing unique population samples these were:
 - Community members of Orieta Village
 - Clan Leaders and other Institutions that tackle land issues in the community
 - Women and Children of Orieta Village
 - Elders and Opinion Leaders of Orieta Village
- (iii) In addition FGDs were also held in other locations with population samples defined in the terms of reference. Specifically the following;
 - IDPs who are yet to return living in Obuku Camp but originating from Tubur Sub county
 - Resettled Urban IDPs in Nakatunya adjacent to Obuku Camp
 - Resettled Rural IDPs in Nyoroby Village, Olio Sub County.

Key Informant Interviews

These were mainly carried out with;

- (i) Political heads of the districts, which also served as briefing sessions on the purpose of the study and the key research questions, the interaction gave opportunity to such office bearers to respond and input into the study, the following were met:
 - Chief Administrative Officer , Soroti District
 - Chief Administrative Officer, Katakwi District
 - District Local Council V Chairperson, Soroti District
 - Resident District Commissioner (RDC), Soroti District
- (ii) Staff and officials of different relevant departments, which are charged with administration of land matters within local governments
 - District Disaster Preparedness Coordinators for both Katakwi and Soroti
 - District Land Tribunal Soroti
 - District Land Office (Soroti and Katakwi)
- (iii) Staff and officials of relief and emergency agencies in Soroti District (these were unable to meet (as earlier proposed) in a round table so were interviewed individually to learn from their experience in managing the return and their views and answers regarding the main research questions (see annex for lists)
- (iv) Staff and officials of non governmental organizations operating on relief and resettlement in Soroti and Teso region (see annex for lists)
- (v) In Kampala, more than 20 Civil Society Organizations and Government Departments directly charged or involved in land matters and IDPs situations management were also interviewed (see annex for lists)

Records Extraction

An extraction of the district records for land title registrations, related fees, land conflicts and claims filed and adjudicated or pending their settlement in the District Land Office and the District Land Offices. The assessment also stretched to budget and capacities of public institutions involved in the return process.

Ground Proofing

The study team accompanied by some village community leaders and members toured the lands in the village to verify information on land use, common property resources. It was not possible to make use of the GPS instrument during the tour in order to get geo-reference since no specific cases arose that deserved attention.

Data Entry, Analysis and Reporting

To synthesize all the information collected in relation to the research questions and/ or objectives in fulfillment of deliverables required by the terms of reference. Analysis of

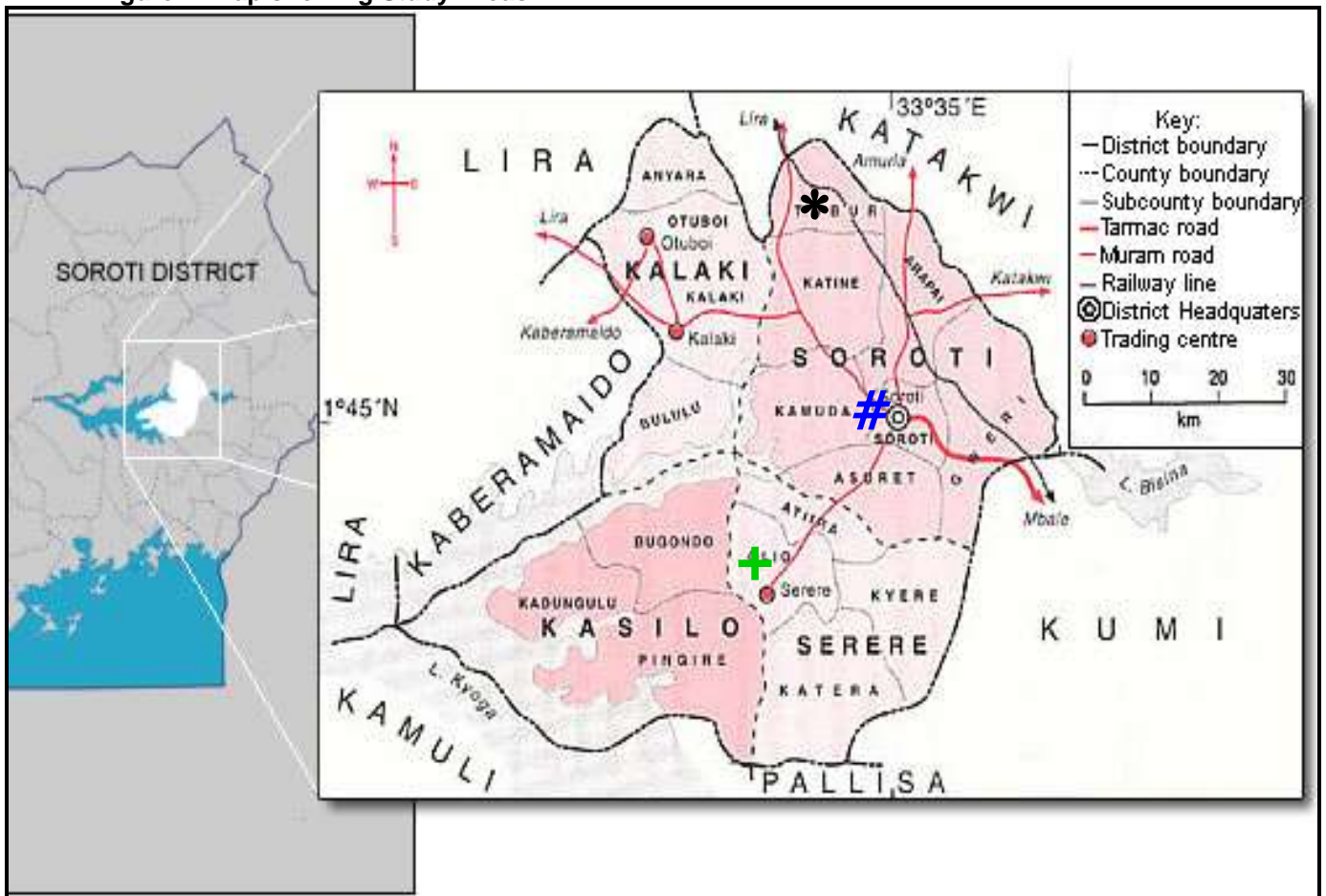
reconnaissance survey data: linking results to reviewed literature and study objectives, pointing out unique and general implications of findings to local and national contexts. Recommendations and implications on emerging issues for the policy and legal context responding to three levels of analysis; legal and policy designed to provide inputs to the Northern Uganda Recovery and Development Program and the National Land Policy, institutional designed to provide inputs to institutions that need to be put in place for return and resource needs for such undertaking.

1.4.2 Study Area

(a) Soroti District

Soroti district was the study area as part of the Teso region; however for coherence of issues, the team also visited Katakwi District.

Figure 1: Map showing Study Areas



Key:

- *Orieta B village in Tubur Sub County
- + Nyorobe Village in Olio Sub County;
- #Obuku Camp and Nakatunya in Soroti Municipality

Physically the Soroti lies approximately on latitudes $1^{\circ} 33'$ and $2^{\circ} 23'$ North of the equator, $30^{\circ} 01'$ and $34^{\circ} 18'$ degrees east of the prime. The district covers approximately a total land area of $2,662.5 \text{ km}^2$ of which $2,256.5 \text{ km}^2$ is land and 406 km^2 is water. Currently the district is administratively divided into the rural counties of Kasilo, Serere, Soroti and Soroti Municipality. There are 17 sub-counties (including 3 divisions of the Municipality), 67 parishes (55 rural parishes and 12 wards) and 517 villages³. Soroti district has a total population of 369,789⁴ of which 180,147 are males

³ District Development Plan Soroti, 2006-2009

and 189,642 are female. The recent 2002 Population and Housing Census results showed a remarkably high annual population growth rate of 5.1 % (1980 –1991). This is one and a half times higher than the national average of 3.3 %! Soroti District has a population density of 151 persons per square km that is higher than the national average of 124 persons per sq. km and is the third most densely populated among the districts of the Teso Sub region after Pallisa (328) and Kumi (160)⁵. Much of this population (89%) is rural of which 51% comprises women, a situation that reflects basically agricultural nature of the district's economy. Generally, access to and control over key production assets and resources is still male dominated. Most rural women are without independent sources of income and so have less access to productive resources⁶. In rural areas housing is of grass-thatched roofs, mud walls and the floor remains earth. The urban areas are mostly constructed with burnt bricks and iron sheets.

(b) **Study Population**

It was agreed at the time of inception of this study, that the selection of the specific village community be done after the research team met with local government round table discussion. It emerged that the key consideration was a village where complete or total displacement and return happened. Other considerations built in the concept note for the study were;

- (i) The village being representative of the typical demographic and land characteristics in the universe of returning communities
- (ii) IDP returning conditions, degree of implementation of the Land Act or readiness for its implementation, the NPIDP 2004 is being piloted in this area, though the Land Act 1998 is not (for the rest of the district)
- (iii) Interaction with Office of the Prime Minister, Ministry of Lands Housing and Urban Development, Soroti District Administration and UNOCHA. The area is selected for piloting of appropriate housing in post-conflict situation by the UN Habitat.

Table 2: Study Population Description

Population	Soroti District	Municipality (Location of Obuku Camp & Nakatunya)	Tubur Sub County (Location of Orieta B Village)	Olio Sub County (Location of Nyorobe Village)
Households	70,455	9768	2945	4670
Males	180,147	20724	6946	12103
Females	189,642	20987	7464	12636
Total	369,789	41711	14410	24739
Urban Proportion	11.3%	-	-	-
Household Size	5.2	-	4.9	5.3
Population Density (Persons /Sq.Km)	150.6	-	-	-
Distance from Soroti Town (Kms)	-	-	32	48
IDP population at time of Study	14,202	9,148	1,393*	690

** From records, this does not imply Tuburs' own population in displacement but rather the population of Acuna IDP camp located within the sub county.*

The sub county of Tubur in Soroti County was selected as the study site, this sub county was regarded as a 'front line sub county' where the LRA attacked first in the District, it experienced nearly 100% displacement and at the time of study, return was at a level of over 90%. It is also the site for model housing for IDP return under the UN-Habitat programme. Within the sub county Orieta B was the selected village because it was one of the most affected villages during displacement and return. In addition, other detailed respondents fitting the descriptions of urban resettled and rural resettled

⁴ 2002 Final census results

⁵ 2002 final census results

⁶ District Development Plan Soroti, 2006-2009

were taken from Obuku Camp / Nakatunya and Nyorobe village respectively. See Figure 2 for details on respondent populations and figure 4 on study site descriptions.

(c) Focus Group Meetings Respondents

The figure below shows the respondents in the Focus group discussions from the different study sites.

Table 3: Study Respondents (FGDs)

Summary of Data Collection			Respondents		
Category	Location	No. of meetings	Female	Males	Total
Resettled Rural	Nyorobe – Olio sub county	2	28	21	49
Resettled Urban	Nakatunya- Soroti Town	2	31	17	48
Vulnerable Group	Orieta B-Tubur sub county	2	48		48
Elders/ Clan	Orieta B-Tubur sub county	2	2	44	46
Village community	Orieta B-Tubur, sub county	3	55	143	198
District	District Council Soroti	1	6	19	25
Still in Camp	Obuku Camp- Soroti Municipality	2	13	31	44
Total		14	183	275	458

(d) Study Sites

The three study sites (villages) where focus group meetings took place are described in the figure below.

Table 4: Study Sites Profile

Study Site	Profile
Obuku Camp and Nakatunya	<ul style="list-style-type: none"> • These are located within the northern division of Soroti Municipality between Lira road and Katakwi road. Obuku camp is located on land belonging to Uganda Prisons Service; it was used as a farm. It occupies an area of 14-16 acres. The housing units are mud and wattle, mostly grass thatch although some have iron sheets. The camp was planned by the Soroti District Land Office. • Nakatunya is a slum near Obuku camp; actually one passes through it to reach the camp. It's a high population area with a lot of petty trade taking place and housing units also largely mud and wattle though with iron sheets built in an unplanned manner.
Orieta B Village	<ul style="list-style-type: none"> • Is located in Tubur Sub County, which is about 35 Kms from Soroti town off the Katakwi-Amuria road. Orieta is divided into A and B. • This mainly an arable farming community with hardly any livestock • At the height of insurgency it experienced nearly 100% displacement and at the time of study, return was at a level of over 90%. • Newly reconstructed homesteads and freshly opened land was a common feature at the time of study.
Nyorobe Village	<ul style="list-style-type: none"> • Is located in Olio Sub County about 55 Kms from Soroti town in the direction of Arapai Agricultural College past Serere Sub County headquarters. • This is an area characterized by a mixture of tribes although the dominant ones are the Kumam and Ateso. • It is a farming community; though livestock is common. • The general settlement pattern is clustered off the main roads where it is linear.

2. KEY FINDINGS

2.1 IDP SITUATION IN TESO

Teso region has experienced several waves of displacement, beginning with the 1940s cattle raids by the Karamojong which have persisted to present, the rebellion with the Uganda People Army (UPA) rebels, in the 1980s and early 1990s when *Itesot* engaged in an armed struggle against the current government, forcing people into camps as a way of containing the insurgency and the Lords Resistance Army (LRA) in 2003 who caused massive displacement in Katakwi, Amuria, Kaberamaido and Soroti districts. Within Northern and North Eastern Uganda, Teso region has had the least insecurity caused by the LRA compared to Lango and Acholi land. Henceforth, has been largely peaceful and devoid of the predicated war over land, although a number of isolated land issues are simmering which, if not well handled could escalate into violence. Displacement in Teso has been for a relatively short period than the rest of northern Uganda. Therefore the findings of this study are only valid in a context as close to Teso as possible with a short displacement period.



Image 1: Homestead being rebuilt after return, note the size of the Granary

Categories of IDPs

Given, the historical events relating to displacement in Teso region, three main categories of IDPs can be identified:

- (a) The **first category** encompasses persons who have been displaced for a long time (over 15 years) living in various IDP camps (mainly in Katakwi and Amuria Districts) and are not in position to return to their home areas due to the fear of incursions and cattle rustling raids⁷ by the nomadic Karamojong warriors. In fact, 61 camps in Katakwi and Amuria Districts hold the largest numbers of IDPs in this category estimated by UNOCHA to be approximately 168,353 (June 06) while GOU RRR Strategic Plan (Nov, 05) puts the figure at 247,703 IDPs (See figure 2). Most of them have lived a life rotating around a schedule of periodic access to

⁷ the Karamojong who have traditionally engaged in cattle-stealing raids

their homes and land, punctuated with returns to camps whenever there is an eminent attack (feared or real). Amongst these also are those who are completely unable to access their home or land, and have thus resorted to either resettling in the host communities (implying purchase of land) near the camps, while devising ways of accessing land (mainly through sale of labour in exchange for access to arable land or land rentals).

- (b) The **second category** is that of persons displaced by Teso rebellion under the Uganda People Army (UPA) rebels in 1980s -1990s, when the *Itesot* engaged in an armed struggle against the current government. Camps were set up around sub-county headquarters, dispensaries, schools etc where government provided security and other facilities, as a way of containing the insurgency. Soon after the conflict, these camps were disbanded and all the IDPs returned to their homes. This displacement was politically and militarily handled, thus no systematic documentation of how the return process was managed is available for learning purposes.

Table 5: Estimates of IDPs by Districts (July, 2006)

District	Number of camps/sites		Number of IDPs	
	Displacement camps	New settlement sites (inhabited)	GoU RRR Strategic Plan Nov 05	OCHA in consultation with partners June 06
Gulu	53	15	462,580	463,000
Kitgum	21	4	310,140	310,140
Pader	30	15	319,506	320,000
Total Acholi			1,092,226	1,093,140
Lira	40		351,020	190,000
Apac	20		120,050	128,190
Total Lango			471,070	318,190
Soroti	2		14,000	7,455
Katakwi and Amuria	61		247,703	168,353
Kaberamaido	2		2,871	1,000
Total Teso			264,574	176,808
Adjumani			41,005	41,005
Masindi				66,116
Total Others			41,005	107,121
Grand Total	229	34	1,909,880	1,694,253

Source: UNOCHA, JULY 2006

- (c) The **third category** is persons displaced by the Lords Resistance Army (LRA) from the beginning of June 2003. The defeat of the LRA in Teso through a combined force of local militia (Arrow Boys) and the Uganda Peoples Defense Forces (UPDF) improved security, such that by 2005 return of IDPs in this category had already commenced. Today averagely 90% of such IDPs have returned to their homes only 2 camps still exist in Soroti holding 7,455 IDPs and 2 camps in Kabermaido holding 1,000 IDPs (see figure 2). Those remaining claim that they are awaiting resettlement packages⁸ to return or are still in the camps because of the socio-economic advantages present⁹. This is the category avails insightful lessons for the rest of northern Uganda (mainly Lango and Acholi land) in preparation for return.

⁸ reported to the study team, that they were still awaiting their resettlement package

⁹ Opportunities presented by the camps such as urban life and incomes from petty trade etc.

Implications on return

In all these categories, some common characteristics emerge that makes displacement in Teso region distinct from that in the rest of Northern Uganda:

- (i) Teso has achieved over 90% return for IDPs displaced by LRA incursions. Since the improvement in security in mid 2004, return of IDPs in Soroti District commenced, by the beginning of 2006, displaced persons numbered 11,503 in urban camps and 8,896 in rural camps¹⁰. From statistics, compiled by the DDMC Soroti, out of the total population still in camps 20% of IDPs from Soroti district, while the remaining 80% come from Amuria and Katakwi due to the Karamojong incursions. During displacement, IDPs did not at any moment lose touch with their land, as long as security could permit. Daytime access to ones' land and visit to homes was regular, hence no disconnect between persons and their rights in land, except systems and practices around land ownership and use became varied and weakened.
- (ii) For IDPs displaced by the Karamojong, decades of displacement coupled with little or no response from government institutions, has forced them to adopt coping mechanism either by accessing land through purchase and resettling in host communities or establishing a chain of land rentals (often repetitive each year) to access land for production, while maintaining a homestead base in demarcated IDP camp areas. In this case there is no total disconnect between IDPs in camps and their homes. IDPs from areas bordering the Karamoja region do not foresee a consistent process of return, because of the persistent seasonal presence Karamojong warriors.

2.2 LAND CLAIMS AND CONFLICTS

Previous studies on land in northern Uganda have speculated that land conflict and claims will escalate in the aftermath of IDP return. In Teso a number of anticipated claims and conflicts have not happened, however justified fears and worry seem to emerge in the absence of appropriate institutional response and political guidance. In other cases, the clash in statute books and written policy is yet to grace reality on ground. All communities that returned have not faced significant or major problems in regaining their land, because IDPs retained touch with their land and properties, which facilitated a relatively peaceful return process without escalation of land disputes or claims.

2.2.1 Suspicion and Fear of Government grabbing Land

In all the focus group discussions held with the communities¹¹ and key informants¹², it was apparent, that there is an inherent suspicion of government intentions on land, linked to the fear, that over the years, government seems to have hatched a grand plan to grab and alienate all land in northern Uganda (and Teso region) through different schemes or approaches, some could be pointed while others could not be clearly pointed out. It was emphasized that since the insurgency commenced;

“ state-sponsored or stage backed land grabbers¹³, have suddenly emerged in Teso, citing the example of Bahima Pastoralists, who have failed to vacate Teso swamps despite several warnings from politicians such as Musa Ecweru and local council resolutions, keeping such invaders at bay is nearly impossible”¹⁴

Secondly, during the research teams' interactions with DDMC / local government round table for Soroti District, it was raised that different media houses and civil

¹⁰ IOM Profiling Study, May 2006

¹¹ Local Councils members, Opinion leaders, elders and clan leaders in Olio, Nakatunya, Obuku and Orieta B

¹² At least half of the members of the DDMC of Soroti District

¹³ Daily Monitor, Tuesday July 18th 2006

¹⁴ Arose during local government round table with members of the DDMC of Soroti District

society organizations revealed the existence of a resettlement plan under the urbanization policy designed to convert the whole of northern Uganda into rural growth centres as a way of tackling mass poverty. This has been interpreted to imply massive acquisition of land in northern and eastern Uganda (either forcefully or mischievously). Since over 80% of the land is held in customary tenure considered to be inferior in terms of rights ascertainment (no land titles) by the Government, it will be nearly impossible for the people of northern Uganda to defend their land rights against massive acquisition.

Thirdly, interviews with civil society organizations revealed that additional threats to land are eminent in Acholi and Lango sub-region though are not pertaining in Soroti. Instances where Army commanders have gone ahead to plough large chunks of land when the owners are still in camps and the establishment of army detachments on such areas to protect the farmlands, creates another threat to land of IDPs, especially whether it will be possible for one whose land has been ploughed to regain the land upon return.

“It seems government and the army are provoking them (IDPs), this must stop to restore sanity and confidence among local people”¹⁵

In addition, the Lango and Acholi sub region manifest the issue of ‘decongestion’ which has created confusion and raises serious questions with regard to the motivation of the government regarding the long-term status of the land in the north. In fact, the current strategy of decongesting main camps and creating satellite camps nearer home especially in Lango region (this did not happen in Teso region), is seen as a first step in frustrating people’s return to their lands. To summarize the ill feeling and skepticism associated with this notion, a CSO respondent, in an interview with the research team asserted that:

“This is seen as an opportunity by GOU, the physical and social infrastructure is there! Why not create an urban centre; this is the chance to create clusters and villages. The question is why can’t it be first applied elsewhere such as Mukono, why Northern Uganda; it is criminally insane. Why is the government over focusing on those who won’t return anyway? Why not think about ensuring that everyone returns by providing sufficient support structures? How about peoples’ land? Are they going to buy it or just acquire it?”

In essence, the population is suspicious of any programmes proposed on land as those geared towards grabbing (stealing) their land either directly or indirectly. This fear is neither new (it has been variously documented) nor is it confronted by the GoU, indeed until recently when the Minister responded, government had not taken systematic steps to allay this fear. It would be ideal if such a fear is dealt with before it closes the minds of the population to receiving any government plans and programmes on land with rationality. The seed for doubts and suspicion is now so grounded, that it will require a well thought intervention on the matter. It will be dangerous to let such a situation to continue simmering, because it is falling prey to political exploitation.

On the whole, it will be important to put in place a systematic information and communication campaign to dispel rumours and misinterpretation. Government has to sensitize recipients of programmes so that suspicion on intentions and outcomes are clear to all. Secondly, discussions relating to return need to engage IDPs themselves, since they are critical and central to the process of return, mechanisms are needed to ensure that their views on land are taken into account rather than the unbalanced views of politicians because as a respondent (official of TEDDO-CoU) put it “politicians

¹⁵ Okumu, Daily Monitor Wednesday December 6, 2006

use the land issues to climb political ladders and abuse ignorant people”. In addition, it will be important to bring together and engage key players such as the army, local government officials, central government and cultural / religious leaders of IDPs in dialogue for purposes of creating a common understanding and mutual trust. For groups such as pastoralists, it is suggested that their movements are either controlled or totally banned.

2.2.2 Occupation of IDP Land by Squatters

In all the three study sites of Olio, Nakatunya and Orieta B, there was no single instance of IDP land occupied by squatters on return. The Focus Groups Discussions respondents attributed this to the short period spent in displacement and the fact that villages were massively displaced and all people left once and returned at the same time, although the concept note and previous studies in northern Uganda had anticipated that this would be a major problem by virtue of section 30 of the Land Act cap 227 which grants adverse possession rights after 12 years of un-interrupted occupancy to squatters. Secondly, in Soroti, there are no incidents of IDP land being occupied by government or investors, except for IDPs displaced by the Karamojong in Katakwi district, there were allegations that due to longer periods of displacement, investors are leasing large tracts of land previously held as reserves¹⁶ by the central government on the borders with Karamoja region¹⁷.

As an issue for clarity¹⁸ the interpretation of section 30 of the Land Act in this instance is flawed, in that such a right of adversary possession is only provided for in event or instances where the land in question is alienated either in Freehold, Leasehold or Mailo tenure. In Teso and indeed the rest of northern Uganda, which is largely customary tenure such an occurrence cannot arise. In addition, such occupancy must be uninterrupted or unchallenged in anyway for 12 conservative years before the commencement of the 1995 Constitution¹⁹, all occupancies claiming to utilize this provision have happened after the proviso date and are thus invalid, construed out of misunderstanding of the law.

Flawed interpretations are attributed to civil society organizations carrying out sensitization without adequate capacity for legal interpretation of the contents of law. The noble intent of CSOs needs to be supported through capacity building. In addition, there is very low awareness of rights stipulated under statutory law compared to the populations understanding of their own indigenous customary tenure hence misinterpretations of such a nature are easily accepted by the local populace.

2.2.3 Customary Tenure Issues

It is evident from field interaction with various groups that land ownership as perceived in ordinary law is far from the rights and interests endowed, under the customary tenure, the following distinct features are clear in Teso:

- (i) In the past, arable land was vested in the Clan but owned by the family or household head and not communally as often assumed in most studies or in law and policy. The household head is an “owner” who holds and manages land for the benefit of the family; in essence the concept of ownership is much more inclined to a form of “trusteeship” or “stewardship” for the good of the family members. Therefore different family members have different interests provided for (e.g. women have access rights). The power of the household head in managing this resource was held in check and overseen by the clan, to which the household head was accountable. The Clan protects its

¹⁶ Reserves were gazetted when indigenous people are already occupying the land

¹⁷ Research Team is still unable to verify this claim that seems to be based on speculation

¹⁸ as pointed out in the literature review to this study

¹⁹ land had to be occupied by the 8th October 1983 to fall under such a claim

members' rights, gives permission for sales and provides governance arrangements for the land. Actions of the household head which alter the quantum of rights of the household members were justified before the clan and sanctioned or approved by the Clan.

- (ii) On the other hand, grazing areas, hunting areas and other land that served a communal interest were vested in the Clan (or traditional institutions) but were collectively held by the community. This often is referred to as communal land. The Clan set the rules for ownership, managed such land for the overall benefit of the whole community. It was not free land as alleged or assumed. It was land vested in the clan which set the rules of use and access for its community members and provides governance arrangements.



Image 2: Meeting the returned IDP Community in Tubur Sub County

However, these features have undergone changes due to war and displacement, the reality on ground is far from the distinctions made above, indeed customary tenure dynamic in response to external and internal influences²⁰, its bench marks have been interfered with and its values have been eroded over the years, the worst part is they have not been passed on to the younger generation. It is evident in this study that:

- (i) The clans' authority over land has weakened, its leaders no longer believe they have the power vested in them (especially to hold land in trust) because they are not able to exercise power and control over land, in the face of other institutions (mostly the statutory ones) that constantly abuse or challenge their decisions or pronouncements.
- (ii) Given the weakness of the clan and its leaders, the power base on customary tenure has now shifted to household heads, who consider customary land to be their personal property and this excludes other family members (reduced

²⁰ Displacement makes extended family collapsed, education is geared towards ignoring or devaluing customs, customs are lost in the camps, the young generation has not acquired the values of the customary system

social responsibility). The implication is that family members are on land at the sufferance of the family head²¹.

- (iii) In event of transactions such as sales, the household heads now merely consult the clan leaders as a sign of respect (and in so doing present reasons for carrying out a specific action such as sale) but do not seek their approval or feel the need to have their actions sanctioned by the clan. In instances where there is a clash between the clan and individual's interest, the household head resorts to statutory institutions (e.g. Local Council or District Land Tribunal) as a way of overcoming the clan, especially in the sale of land that threatens communities' collective rights. However, the clans do have their own justice system²² if they deem a member, is about to cause loss of communal land held by the group and they fail to apply sufficient pressure for the individual to abandon such an action.
- (iv) Community members adjacent to communally held resources (such as swamps) are gradually extending their claims into such areas, though they still allow member to access such a resources, therefore diminishing the area available to the community as a whole.

Table 6: Respondent's Views on Titling Customary Tenure

Respondents
<p>Titling implies that government is trying to acquire our land under dubious and deceitful programmes (systematic demarcation). We therefore have questions for the government:</p> <p>(a) What is the benefit for you (as government)? How is government going to benefit? If you have land and it is not surveyed, does government have the power to take it or not? We need to understand this!</p> <p>(b) The positives given do not match negatives, are you not going to tax me? Since there is no graduated tax? The intention is to tax me! If another group comes without the locals from this area, who speak the native language (just as you have come) there would be trouble?</p> <p>(c) When you people come, we know government is about to force us to demarcate the land and they connive with the banks so that we loans, since we do not produce enough to pay loans, we automatically lose the land on ground of failure to pay the loan, that is a very grand scheme, but here we want to warn you and go tell the government that: "land is death", it is the only thing we have left!</p>

Given the finding above, the anticipated clash between the Land Act which authorizes land sale and customary tenure which is assumed not to have also not happened in reality; customary tenure does allow for sale of land (sales are taking place within clans, externally to IDPs and other Persons) under justified conditions and circumstances (these include: in event of sickness, if one has no sons or few sons amongst his children, for bride price if one wishes to marry, for education-school fees) while these in the past were approved by the clan, today such a decision falls in the realm and power of the household head who merely inform the clan.

In Teso, it is evident that non-state interference in the dynamics of this tenure has enabled it to absorb and respond to changes in its environment, including displacement and return of IDPs without major incident and with the least disturbances except for boundary disputes and instances of fraud, not necessary related to the status and value system of customary tenure perse, the systems provided therein have gone ahead to reposition themselves for tackling the post conflict era. Respondents seem to find comfort in the status quo and are not willing to stretch into the unknown; therefore policy should support such a system to adapt to the changing environment:

"You accept what you know, we know the customary system, and we do not know the legal system so we hang on what we know"²³

²¹ Interview with Nelson Ocakara, CAO Katakwi; also raised by Judy Adoko, LEMU

²² Often, the individual is silently murdered, all manner of investigation by state organs are not often able to locate, how such a crime is committed.

²³ Interview with Official of TEDDO – COU, Soroti, September 2006

2.2.4 Land grabbing by Neighbors and Family

In Orieta B, respondents in Focus Group Discussions could not point out a single incident of land grabbing by neighbours or family on return, however they confessed that boundary extension was common by those persons who arrived earlier, it is rampant on garden edges, where extensions are made by cultivating into other persons land, especially if such person has not yet returned. Such extensions are made by neighbours and family members. They have been effectively resolved by clan heads issuing statements and warnings containing clarifications on extent and size of land for parties involved, the statements are heeded to thus any possible disputes in this arena have been avoided or resolved. Previous studies²⁴ and government's position paper on northern Uganda have expressed fear and concern that customary is not surveyed, therefore it will be difficult to know boundaries of displaced persons on return and an escalation of land disputes is expected. However, identifying and confirming customary claims in Teso on return didn't present any major problems; traditional land marks (mainly the *ejumulla* tree) were still in place on return.



Image 3: Returned IDPs have resumed crop cultivation and use of land

2.2.5 Land sales and Land rentals

In Orieta B village, the focus group discussions with the vulnerable groups²⁵ and elders²⁶ reported increasing land rentals (either in form of shares cropping, cash rentals or lending). No records of rentals could be viewed by the research team, as these are often verbal agreements reached between individuals, neither was the local council able to show record of sales because of poor record keeping. Records at the district land offices could not show a decline or rise in land sales because it was not possible to discern such detail. The urban resettled community in Nakatunya outside Obuku camp in Soroti municipality rent both the housing units and farming plots, at the time of the study, a half acre plot was ranging from 15,000/= to 25,000/= per season, this is usually revised upwards every season.

²⁴ In the literature review and background to this study

²⁵ 48 persons

²⁶ 44 persons

Previous studies²⁷ and the concept note²⁸ for this study expressed concern that on return, conflicting land sales are likely to take place especially by the youth who will then turn to the urban livelihood. The findings of this field study are not able to substantiate this assertion. However, one un-anticipated trend that emerged was the increased utilization of land (higher acreage) because it is the only resource readily available and the only capital open for those who have returned to use, no alternative assets such as animals are in existence, and stretches of uncultivated land are dramatically disappearing since the return of IDPs. In addition, the threat of the land market on IDP return is also extensively discussed by previously studies and its ability to push families into abject poverty or the likelihood of an economic land grab using the purchasing power of those who are strategically positioned to do so. In Soroti, evidence of this having could not be adduced since no massive acquisition by the well to do in society could be pointed out.



Image 4: Women involved in Focus Group Discussions in Orieta B, Tubur Sub-County

2.2.6 Land Rights of Vulnerable Groups

From the Focus Group Discussions with the vulnerable groups²⁹, two major issues emerge on the rights of vulnerable groups, first is that displacement and return, presents a slightly different issue in case of widows especially if the clan disinherits them on land, widows are being told to stick in town and undertake petty trade; such as brewing. From Obuku camp, majority of the people who are yet to return are widows (over 60% of the respondents) either waiting to be resettled or are without sufficient confidence to return. In the case of women, rights to access and use land are guaranteed through the male lines; therefore women without men (widows, separated, unmarried daughters, girl-child etc) are the ones lacking access to land.

The second issue is the assertion that the clan is in position to protect women and children's rights in land on return as narrated by the elders³⁰, the clan is responsible for

²⁷ Rugadya, 2006

²⁸ World Bank, 2006

²⁹ 48 persons

³⁰ In FGD with study team

widow and adequately caters of rights of access and use of land by widows. In the event that they remarry, then the rights of access must be secured in the new clan, they have married into, in case the widow bears other children while not officially remarried then the analogy below applies:

“If you have a goat (she) and borrow your neighbor’s (he) goat, to mate with it, when the kids (baby goats) are born, to whom to they belong? Is it your neighbor who claims them or are they yours?”

However, the chances are vulnerable groups are often caught in between both systems; the weakened clan and statutory institutions that are not on ground or are far-flung leaving the option of Local Councils; these are corrupt and can be easily influenced by the powerful against the vulnerable groups. Given, the above it appears that there is no concrete evidence of the rich, powerful and well to do taking advantage of such groups except in instances where rights protection or claim ascertainment involved local councils, which are said to be open to manipulation.

2.2.7 Conflicts and Claims over IDP Resettlement in Urban Centres

There are no IDPs squatting in urban buildings or lands in towns, except the relatively small populations still in the demarcated camp areas; taking advantage of the urban appeal and opportunities. However in Soroti, persons from other slum areas within the municipality are taking advantage of the return of IDP to occupy the demarcated camps and live there as if they are part of the IDPs because it is a cheaper and better environment than the slums they have been living in. The administration framework needs to institute punitive measure for such a trend to cease. Secondly, in Soroti Municipality, IDP are resettling in road reserves causing stress and disturbance to planning and urban development control, the urban authorities are yet to respond although a crisis is looming.

2.2.8 Encroachment on Natural Resources and their Degradation

Public lands gazetted for conservation purposes and community resource areas designated for communal use were also affected during displacement and on return. The communal use areas are mainly under threat from migrant pastoralists from the South (*Bahima*) moving in search of pastures who have settled in swamps and are grazing. Efforts to deal with them through political pronouncements and deadlines have not yielded results, as they claim to possess *bonafide* purchaser interests or have leased the said pieces of land from government. This is not an exclusively IDP problem, though it is also often cited by IDPs on return, especially if such pastoralist have taken over IDP community grazing land.

2.2.9 Land Mines not a Problem in Teso

This study was not able to validate the claim that land mines are curtailing access to land in Teso.

2.3 INSTITUTIONAL FRAMEWORK

2.3.1 Dispute Resolution

The Land Act Cap 227 and the Constitution 1995, established an elaborate structure of quasi judicial institutions baptised tribunals under a decentralised framework. The proposed framework proved costly to implement, an adoptive concept of circuiting District Land Tribunals based in 18 regional centres, supported at the base by Local Council III and Local Council II as court of first instance was put in place on pilot basis. The tribunals were initially set up under the Ministry responsible for Land but later transferred to the Judiciary, at the time of writing this report, Tribunals have been closed Magistrate Courts are now taking over due to lack of resources. The Act also provided for appointment of mediators in situations that warrant such mechanisms.

(i) Land Justice Institutions or Judicial Service?

In terms, of dispute resolution at district level, the picture on ground is a choice between land justice and judicial service, in essence the District Land Tribunals and the Magistrates Courts. The Judiciary has closed down the Tribunals, opting to deliver services through the Magistrates Court, the reason being the Land Tribunal, as the law intended them to be quasi-courts on land matters and to avoid the intricacies of the ordinary judicial systems, with view to expediting justice on land matters have failed to effectively function and deliver. Tribunals were conceived because the conventional system was not delivering land justice, however, by the time of their closure, they were a duplication of the Magistrates Court imbued with all kinds of bureaucracies and procedures that they intended to avoid³¹ and failing to achieve a move closer to alternative dispute resolution allowing individuals opportunity to state their cases without recourse to formalities.



Image 5: Research Team Meeting Members of the Soroti Circuit District Land Tribunal

Their location and operations have not only been conventional but far away from their intended beneficiaries at regional (as a circuit) level, their existence was not appealing anymore, even if the demand for their services might have been high. The resultant situation was made worse by failure to provide sufficient resources to support the set up (from pilot phase to operational phase) and support their operations, they have been limping in terms of capacity and resources³², their eventual transfer from the Ministry responsible for Lands to the Judiciary not only made matters worse, but exacerbated the resource constraint as the Justice Law and Order Sector, did not view them as priority expenditure institutions nor considered them a necessity, thus as Registrar³³ of the DLTs put it:

“It is in plan to seek a constitutional and legal amendment, to reverse jurisdiction of these institutions back to the Magistrates Courts, because GoU is not allocating resources to them, despite a constitutional directive for their existence”.

³¹ rules of procedure allow lawyers in tribunal proceeding to litigation for parties

³² see Annex 1: Resources disbursed to Tribunals

³³ Interview with Registrar of District Land Tribunals, Land Division, High Court of Uganda

The concept of tribunal circuits, even if the funds were available creates further problems, the tribunals cover too large an area³⁴, this has caused backlog. The Soroti Tribunal is only able to hold 2 sessions in a month in each. It is therefore important, that the capacity of lower bodies such as Local Councils in this framework³⁵ is built and their operations are facilitated to relieve the tribunals at the apex or the magistrates' courts; depending on which institutions will have jurisdiction over land at the time of implementing recommendations of this report. Capacity and establishment requirements are needed right from the bottom to the top, if land justice is to be delivered expeditiously.

(ii) Local Council I or Local Council II?

Local Council II as a court of first instance on land matters is not operational in Orieta B, Tubur Sub County, instead land disputes are filed in the Local Council I court, appeals then follow to local council II and III. This raises the question of which LC level should be the court of first instance in dispute resolution. In law, the Land Act cap 227 places the jurisdiction at LC1I, however in practice, this level is far from the people and is not on ground, because of ignorance of the law which is reflective of an information gap, they often refer parties back to LC1 as the starting point, hence a need to popularize the 2004 Land (Amendment) Act, which granted them the powers to tackle land issues as courts of first instance. This has resulted in scenario where by LC1 being on the ground and closer to the people are undertaking dispute resolution illegally but with legitimacy given the fact that the communities they serve accept their authority, this arrangement seems to be functioning smoothly leading the research team to conclude that, it would be ideal to grant jurisdiction to LC1 as court of first instance and strengthen their capacity on land matters in post-conflict situations.

(iii) Local Councils or Clans (Traditional Institutions)?

Since the return of IDPs in Orieta B, Tubur Sub County, when disputes arise, the clan is the first point of petition, before matters proceed to the local council I, incase they are not resolved. If the matter in question is considered by the parties involved to be grave, then the complainants tend to ignore the LC courts and move from the clan, directly to the tribunal. Secondly the Focus Group Discussions pointed out that resorting to LCs is often seen as opportunistic use of the systems to ensure that ones "interests are served rather than justice being served". On the other hand Tribunals were said to be intimidating and the domain of lawyers who know it all. These findings show that to some extent the clan as a dispute resolution institutions still holds appeal to the people, this they said is because its about reconciliation while the law is about winners and losers, on the other hand local councils are viewed as the "government" and are backed by the force of law and have legality, but this does not necessarily imply legitimacy:

"Court or LCs can rule but not solve the problem; the loser will look for alternative solutions, judgment is not enough, the conflict is not resolved"³⁶

Clearly, not having recognized the traditional institutions in dispute resolution does not mean that they do not function or deliver services to the satisfaction of the local population; they have continued to operate with legitimacy but without legality. In Teso, the community still has regard and confidence for the clans in relation to handling of land disputes, to the extent that within communities' persons who approach the formal statutory institutions including the local councils for resolution of land disputes are looked at as deviant and anti-culture or anti-tradition.

³⁴ For example the Soroti Circuit covers six districts of Soroti, Kumi, Kaberamaido, Katakwi, Amuria, Bukedea.

³⁵ which are currently not functioning well

³⁶ Mob justice administered by the Clan

(iv) Institutionalising Clans in Dispute Resolution

Under the Iteso Cultural Union³⁷ (*Emiromor*) working with Civil Society Organisations³⁸, a Customary Land Clan Courts Ordinance No. 2 of 2006 has been drafted to provide for traditional courts to hear disputes on customary land and for these institutions to make law, monitor and supervise courts. This ordinance is currently being considered by all District Local Councils in Teso region for adoption and enforcement. It is a deliberate local effort to re-invigorate cultural roles and functions of clans in the area. This development is unknown to the Ministry responsible for lands and the research team was not able to establish its standing within the current legal framework for dispute resolution. However, constitutionally and under the Local Government Act, Districts have the mandate to adopt such law (as ordinances or bye law) on condition that the implementation costs are computed and approved by Ministry of Finance, secondly, such a bill is not law until it is endorsed by the Attorney General. It was found that in Teso each Clan has a Clan sub-committee on land chaired by “*Apolon Ateker*” who is also responsible for land matters, mainly resolution of disputes and endorsement of sales. One of the solutions put forward³⁹ is the co-opting of clan heads into the LC courts system as per land issues in a particular case.



Image 6: Interview with Local Council 3 Chairperson, Tubur Sub County

(v) Disputes handled by the District Land Tribunal

Amongst, cases reported and tackled by the District Land Tribunal of Soroti, it is impossible to discern whether, they were filed by IDPs or not. Taking the period (2002-2005), a total of 405 cases were received by the Soroti District Land Tribunal circuit, the main disputes included the following:

- (a) Boundary discrepancies or disputes, this is most common between by relatives or neighbours.
- (b) Sale without consent (of the Clan or Spouses) is common among sales endorsed by the local councils. In most instances, the clans filed such cases as a way of protecting its land, powers and authority in society. By suing its members, especially in event of sale of land without the clan being informed, by this the clan attempts to reassert itself to role of superintending over land.

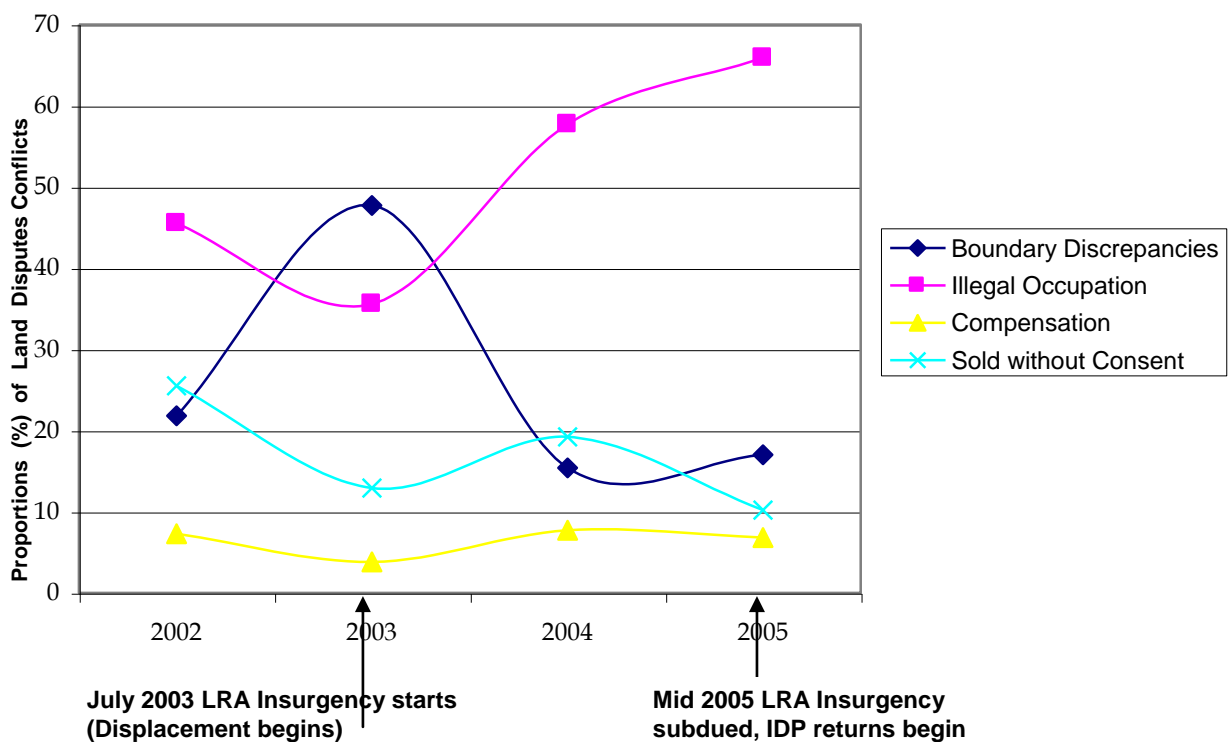
³⁷ As described under the 1995 Constitution

³⁸ Land and Equity Movement

³⁹ In the FGDs with communities

- (c) Cases of illegal occupation of land by institutions (where the clan or families grant land to institutions to expand their services) especially schools, churches or local government and they end up legalizing their access into ownership rights.
- (d) There were also cases of compensation against the Local Governments in relation to planning of customary tenure in urban areas in order to adhere urban plans and other land use plans. The urban authorities have to undertake planning despite the fact that they have no funds to readily compensate the customary claims in development control and land use enforcement. Urban authorities are also suited on ground of failure to compensate customary interests or undertaking or further sub-division customary land without compensating the loss of interest, or instances where there is failure to renew leaseholds and re-allocation is undertaken. Cases of double allocation are also common in the municipality with proper documentation to support each allocation.

Figure 7: Land Disputes filed in the Soroti District Land Tribunal



Source: Records Extraction, Soroti District Land Tribunal; September 2006

Looking at trends for cases filed in the Soroti District Land Tribunal for the period 2002 to 2005, during which displacement due to LRA incursions happened, two types of disputes show peculiar trends. First, the anticipated increment in boundary disputes did not happen, instead a sharp decline is seen as return of IDPs commences in 2004 with a slight rise in 2005. Second, a sharp rise in illegal occupation claims are witnessed, with a continuing rise, as the IDPs continued to return home in 2005. However, the results of these cases depicted above in figure 7 cannot be completely attributed to IDP return, since most of the cases were recorded from urban areas and the records could not discern for IDPs or non-IDP status. There is also a noticed decline in cases of sale without consent of the clan or spouses over the period 2002 to 2005. Overall, the statistics from the District Land Tribunal does not show an increment in the volume of disputes as anticipated, however, the secretary of the tribunal notes that the severity of certain disputes went a notch higher, often degenerating into violence or death when communities returned.

(vi) Performance of District Land Tribunals

The existing dispute resolution mechanisms can be analyzed from two perspectives; the traditional and the formal institutions. The formal institutions with a statutory mandate to handle lands disputes are not functioning as expected. The rate at which disputes are resolved is extremely low. In the table below, a comparison is made between cases received and resolved by the District Land Tribunal Soroti for the period 2002-2005. The performance record shows an average resolution of 5.9% of all case received annually, which is nearly dismal performance, depictive of all the constraints and challenges already elaborated.

Table 8: Performance of Soroti District Land Tribunal

Total No. of Cases Received (2002-2005)	405
Total No. of Cases Resolved (2002-2005)	95
Average Annual Dispute Resolution Rate	5.9%
Cumulative (2002-2005) Dispute Resolution Rate	23.5%

Source: Extracted Records from Soroti District Land Tribunal; September 2006

(vii) Disputes handled by Local Councils and Clans

According to Local Council II and III records in Tubur sub county, there were only 4 land cases reported between 2004 and the time of conducting the study (September 2006), however no records could be obtained at Local Council 1. The records in LCII and III could not show details on nature of cases, content or progress, they were merely a listing of the parties involved and the issue to be tackled. This state of affairs depicts the capacity of these lower courts. The clans could not avail a record of the cases they handled since such a system is mainly based on memory, but indicated having dealt with more than 10 cases on the basis of written rules, that have been drafted since return. These rules are considered to be a codification of norms and practices around land matters within the sub county. It was claimed that the rules are kept in custody at the sub county police office with the Officer in Charge⁴⁰.

Disputes handled by the LCs and Clans, as far as IDPs are concerned mainly hinge on host community fatigue, signalling the fact that, where IDPs are yet to return or are resettled, they have out stayed their welcomeness leading to rise in social tensions. One of the ways this tension is expressed is through labelling and name calling. For example, IDPs that are yet to return are referred to as 'Esala' literary meaning "remnants" or "leftovers". Such incidents create tensions that the clans are managing. It is not possible to confidently state the performance rate or pattern for clans or local councils on land matters due to the absence of written records.

2.3.2 Land Administration

In reviewing sufficiency and capacity of land administration institutions, the study considered district and community level institutions. At district level, the District Land Office and the District Land Board were assessed while at community level, the existence of Area Land Committees and the operations of traditional (cultural) institutions were considered, even though the roles and functions of traditional land administration institution are not adequately located within the existing legal framework.

(i) District Level Institutions

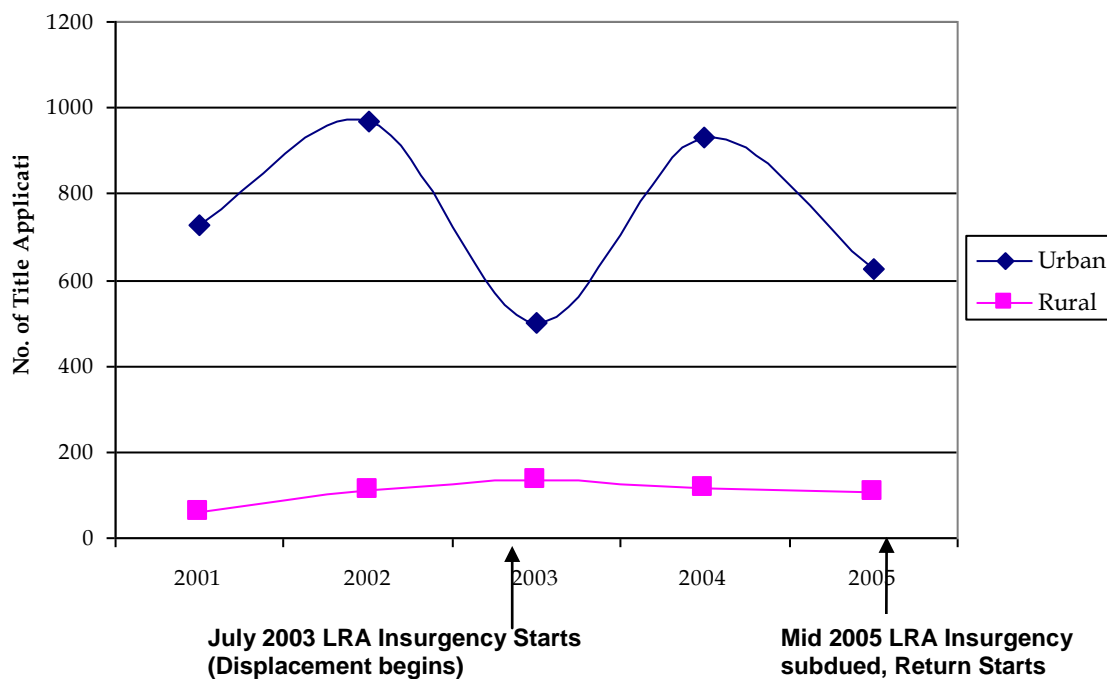
In all most all district in Uganda, staffing of District Land Offices, as a responsibility of local governments is not considered a priority⁴¹. However, compared to levels in other districts, the Soroti District Land Office is above average in staffing levels, since 4 of

⁴⁰ The research team was unable to access a copy of these rules for verification

⁴¹ MoLHUD, 2005, Functional Analysis of the Land sector

the 5 technical staff required for appropriate functionality are in office only the position of Physical Planner is vacant. However, the office is short on support staff notably typist and chainman. In addition, operations are not sufficiently supported, mainly in terms of transport, which makes site inspection cumbersome. Due to constraint in resources the office has tended to restrict its operations and functions to urban areas, where staff can easily access and inspect properties without need for transportation. In terms of facilities and equipment, the Soroti Office lacks a strong room for safe custody of registration records and appropriate filing cabinets, cartographic and survey equipment is also lacking. A number of standards and formats issued in the rules and regulations for implementation of the Land Act Cap 227 are yet to be adopted in the district office. The District Office has not found necessity to provide specialized land services responding to IDPs needs in rural areas because there is no demand except for urban areas.

Figure 9: Applications for Titles (Soroti District Land Office)



Source: Records Extraction, Soroti District Land Office; September 2006

On the other hand, the District Land Board (DLB) is fully constituted and operational as an apex institution, the root institutions (Area Land Committees) are not constituted nor are they operational. Members of the DLB that the research team met confessed not fully comprehending and understanding their roles and functions in the delivery of land services, hence have restricted their operation and service in urban areas, besides without any Area Land Committees to provide support services at grassroots level it becomes impossible to undertake land administration roles. In order to cope, the DLB has taken over the role of verification at local level by itself. This strategy has been scuffed by a directive from the Ministry responsible for Lands, warning District Land Boards on usurping the powers and roles of local level land management institutions, currently therefore, clans, local councils III, II and I have taken over the role of verification at lower level, though they lack facilitation or understanding of the law.

(ii) Services and Performance of District Land Office and Board

The demand for land services is rather low and limited to urban areas; very few people in the rural have approached the statutory offices for rights ascertainment and

affirmation. The Land office in Soroti receives an average 857 applications annually. Out of all the applications received for the period 2001-2005, 87.7% (4,283) applications were for urban land. This trend is illustrated in the table below distinctly showing a remarkable difference between rural and urban demands.

Table 10: Performance of Soroti District Land Office

	Urban Land	Rural Land
Total Applications Received (2001-2005)	3,756	527
Total Applications Successfully processed (from 2003)	120	14
Average Annual Rate of Application Success (from 2003)	2.9%	2.0%
Cumulative (from 2003) Rate of Success of Applications	5.8%	3.9%

Source: Extracted Records from Soroti District Land Office; September 2006

Secondly, the impact of displacement and return on demand for services cannot be readily discerned or at best is negligible. It is apparent, that the establish trends continued unabated for both rural and urban areas. The level of performance despite receipt of applications from urban areas only, is disappointing, for all applications received in a year an average of 2.9% per annum are granted titles in urban areas, while the rural further slides down to 2%, this is not only dismal but alarming as well. The performance level is reflective of the capacity and insufficiency in institutions charged with delivery of land services at district level. The performance gap and the demand levels also depict the desire for the populace to continue holding their interests and rights in land in customary tenure, perhaps because they feel secure in it, there seems to be absence of knowledge about alternatives forms of tenure security, how they can be achieved and the opportunities they avail when pursued.



Image 7: Members of Local Council 1, Orieta B, Tubur- Soroti with Research Team

(iii) Areas Land Committees: Clans or Local Councils?

The Area Land Committees are not constituted to undertake the role of verifications of land applied for, the only area land committee in Soroti district was formed during the piloting of systematic demarcation and has since become dysfunctional when the

piloting encountered problems⁴². The District Council has failed to constitute Area Land Committees due to resource constraint. In the absence of Area Land Committees, two institutions have emerged to fill this vacuum; the local councils and the clan. Both institutions are not legally mandated to undertake such a role; however, the local councils have acceptance and authority over such matters within the community, they offer services at a fee, while the clan services are free. The local councils have instruments and offices, which they have put at the disposal of the community for sanctioning their services (read, write and stamp forms), while the clan services remain weak and based on verbal communication. In the end the two (LCs and Clans) are clashing in their roles of land administration.

The second land administration role, often performed by the two institutions is the endorsement of land transactions. Similarly, while the service is given free of charge by the Clan, the Local Councils charge between 10% and 20% of the total value of the transaction, which is rather high. Given the fact that they are part of state institutional infrastructure it becomes inevitable raising the question of legality of such an exorbitant charge. Legally there is no basis under any law for this charge; however parties to transactions legitimately accept and pay this charge as development fees to the local councils, the compulsion to pay is based on fear that LCs have the ability to threaten rights utilization and enjoyment in case of non-compliance, besides neither the local councils nor the clans are remunerated for discharging land administration functions.

(iv) *Institutionalizing Clans as Land Administrators*

Just as under dispute resolution revival of cultural institutions under the Iteso Cultural Union⁴³ is extended to land administration under the Draft Customary Land Tenure Management and Rights Ordinance No. 1 of 2006 to provide for rights over customary land, management of customary land, procedure for sale of lands and other land related matters. This ordinance is currently being considered by all District Local Councils in Teso region for adoption and enforcement. Its adoption and use is similarly affected as the proposed one under dispute resolution. By this development the clans are institutionalising themselves in a rational manner vis-à-vis the statutory institutions in land administration. Though the development is positive it needs streamlining, guidance and supervision for legitimacy and legality.

2.4 LEGAL FRAMEWORK

Uganda's constitutional and legal framework on land was not drawn with anticipation of responding to post-conflict situations. It is therefore largely skewed to historical land issues and contemporary political necessities and demands. Having been a British colony, Uganda inherited a complex and pluralistic land regime which is grappling with need to adopt both foreign and indigenous cultural and economic values. It is not adequately positioned to tackle post conflict situation as the framework is restrictive to dynamic growth and evolution of land tenures and systems.

(i) *Land Fund and Resettlement*

The Land Act Cap. 227 in section 41 provides for the establishment of a Land Fund, whose management is entrusted to the Uganda Land Commission. Amongst its functions stated in section 41(4c) is to "resettle people who have been rendered landless by government action, natural disaster or any other cause" and in section 41(6), government is specifically mandated to purchase or acquire land and pay prompt and fair compensation as per the provisions of the Constitution and Land Acquisition Act 1964. The Uganda Land Commission lacks the capacity to manage the

⁴² The systematic demarcation pilot scheme in Kamunda, was halted because the beneficiary community attacked and hacked staff and officials of Ministry of Water, Lands and Environment due to the suspicion that surveying taking place was actually grabbing their land.

⁴³ As described under the 1995 Constitution

fund, in addition the Land Acquisition Act, 1964 is inconsistent with the provisions of the Constitution and above all, the guidelines or principles for resettlement are not detailed. The conditions for one to qualify for resettlement are unclear. As a legal framework, the provisions of the Land Fund in the Land Act are sufficient to respond and satisfy the principle of resettlement of IDPs should the need arise. However since its establishment, the fund has lacked an appropriate administrative and institutional framework, this has combined with inadequate resources to undertake its operations. It has been largely driven as a political protégé that serves the interests of the ruling government in solving land issues it considers pertinent at a particular time mainly for political correctness. For northern Uganda to utilise such a fund in resettling IDPs it must be politically sanctioned, which requires harnessing the political will to indulge in such a process, currently such political will is still lacking.

(ii) Encampment, Occupation and Compensation

Compensation on the other hand is a matter partially addressed within the existing legal framework, overall State obligation to respect private property is outlined in article 26 (a and b) of the 1995 Constitution, which lays the premise for compensation. Section 72 of the Land Act details the rights of public officials to encamp on private land in the execution of their work. The terms and conditions spelled out were certainly not applied in the establishment of camps in northern Uganda since no systematic procedure was followed in the set up of IDP camps. Section 72 of the Land Act Cap 227 limits itself to compensation claims in relation to damages and losses; it is not clear what modalities are to be applied in the assessment of quantum of rights and interests to be compensated and what principles are to be applied. In addition, it exempts such claims in instances where the armed forces occupy land⁴⁴, which is one of the strongest claims emerging from private land owners in northern Uganda.

Given the existing legal framework, some of these claims are not dealt with besides it will also be important that verification and ascertainment of claims from land owners (especially individual owners) is undertaken especially if the cost of use and occupation of land has already been directly borne by the IDPs themselves, during the period of displacement. Lastly, it will be important to determine as a matter of policy, the definition of what is to be compensated, whether it use, occupation, degradation, or will it stretch as far as harvesting of resource tenure used by the military in construction etc. It will also be important to make choice on how compensation should be tackled either politically or legally.

(iii) Institutional Issues

From reading the Constitution 1995, the Land Act Cap 227 and the IDP Policy, it is not clear which government agency or department is responsible for compensation, on property matters for a case, such as northern Uganda. The IDP policy points to local governments as the responsible centres for restitution (recovery), it not clear which institution will be responsible for compensation in northern Uganda. It is the view of this study, that this location is inappropriate because of the technical capacity required for restitution and the fact that it is state (function) responsibility to undertake compensation. GoU needs to clarify whether such claims will be handled by the line Ministry of Lands Housing and Urban Development, or Office of the Prime Minister or Ministry of Justice and Constitutional Affairs or Ministry of Finance. This will not only require clarification of institutional responsibility (both horizontal and vertical linkages articulated) but a set of guidelines to apply as well.

2.5 POLICY FRAMEWORK

In the last two year, the anticipation that peace will return to northern Uganda has moved on a fast pace. The Government of Uganda (GoU) designed a number of

⁴⁴ Consultant's still unable to discern which legal framework covers the armed forces

strategies for northern Uganda. These strategies in essence respond to commitments laid out in the National IDP policy, the most significant ones in relation to land are:

(i) *National Internally Displaced Persons Return, Resettlement and Re Integration: Strategic Plan for Teso and Lango sub regions, 2005.*

This plan considers immediate and short term essential needs and priority conditions for return and resettlement in the sub regions of Teso and Lango. Amongst the needs considered, land issues are not a priority nor are they anticipated in anyway, however should land issues (disputes or claims) arise in the communities being resettled, then it is assumed that the re-establishment of state institutions especially the police administration, the court system and the prison services, is sufficient mechanism to take care of any land matters; which are viewed in terms of civil or criminal cases⁴⁵, this is a narrow perception and view of land issues to be dealt with in post conflict land administration. This assumption does not foresee complexity of land matters that are likely to arise beyond disputes in communities such as compensation which is a state function. Lastly, it is assumed, that land and property issues, do not necessary deserve domain and positioning at the commencement of return and resettlement.

(ii) *Emergency Humanitarian Action Plan-LRA Affected Areas, 2006.*

Its main focus is the guarantee of security of persons and property by availing services, which will trigger voluntary spontaneous return. In addition, it attempts to utilize existing mechanisms provided by the National IDP Policy, unfortunately, many of these mechanisms are non-functional. Similarly, it does not adequately recognize that land is part of property which requires a systematic framework to guarantee security on the return, in resettlement and reintegration process. The level of perception of land matters is still low, hence no significant or broad guidelines are availed to respond to the realities on ground; in essence the plan is blind to land matters that need conscious government effort in ensuring smooth return and resettlement.

(iii) *National Peace, Recovery and Development Plan for Northern Uganda (PRDP) 2006-2009.*

This plan is a commitment by GoU to stabilize and recover the north in the short-term (3 years) through a set of coherent programmes under a consolidated framework, it is considered by the OPM's office to be a follow-up on the NUSAF programme⁴⁶. It specifically acknowledges the impact of conflict status and extent of vulnerability in communities affected by war by adopting a conflict framework rather than a development framework, acknowledging that state authority has not been functioning normally for over 20 years.

In objective one of this Plan on consolidation of state authority [*specifically 1.2: re-establishing law and order in communities, 1.3: functioning judicial and legal services*] and objective two, on rebuilding and empowering communities [*2.1: improving the conditions and quality of life of IDPs in Camps, 2.2: Completing return of displaced population - rural, peri-urban and urban, 2.3 initiating community rehabilitation and development activities - social services and livelihood support*], issues pertaining to land in post conflict situations ought to have been addressed. It suffices to say that objective 3 on revitalization of the economy will nearly be impossible to achieve without with stable land relations, for no empowerment of people on agriculture production can take place if their key resource for production i.e. land is affected by unstable relations. Yet PMA acknowledges the centrality of land to production and the rights of the major producers (women and children) are not dealt with, and in essence the plan is blind to land issues in post conflict situations

⁴⁵ In interview with Senior Resettlement Officer, Office of the Prime Minister, October 2006

⁴⁶ Interview with Resettlement Officer, OPMs' office

The District Land Tribunals, District Land Offices and Boards are not envisaged to be part of the institutions to be put in place or to be rebuilt to functionality for northern yet, these are the institutions charged with delivery of land justice and land services IDP on return. It is assumed that support to the Justice Law and Order sector, is sufficient to cover concerns in the land sector⁴⁷. Similarly, the mechanisms for land rights protection and land claims settlement are not dealt with in objective two, yet they are crucial to resumption of sustainable livelihoods and require specific social protection strategies, in order to avoid large scale community degeneration into land related conflict and violence, since it is evident in post-conflict Teso, that land is often the only readily available asset for production on return and resettlement, henceforth the value attached to land is enormous and warrants special protection and guarantee. For the IDPs who have returned it is considered their “wealth and survival asset”, central to the most basic aspect of production⁴⁸.

(iv) Land Sector Position Paper for Northern Uganda

In response to the challenge⁴⁹ above, the Ministry of Lands, Housing and Urban Development, has developed a position paper⁵⁰ on service delivery in the NPRDP 2006-2009. The Draft position paper notes that tenure insecurity and uncertainty of land rights are the most important challenges that have to be addressed for IDPs in northern Uganda since they are closely linked to access, control and management of land resources. It doesn't however; anticipate compensation claims for land use during displacement period or where camps were established on individual lands or property.

In housing and urban development, the issue of concern to northern Uganda is the piloting of rural growth centers, as a way of destroying peasantry, subsistence farming and land fragmentation, leaving room for development of mechanized agriculture through cooperatives and creation of nucleated settlements, the overall vision is one of transforming Northern Uganda into a modern society This concept would be ideal and feasible, if the complex interests and rights under customary tenure are understood and captured. This particular concept has been misunderstood to imply massive land grabbing. MoLHUD is taking a reactive stand to land issues in northern Uganda rather than being proactive, there is a disconnect between strategies and problem analysis, the strategies put forward are typical of technocrats prepared with little input from the intended beneficiaries and other stakeholders.

(v) The National Land Policy Draft

The Draft National Land Policy (NLP) upholds the land rights of IDPs under the principle of enhanced equity and social justice in society. But the NLP lacks in-depth analysis of post-conflict land issues and proposes only one strategy in the entire 132-page document i.e. *resettle all internally displaced persons in their areas of origin and guarantee their security of tenure* (page 45). The policy's emphasis is only on resettling IDPs in their areas of origin. This fails to address the desire of those who may prefer to remain in camps or around the IDP camps which places have over the years become urbanized and currently offer opportunities, facilities and services which may not be readily available in their places of origin. In terms of land administration, the only envisioned mechanism seems to focus on dispute resolution and does not address the rather important aspect of delivery of land services and ascertainment of rights. The NLP also fails to address the role of traditional/customary/informal land administration and land dispute resolution mechanisms, systems and structures and how these will relate and interface with the statutory mechanisms.

⁴⁷ In interview with Senior Resettlement Officer, OPM's Office

⁴⁸ Deninger, 2003

⁴⁹ Though delayed, it is happening now

⁵⁰ Still at zero draft level, and open to discussion and concretizing of strategy and intended actions. This study should serve as a stepping stone for the actions that the Ministry may undertake.

2.6 OTHER STAKEHOLDERS ON LAND IN NORTHERN UGANDA

A number of civil society organizations⁵¹ in relief and development are undertaking programmes and projects focusing on IDP welfare and return in Teso region (see profile activities of each in the annex). The following observations are clear from their operations:

- (i) Activities are essentially recovery oriented (focusing on agricultural implements, provisions of food, relief items and livelihood support) excluding land issues in their work except for a few National NGOs and CBOs. The perception is that land is a technical and highly sensitive culturally issue, r which they have no capacity to address, it can turn volatile and dangerous;

“Land is considered a sensitive matter; you have to be careful speaking about it, the community receives you with suspicion, it is best you go through the cultural leaders if you want to speak about land, they are trusted on this issue. The system is closed in”⁵²

- (ii) National NGOs and CBOs attempting to address land matters for IDPs lack capacity and resources for design and implementation of effective programmes, henceforth, without intent their interventions have further escalated the levels of fear, suspicion and misinformation on land matters and governments plans for land in northern Uganda. The gap is reflected in quality of services and information passed on to their audiences and local populace. For example, the use of already amended versions of the law can easily be construed as misdirecting the public or intentional issue of incorrect and substandard information. Appropriate technical backup, guidance and collaboration with other CSOs actors that have capacity in such areas is necessary and with government departments.

⁵¹ DDMC Soroti has a record of 56 NGOs involved in displacement, emergency and relief in the district.

⁵² In interview with Project Coordinator, World Vision Tubur Area Programme

3. EMERGING ISSUES AND RECOMMENDED ACTIONS

The issues and recommendation presented in this chapter of the report emerge from the first phase of literature review and the second phase of the field findings in Soroti District. Though the findings and recommendations on policy, legal and institutional framework may universally apply for the whole of northern Uganda, a number of specific issues detailed in chapter 4 need validation and verification in the rest of northern Uganda especially Lango, Acholi, West Nile and Karamoja, given the relatively short period of displacement in Soroti compared to the rest of northern Uganda, their validity hinges on the context being as near as possible to conditions pertaining in Soroti District.

3.1 GUIDELINES AND BEST PRACTICES

Normative frameworks for tackling land matters in relation to IDP return, resettlement and reintegration, put forward the following principles and best practices from international experience, which need to be kept in mind when dealing with land policy and land administration (see annex for detailed elaboration):

- (i) The core issues in relation to conflict potential and land are: “security of tenure”, “access to land” and “equitable distribution of land”. These are not objectively given, universal, or independent from one another they are socially constructed.
- (ii) Land policy, as an element of peace-building missions, *tends to be under-rated and has received little attention* yet land policy clearly plays a fundamental role, in recovering from conflict, and ensuring that further conflict does not follow.
- (iii) Tenure security is only and only achieved if a persons’ interest in land can be successfully defended when challenged.
- (iv) Land policy is context specific embedded in political, social, cultural and ecological conditions that affect its outcomes.
- (v) Management of disputes and claims calls for the establishment of mechanisms and agencies to support the post conflict land administration
- (vi) Rights of vulnerable groups need to be specifically protected in policy and administrative undertakings.
- (vii) Lastly, land policy must strive to have an institutional approach and create institutions and laws to meet claims for property restitution (recovery), resettlement and compensation.

3.2 CRITICAL CHALLENGES

The following strategic areas and critical challenges must be addressed:

- (i) The need to provide land for people who are landless or who cannot return to their homes. Restitution of land to its lawful owners and establishment of procedures to compensate people for whom restitution is not possible. This will require the establishment of procedures to compensate people with various claims.
- (ii) Prevention of illegal occupation of land and buildings by criminals and the establishment of fair procedures for the eviction of unauthorized occupants including mechanisms to resolve land claims and land disputes.
- (iii) Re-defining roles and responsibilities for land administration; central and decentralized government agencies, customary authorities. In addition, the issue of how to build capacity rapidly in order to provide land administration services, considering such alternatives as the ability of local government to provide needed land administration services.
- (iv) What adjudication system can be developed so that it can function within the resources available?

- (v) Government’s financial and institutional capacity to implement the policies should at all times be borne in mind.
- (vi) What timeframe would be involved in addressing the issues (immediate / urgent, short, medium and long-term)?

The choice of whether such matters should be handled legally or politically, (in which case both avenues are justified in the law and in policy) has to be made. Legal processes are likely to be cumbersome and costly not only for the rights seeking public but for Government since the sums involved will continuously swell as legal processes take time. In the alternative, it could be handled politically through a designated government department.

3.3 ISSUES AND RECOMMENDATIONS FOR TENURE SECURITY

(i) Customary Tenure

The Teso scenario affirms that customary tenure can survive the rigorous of displacement in the short-term and still emerge as the appropriate and preferred tenure in post-conflict situations, however it is not possible to establish the impact of longer periods of displacement and how such a tenure will emerge after a longer period of displacement as is in the rest of northern Uganda.

Table 11: Transformations on Customary Tenure in Teso

GENERIC (PERCEPTION)	REALITY (ON GROUND)
<ul style="list-style-type: none"> • Insecure tenure because there are no titles 	(i) Secure because, it is known, understood and the values appreciated by the owners and users (both distinctly known)
<ul style="list-style-type: none"> • Better to have individualized registered land 	(ii) Fear titles they are given with the ulterior motive of grabbing land by government
<ul style="list-style-type: none"> • Customary land is collectively owned by clans or families, heads of families are trustees or stewards 	(iii) Customary tenure is now owned by individual household heads, who have abused the “concept of stewardship” or “trustee”
<ul style="list-style-type: none"> • Clans do not allow customary tenure to be titled 	(iv) Individual household heads (despite the fear of the unknown and clan reaction to such a move) would not mind titling their customary tenure.
<ul style="list-style-type: none"> • Clans have authority and power to control and make accountable household heads on their actions on land such as sales 	(v) Clans require that household heads inform them on actions taken on customary land, but do not have power or authority to sanction sales, determine land use etc. on land held by households.
<ul style="list-style-type: none"> • Common property resource areas and common land are communally held 	(vi) CPRs though still open to community access have been gradually taken over by neighboring customary owners who have extended boundaries without community approval
<ul style="list-style-type: none"> • IDPs on return will not be able to locate boundaries to their land because it is not demarcated or ably make restitution claims 	(vii) IDPs in Teso did not experience problems with boundary locations on return. No restitution claims are emerging
<ul style="list-style-type: none"> • Customary land tenure administration systems have collapsed due to war and displacement cannot manage IDP return process 	(viii) Customary land administration has weakened variably, however in absence of functional state infrastructure, has had to fill the vacuum of land administration for IDP return; therefore its values systems are being consciously reinvigorated (Under Iteso Cultural Union and District Council Ordinances ⁵³)

Even though customary tenure survived, its benchmarks and values have been transformed. It is the recommendation of this study team that:

- The possibility of codifying customary tenure; especially the reasons behind it, its operations, practices etc. be considered so that they are understood and written down for legal precedent in case of litigation.

⁵³ See Finding in this report

- Secondly, the fear of pushing certification and registration when the local populace doesn't seem to be ready, especially if individualization is the drive. Customary tenure on its own has capacity to evolve, therefore this calls for institutions and frameworks that will enable it in its own due course to gradually move on to registration. However, should it become a necessity to consider certification or registration, then it should take place with emphasis on family ownership.
- In addition registration and certification under communal land associations for Common Property Resources and Communal land which are at risk of individuals grabbing them is necessity and is favored but the legal processes and procedures require urgent reform.
- Original jurisdiction for dispute resolution and land administration over customary tenure should rest with traditional institutions (clans) and to the extent possible these institutions need to be co-opted into the statutory arrangement on land.

(ii) Threats to IDP land and anticipated violence

Substantive threats to tenure security in post conflict northern Uganda (evident in Teso) are politically generated rather than ground in tenure type (customary tenure). The major threat is that of the Government massively grabbing land either directly or indirectly through other agencies, which is elaborated in this study as weaknesses in the policy and legal frameworks, fuelled by speculative release of information by different stakeholders in the land sector (see Table 12).

Table 12: Threats to IDP Land on Return and Resettlement

THREATS TO LAND	SOURCE	IMPLICATIONS
1. State backed land grabbers; especially pastoral <i>Bahima</i> in Teso Swamps (<i>and elsewhere in Northern Uganda</i>)	Physical presence of pastoralist; their defiance of Council and politicians directives	<ul style="list-style-type: none"> • Local populace's mistrust of government's intentions on land in northern Uganda. • Continued stay of Bahima pastoralists in swamps is a direct threat and evidence that local government cannot tackle the issue.
2. Fear of operations of the land market and susceptibility to heightened sales on return of IDPs	<ul style="list-style-type: none"> • Private Sector • Civil Society Organizations 	<ul style="list-style-type: none"> • Evidence in Teso show increase in demand for land since IDPs are devoid of alternative survival and livelihood means • Increase land rentals are evident, though sales are still limited, increased acreage cultivation also seen
3. Unclear resettlement plan under the urbanization policy of creating rural growth centres	<ul style="list-style-type: none"> • Civil society Organizations • Media • Politicians 	<ul style="list-style-type: none"> • Since land is held under customary tenure, it will be impossible for the local populace to defend its right hence resurrection of clans' authority • Skepticism and opposition to any government programme or plans on land without rationality
4. *The camp decongestion policy currently being implemented in Lango and Acholi land	<ul style="list-style-type: none"> • Politicians • Government Officials 	<ul style="list-style-type: none"> • Skepticism and opposition to any government programme or plans on land without applying any rationality • Violence likely to erupt
5. *Claims that government owns land in the north, that can be given to investors or 'politically connected individuals'	<ul style="list-style-type: none"> • Politicians • Government Officials 	<ul style="list-style-type: none"> • Politicians mobilizing local populace to defend their land incase of invasion • Set and broker equity conditions in investment agreements with investors on return of IDPs
6. *Army Commanders who are cultivating land belong to people in IDP camps and have created military detachments around such land	<ul style="list-style-type: none"> • Civil society Organizations • Media • Politicians 	<ul style="list-style-type: none"> • Politicians mobilizing local populace to defend their land, if on return such cultivation does not cease • Demand for removal of army detachments from privately owned customary land
7. Misconception of what constitutes customary tenure (rights and interests there) and how it should be tackled (e.g fear of loss of access rights by vulnerable groups)	<ul style="list-style-type: none"> • Civil Society Organizations • Cultural Institutions 	<ul style="list-style-type: none"> • Various studies are being undertaken on the subject by different stakeholders

- Reaction or implication not clear from Teso region since it has not happened there

The possibility that violence will erupt if fears and suspicions are not addressed is very high. Politicians, media and CSOs have prepared the ground for this. The situation is not helped by the fact that there is a low level of understanding of law and policy on land amongst the local populace which accounts for low levels of utilization and demands for land services, is currently restricted to urban areas. Political will to address the land question in northern Uganda is not definitive; creating profound fear amongst in the local populace, this fear is neither new nor confronted in a systematic manner. It will be important to bring together and engage key players such as the army, local government officials, central government and cultural / religious leaders of IDPs in dialogue for purposes of creating a common understanding and mutual trust on land matter to avoid suspicions and mistrusts. Such communication reduces confusion and improves transparency of government. For groups such as pastoralists, it is suggested that their movements are either controlled or totally banned.

In addition, public education and information campaigns are critical in the entire process. Programmes should be implemented to keep the public informed of the development of policies, strategies and actions. Early public information and education campaigns about land-related issues can help to clarify issues and correct false assumptions. Information should also be given to advice people how to protect their land rights, and on the rules and procedures for restitution, compensation, resettlement, and formalization of rights. A wide range of messages need to be created for different audiences and using different media and for and different actors. UN-habitat and UNDP together with other UN Agencies have recognised the importance of such an approach and are committed to developing specific IEC materials responding to land issues in northern Uganda with a view to ensuring that appropriate information is passed on to audiences.

(iii) Different IDP Categories, Different Land Issues

The current situation in Teso presents three distinct categories of IDPs (see the table below) which requires a differentiated approach to tackling their land issues. Broadly, the same policy and legal framework affects Teso and the rest of northern Uganda. However those displaced by the Karamojong incursions present a peculiar case that requires a separate exploration.

Table 13: Different IDP Categories and Land Issues

CATEGORY	PERIOD	CURRENT STATUS AND IMPLICATIONS
IDPs displaced by Karamojong Incursions (Displacement commenced in the 1940's, cyclical depending on raiding seasons)	Over 15 years of displacement	<ul style="list-style-type: none"> Maintain loss touch with their land, but operate chains of land rental or have opted to purchase land and resettle Clans have broken down and households are now the power brokers on land administration "Families" or sub clans operate as if they were clans on dispute resolution Further investigation could avail insight on implications for longer periods of displacements and non-government response and IDP coping mechanisms.
IDPs displaced by UPA Teso Uprisings (Happened during the late 1980s and 1990s)	5-8 years of displacement	<ul style="list-style-type: none"> All IDPs in this category were politically handled hence returned (no lessons to draw upon)
IDPs displaced by LRA War (Displacement commenced in 2003, returns are still on-gong to date)	2- 3 years of displacement	<ul style="list-style-type: none"> Never lost touch with their rights and holdings in land Though varied and weakened Clan system on customary tenure is currently undergoing re- invigoration Clan has ably filled vacuum of statutory institutions for administration and dispute resolution on return May not provide insightful lessons for rest of northern Uganda because of short displacement period

(iv) Slum Dwellers and Urban Camps

Urban camps in Soroti are nearly closed since majority of the IDPs have returned home. However on departure, slum dwellers purchase the occupancies of returning IDPs and are now squatting in camps replacing returned IDPs. This emerging squatter situation is creating complications for urban land owners where the camps were created and will required punitive measures to curb either by local governments or urban authorities. Secondly, IDPs who are unable to purchase their own land for resettlement and cannot return to their homes are opting to squat in urban areas. In Soroti Municipality for example, numerous settlement are being set up in gazetted road reserves posing a problem for orderly for urban development and control. In such instances evictions are necessary and inevitable. Therefore, the return process should set clear standards and responsibilities for carrying out evictions. It may be necessary to find alternative (or purchase) land for the occupants or squatters in urban areas.

(v) Operations of the Land Markets

There is a thriving land sales and land rentals market emerging on customary tenure. The volume and level of transactions is not regulated. This threat to tenure security becomes more pronounced when families are forced to sale in the pertaining economic squeeze on return (given no economic alternatives) leaving the household without livelihood options hence further descend into poverty. Regulation whether introduced through the traditional institutions or statutory institutions would improve tenure security for the vulnerable groups and institute a system of social safety nets for rural land markets.

Table 14: Insight into Land Rentals and Sales

Study Area	In sights into Land/ Housing Sales and Rentals Situation
Obuku Camp/ Nakatunya	<ul style="list-style-type: none">• Rent is essentially in two instances; land for cultivation and housing units.• No sales were reported by IDPs but land is rented for farming purposes within the municipality. About half an acre of land is rented at 20,000-30,000 Uganda shillings per season.• Its worth noting that initially IDPs were given land freely but this situation changed and rental fees appreciate every season were introduced when returns started.• Those who leave maintain like a second home in the camp while others rent out their housing units in the camp a grass thatched one goes for 8,000 to 10,000 shillings a month while an iron roofed one goes for 20,000 to 250,000 shillings.• In Nakatunya right outside the camp, rates are slightly higher; a grass thatched one roomed housing unit goes for 20,000/= while the iron roofed ones go for 30,000/= if it has electricity as much 50,000/= is charged per month.
Orieta B Village	<ul style="list-style-type: none">• No sales and rentals were reported here but land is borrowed at no cost currently; though it was indicated that due to intensive cultivation efforts since return. There is a general shortage of land and people have started share cropping on a very limited scale.
Nyorobe Village	<ul style="list-style-type: none">• Here IDP who have opted for resettlement and purchased for themselves small patches of land averaging a quarter of an acre; in many instances the purchase had been in form exchange using cattle; where an acre goes for 3-4 heads of cattle. Therefore it's the IDPs who moved with their cattle that have managed to resettle but still they have to rent land for cultivation while the purchased parcels are used for homesteads.• An acre of land for cultivation purposes is charged about 20,000/= per season. It was indicated however, that as the effects of the insurgency ware down; these charges are beginning to appreciate.

(vi) Dispute Resolution on Land

Currently, there is no adequate institutional capacity to manage or resolve land disputes. Targeted institutional strengthening or capacity building to promote more efficient handling of disputes will be necessary. Initiatives and support should focus both on the formal system and the informal / customary conflict-resolution mechanisms. Socially legitimate informal institutions (clans etc) have to be identified and supported as they can manage a number of post-conflict land disputes. A variety

of land disputes, other than restitution are envisaged in the post-conflict area. The Land Tribunals are currently dysfunctional and even when they are established in all the districts; they will not have the capacity to handle all disputes efficiently. Customary and community-based mechanisms for conflict resolution are very relevant especially Alternative Dispute Resolution (ADR) approaches such as mediation; conciliation and arbitration need to be considered. These mechanisms can offer effective and acceptable means of managing many kinds of land conflicts and disputes. Enforcement mechanisms need to be put in place to ensure that judgments / settlements are implemented. Simple disputes can be resolved through the LC Court system. Complicated cases that require adjudication should be referred to the District Land Tribunal.

(vii) Land Administration

The core function of land administration should be shared between the customary authorities and the statutory institutions established under the Land Act, i.e. Area Land Committees (ALC), Recorder at the sub-county level and the District Land Office. Institutional responsibilities must be assigned for administrative issues such as restitution and resettlement, evictions, management of public lands and abandoned private lands.

(viii) Resettlement

The need to provide land for people who are landless or who cannot return to their homes will be unavoidable, with special emphasis on the female-headed households, widows and other vulnerable groups. Vulnerable groups will require separate processes for the allocation of land. The challenge is to find land that is available for resettlement. Public lands (some controlled by the Central Government and the other by local governments), whether abandoned or unused, e.g. the ranches should be used for resettlement. The other option is to purchase private land on the open market. The use of private land that has been abandoned should be avoided as this is likely to lead to the government creating a dispute between itself, the owners of the land, and the people who have been resettled.

(ix) Restitution

The existing legal framework is not adequate for resolving land restitution issues. Restitution requires the adjudication of competing claims to determine who has a more legitimate claim to land. It is important to bear in mind that solutions for land claims should not be seen as a simple declaration of entitlement to land rights but should also strive to support national reconciliation. Refugees, IDPs and ex-combatants returning home may find their land/property occupied by others. Unauthorized occupation may also occur on public lands or gazetted lands/protected natural resources. When people recover their property from occupants, how can those occupants be protected from becoming homeless? Compensation may be proposed for people who cannot have their land restituted and this may be in money or in kind (equivalent land located elsewhere).

(x) Claims and Compensation

The rules for treating land claims and land disputes will have to be defined e.g. the types of claims that are eligible for restitution; the date for which claims are valid as claims for property taken before a certain date might not be eligible to submit claims; evidence that is acceptable to support restitution claims. It ought to be pointed out that the land in Northern Uganda is held under customary tenure without formal land records, so it will be necessary to accept other types of evidence, including oral evidence and other types of evidence considered acceptable to prove claims.

The biggest challenge is likely to arise from submitting and processing of claims and applications for resettlement which need to be accessible to people. People

throughout affected areas should be able to easily submit their claims. Forms and information on the process should be in local languages, and should be prepared in consideration of the literacy levels of the population. If any fees are to be demanded for the process, the fees should be affordable to the people. The design of the system should reflect the limited resources available.

It is recommended that a claims processing unit be established at Parish level (Parish Development Committee) and ensure that they meet the administrative requirements before submitting them for decision. Claims for compensation and applications for resettlement should be verified at the parish level by the Parish Development Committee and the Traditional institutions on land (clans) and sent to the Disaster Management Committee (DMC) at the district level. The District Land Office should have the mandate of assessing compensation, and the DLB should assist the DMC in matters of resettlement. Legal aid units should inform people of procedures and assist them to complete forms.

3.4 INSTITUTIONAL FRAMEWORK: ISSUES AND ACTIONS

The context for land administration in northern Uganda has undergone dramatic and irrevocably changes during the displacement period and the post-conflict era⁵⁴.

(i) Institutional Framework for Restitution and Compensation

There is no established institutional framework to handle restitution (recovery of land), resettlement and compensation. The IDP Policy points to local governments as the responsible centres for recovery of land (restitution) and resettlement where recovery is not possible. But which level of local governments and which agencies of local governments? Do the local governments have the institutional capacities to handle this delicate work? In the case of acquiring land for resettlement, do the local governments have resources? They do not have technical capacities or the financial resources to undertake such an enormous task.

From the reading of the Constitution, the Land Act and the IDP Policy, it is not clear which government agency or department is responsible for compensation in the post-conflict cases of this nature. It is the view of the Consultants that compensation is a national function and as such it should be handled by the central government in close collaboration with the local government. The framework should detail the executing agency at the centre (MoLHUD) and the horizontal linkages with Ministry of Justice and Constitutional Affairs, Ministry of Finance and OPM, as well as vertical linkages with the local governments. The policy should provide guidelines on how compensation claims are handled right from the receipt of claims, verification, assessment and payment of compensation.

(ii) Decentralized Structures for Land Administration

The statutory decentralized land administration structures (under the Land Act) i.e. DLBs, DLOs, Area Committees and Recorders (at sub-county level) would be sufficient to handle land services delivery in a post-conflict situation but almost the entire infrastructure is not on the ground and is non functional. The land administration systems have suffered greatly from social dislocation and break-down of state infrastructure. In the north and north-eastern region, the capacity/resource gap for delivery of land services is enormous. The core issue is therefore in ensuring land institutions and infrastructural revival. Local governments do not consider resource allocation and staff capacity for land institutions at district level as a priority, hence they are understaffed and under resourced not only at the apex, but the base institutions such as Area Land Committees are not yet set up or operationalized, hence the system is crippled from the bottom and is hardly able to deliver land services without operational base support. In addition, the current framework fails to adequately locate

⁵⁴ CSOPNU, 2004

the roles and functions of traditional / customary / informal land administration institutions.

The roles of local councils as emerging power institutions in dispute resolution and land administration needs to be clarified, based on legality and given legitimacy. In places, where the traditional institutions are still operational, it is pertinent that they are institutionalized and regularized in a manner similar to the statutory ones and harmonized for acceptability. They should be assigned duties responsibility for accountability. However, in dealing with local councils, the concept of separation of powers (for governance and juridical role in dispute resolution). Secondly, the capacity of both local council and clans needs to be built (for example both are not able to keep records of disputes or land administration undertakings). Since LC1 are effectively engaging in disputes resolution other than LC2 which is the legally recognized court of first instances, the law needs to be amended to reflect the reality on ground, although moving such courts to LC 1 is an enormous cost.

The DLTs were intended to be community institutions, user-friendly and non-conventional, but in practice they have become too formal and located far away from their intended beneficiaries at regional (as a circuit) level. They have been recently closed down by the Judiciary. If they are to be revived, their location needs to be returned to the Ministry of Lands, where the concept of land justice is considered a priority rather than judicial service. The rules of procedure which are currently based on civil procedure amended and the concept of circuiting needs to be done away with or scaled down (to least 2 districts in a circuit).

(iii) Transaction Charges and Verification of Claims

For endorsement of land transactions, a service which is provided free of charge by the Clans, the Local Councils charge between 10% and 20% of the total value of a transaction. This raises the question of legality and legitimacy of this charge. Legally there is no basis under any law for this charge; however parties to transactions legitimately accept and pay this charge as development fees to the local councils. Bearing in mind that neither the local councils nor the clans are remunerated for discharging land administration functions, there is need to regulate this charge and ensure its systematic levy and handling as a source of revenue.

3.5 RECOMMENDED ACTIONS FOR POLICY FRAMEWORK

Assessing policy and law on land in conflict and post conflict situation rotates and revolves around four major principles which are the defining parameters on property rights;

- (a) commitment to protect land (property; during displacement) and possessions
- (b) commitment to resettle and reintegrate IDPs on return by acquiring land or
- (c) by availing mechanisms for recovery (restitution) of IDPs' land and
- (d) compensation in event of loss of land or property

(i) National Policy for Internally Displaced Persons (NPIDP),2004

The NPIDP places the responsibility or restoring land to the returning IDPs (restitution) on local governments without elaborating on the implementation mechanisms. The NPIDP requires local governments to resettle and reintegrate the returning IDPs by “acquiring or recovering their land in accordance with the provisions of the Land Act” and where recovery of land is not possible, Local Governments shall endeavor to acquire and allocate land to the displaced families. Once again no strategies are stated in the policy. Where is the free land to allocate? It should be noted that Uganda does not have a national involuntary resettlement guidelines! The NDIP assumes that IDPs will return and it does not make provision for the IDPs who may be forced to stay in camps for ever or those whom may not opt to return to their areas of origin.

It is the recommendation of this study, that the NPIDP be amended and guidelines for implementation of its provisions on property rights drawn. The amendments and guidelines should include the following;

- Relocate the responsibility for restitution (recovery) and resettlement from local government to central government (specifically Ministry of Lands, Housing and Urban Development) because they have neither the resources or technical capacity, indeed such an undertaking is a state functions befitting national attention.
- Guidelines on quantum and quantity of interests to be considered for restitution or resettlement, eligibility criteria, assessment criteria, verification of claims and execution of claims. This virtual constitutes the resettlement guidelines. There will be need to note the peculiarity of northern Uganda in claims verification given the fact that customary tenure has no records, other forms of evidence will need to be considered.

(ii) National Land Policy

The draft national land policy (NLP) upholds the land rights of IDPs under the principle of enhanced equity and social justice in society. But the national Land Policy lacks in-depth analysis of post-conflict land issues and proposes only one strategy in the entire 132-page document i.e. *resettle all internally displaced persons in their areas of origin and guarantee their security of tenure* (page 45). The policy's emphasis is only on resettling IDPs in their areas of origin. This fails to address the desire of those who may prefer to remain in camps or around the IDP camps which places have over the years become urbanized and currently offer opportunities, facilities and services which may not be readily available in their places of origin. In terms of land administration, the only envisioned mechanism seems to focus on dispute resolution and does not address the rather important aspect of delivery of land services and ascertainment of rights. The NLP also fails to address the role of traditional / customary / informal land administration and land dispute resolution mechanisms, systems and structures and how these will relate and interface with the statutory mechanisms.

It is hereby recommended, that the National Land Policy Working Group of the Ministry of Lands, Housing and Urban Development adopts the findings of this study in as far as they tackle land policy issues and adopt the submissions detailed in the next chapter of this report to ensure that the current gaps in the policy draft on resettlement, restitution and compensation in post conflict land administration are dealt with, in addition the consideration of improved delivery of land services, ascertainment of rights and the critical role of traditional land administration and dispute resolution institutions is recognized.

3.6 RECOMMENDED ACTIONS FOR LEGAL FRAMEWORK

(i) 1995 Constitution of Uganda

The permissible grounds for Government to invoke powers of eminent domain to appropriate land are restricted under Articles 237 and 26 of the Constitution and do not include resettlement. It is recommended that the Constitution be amended to include resettlement as one of the grounds.

(ii) Land Act Cap 227

The current legal framework as elaborated under the Land Act Cap. 227 and the Land Acquisition Act Cap 226 does not sufficiently take care of post-conflict land issues, although section 41 of the Land Act (LA) provides for the establishment of a land fund, to be used, among other things, to "resettle people who have been rendered landless by government action, natural disaster or any other cause". In the first place, the Land Act cap 227 still lacks guidelines or principles to apply for resettlement; clearly elaborating who qualifies to be resettled, on what terms and conditions? Secondly the

power of compulsory acquisition of land given to government under section 41 (6) is unfortunately limited to registered land occupied by lawful or bonafide occupants to enable them acquire registrable interests pursuant to the Constitution (article 237 (9)(b) of the Constitution). The interpretation is that Government cannot invoke powers of eminent domain to compulsorily acquire land to resettle IDPs –this is a serious constitutional and legal lacuna!

No legal provisions for resettlement except under section 41 of the LA which provides for the establishment of a land function, to be used, among other things to *“resettle people who have been rendered landless by government action, natural disaster or any other cause”*. Need for regulations and guidelines to implement this provision.

The Land Fund, since its establishment, has lacked an appropriate administrative and institutional framework, resources and capacity; currently responsibility is tasked to Uganda Land Commission which is unable to fulfill this mandate. In addition, its previous operation have been driven by political protégé limited to serving interests of the ruling government in solving land issues considered pertinent for political correctness, utilizing it requires political sanctioning and will.

The compensation provisions in the Land Act which is a recent enactment are not sufficient to handle the likely compensation claims as detailed in this study. The law does not provide for the basis of assessment; it does not state what is legible and not legible for compensation; it does not state who will be responsible for assessing compensation. The only basis of assessment is in section 41 (6) and it is restricted to only registered land occupied by lawful or bonafide occupants. Section 72 of the Land Act limits itself to compensation claims in relation to damages and losses arising out of official encampment of on private land by any officer of Government. The section however does not apply to the encampment of any authorized security forces. The LA does not specify the modalities to be used in making the claim and the principles to be used in assessing the quantum of compensation.

In addition, there will be need to decide whether compensation claims arising are to be tackled legally or politically. It is also not clear, the extent of compensation and how far it will stretch on land. The elements to compensate need to agreed on and include the following; use of land, occupation, degradation and harvested resources such as trees. Furthermore claims verification process needs to be cognizant of land owner out to make false claims especially if IDP directly covered the cost of occupation or use of land during displacement. Hence three aspects of managing compensation need to be clarified; determination of compensation, verification of claims and executing agencies.

(iii) Land Acquisition Act Cap 226

The Land Acquisition Act Cap 226 which is the principle law on compensation was enacted in 1965 and it is not only outdated but many of its provisions are inconsistent with the constitutional provisions under the 1995 Constitution (especially article 26)

The Land Acquisition Act Cap 226 (LAA) should be amended and harmonized with the Land Act Cap 227 and to comply with the constitutional requirement for prompt, adequate and fair compensation prior to the taking.

The LA & the LAA should be amended to, among other things, provide for what is eligible for compensation as well as the basis of assessment. The full structure and framework encompassing basis for assessment of compensation, determining quantum and interests to compensate, verification of claims and execution of claims.

3.7 ACTIVITY SEQUENCE AND FINANCIAL IMPLICATIONS FOR 3 YEARS FOR SOROTI DISTRICT

RESPONSE ISSUE	TIME PERIOD	ACTIVITIES	SPECIFIC ACTIONS	COST (Ushs) "000,000"
AGENDA SETTING	IMMEDIATE	lobby and advocacy to get land into the recovery and reconstruction agenda for Northern and North Eastern Uganda	Development of policy brief on land issues for post conflict recovery and development on policy, legal and institutional frameworks and recommendations	20
			Verifications of roles of various actors and clarifying institutional responsibility and mandates on land matters MoHLUD (e.g LC levies)	40
			3 Round table Discussions for national level actors	
			(i) Donors and Development Partners	10
			(ii) Relevant Government Ministries and technical Staff (Decide Political or legal approach)	20
(iii) Private sectors, CSOs and other stakeholders	10			
			Round Table Discussions at District level	
			(iv) Area specific Members of Parliament, Sessional Committee of Parliament	20
			(v) Roundtable Discussion with Soroti District Council and DDMC	10
			SUBTOTAL	140
TENURE SECURITY				
(a) Explore land issues for IDPs in other regions	IMMEDIATE	IDP situations in Lango Acholi land West Nile and Karamoja for clarity as the Teso case study is limiting in its application	(i) Undertake similar study in Lango and Acholi land	50
			(ii) Explore unique position of Karamoja	30
			(iii) Look at issues emerging from West Nile	30
(b) Fears or anticipated violence	IMMEDIATE	Provision of accurate Information to deal with speculation and Fears Public education and information Campaigns Dialogue with different stakeholders especially those wielding power that threatens rights or have capacity to grab land	Development of specific IEC materials to confront Political statements on land in northern and misunderstandings or misinterpretation	50
			Provision of prepared materials to	
			(i) MoLHUD technical personnel	50
			(ii) CSOs and Private Sector	
			Dissemination of information through Community Sensitization/ dialogue sessions	
			(i) Cultural Institutions (Iteso Cultural Union- Emorimor)	120
(ii) Other Actors at Grassroots (to be identified)				
			Dissemination of Information through Media Campaign (Print and Broad cast)	
			(i) National level	50
			(ii) Soroti District (Translated Information)	20
			Dialogue with different actors; including but not limited to; Army, local leaders, private sector etc.	80
			SUB TOTAL	350
INSTITUTIONAL FRAMEWORK				
Dispute Resolution	IMMEDIATE	Creating capacity for tackling post conflict land disputes resolution, alternative dispute resolution etc	(i) Support to identified traditional institutions to tackle post conflict land disputes (clans) including paralegal training for alternative dispute resolution	80
			(ii) Support and capacity to local councils on content of law, roles and enforcement of decisions and judgment on land issues	80
			(iii) Support to operations of Tribunal @ 6,000,000 x 12 x3	216
Land Administration	IMMEDIATE	Creating and supporting for post conflict claims	(i) Operationalization of Area Land Committees and Recorders in Soroti	80
			(ii) Institutional support to the Land Office and District Land Board	144

		management and administration services	(iii) Simplifying the procedure and process for communal land associations formation and registrations	20
Traditional Institutions	MEDIUM TERM	capacity building for traditional institutions	(iv) Community sensitization/ dialogue sessions on integration of customary and statutory institutional roles on dispute resolution and land administration	200
			(v) Feasibility and piloting of institutional integration and training of traditional and statutory institutions	300
			SUBTOTAL	1,120
RESETTLEMENT, RESTITUTION, COMPENSATION AND CLAIMS	SHORT TERM	Compensation Payments (where applicable) Purchase of land for resettlement Land Restitution	(i) Establishment of a transparent mechanism through which claims are logged/ processed at parish level)and Support DDMC and PDV to facilitate claims processing, compensations etc	120
			(ii) Establish or identify national Agency and facilitate its operations for Restitution Resettlement and Compensation	120
			(iii) Acquisition of land for resettlement (5% of total unreturned population) (approximately 5,000 to 7000 IDPs in Soroti District) 750,000 x 5,000	3,750
			SUBTOTAL	4,090
SLUM DWELLERS IN URBAN CAMPS	MEDIUM TERM	Removal of illegal camp occupants in urban buildings, former Camp areas and road reserves	(i) Consultancy to set up standards and assign responsibility for evictions	30
			(ii) Purchase of alternative land (if resettlement is the option)	500
			(iii) Facilitation of officers involved	30
			(iv) Municipal/ District Council Session	45
			SUBTOTAL	605
LEGAL FRAMEWORK	MEDIUM TERM	Ensuring legal framework is responsive to restitution, resettlement and compensation	(i) Consultancy for development of guidelines on compensation	30
			(iv) Consultancy for developing Uganda's Involuntary Resettlement Policy rules and regulations on resettlement	40
			(v) Ensure Constitutional amendment to invoke eminent domain by government to include resettlement conditions	30
			(vi) Move amendments to land Act, Land acquisition act to provide for compensation; define terms, quantum and eligibility criteria's and responsible institutions	50
		Building Capacity for regulating land sales and rentals for vulnerable groups in Post conflict	(i) Develop and implement rural land market regulations	20
			(ii) Provide specialized training in land records management and rules implementation guides and schedules for Local Councils and Traditional Institutions, Law enforcement agencies etc.	40
			(iii) Development of integration/ operational guidelines for traditional and customary institutions on land administration and dispute resolution	40
National Land Policy	(i) Prepare submission to and input into the National Land Policy on IDPs; Policy Working Group sessions	40		
			SUBTOTAL	290
OPERATIONAL ISSUES	SHORT TERM		(i) Stakeholder Coordination	20
			(ii) Monitoring and Evaluation	40
			SUBTOTAL	60
GRAND TOTAL				6,735

4. WAY FORWARD

4.1 OPERATIONAL CONSIDERATIONS

(i) *Land Issues in Recovery and Development Plans for Northern Uganda: Sequencing activities for Follow Up*

The development and implementation of policies to facilitate access to land and its administration should be a priority for the Government in the post-conflict recovery for northern Uganda. So far the agencies leading the recovery and reconstruction efforts have not assigned any importance to land tenure issues. Land issues are being tackled in adhoc ways, rather than according to systematic guidelines and normative frameworks. Much as the National Policy for Internally Displaced Persons (NPLDP) makes strong commitments on property rights under Chapter 3.6⁵⁵. All the government plans⁵⁶ so far released to implement the NPLDP, do not make any provision on land issues⁵⁷. As a major step forward, it is important that the following take place;

- Priority issue number one is recognizing land tenure problems and getting land on the recovery and reconstruction agenda⁵⁸. Land tenure should be dealt with from the angle of a broad policy framework as distinct from a series of separate issues; this approach acknowledges the interrelatedness of land within and between relevant institutions. The challenge in this, is prioritizing issues that must be dealt with and ensuring that policy objectives are reasonably developed in co-operation with a cross-section of society (within a framework of reconciliation and compromise), addressing the need for transparency and community consultation, bearing in mind the international conventions in regard to land;
- Secondly, preparation of interim submissions for NDRDP and the National Land Policy since the findings and recommendations of this study's results are valid for the generic setting especially in terms of policy and legal frameworks. The sequencing of actions and activities is detailed together with the budget in section 3.7 of this report.
- However, for the rest of northern Uganda in terms of institutional and tenure security issues, given the different cultural context pertaining in Soroti and the rest of northern Uganda. It will be important that Lango, Acholiland, West Nile and Karamoja are explored separately, given their peculiarity and unique condition

(ii) *Stakeholder Involvement: Coordination and Roles*

Stakeholder co-ordination should provide a link between the national land agencies, local governments and local communities. Partnering with international organizations & NGOs can be critical to the co-coordinated development and implementation of appropriate policies and strategies to provide access to land and security of tenure. All

⁵⁵ Chapter 3.6 of NPIDP reenacts the constitutional provision on protection from deprivation of property when it states clearly that Government will ensure that IDPs are not arbitrarily or compulsorily deprived of property or any interest in or right over property except as provided for in article 26(2) of the Constitution

⁵⁶ Among the government plans are: The National Internally Displaced Persons Return Resettlement and Re-integration; Strategic Plan for Teso and Lango sub-regions, 2005; Emergency Humanitarian Action Plan – LRA Affected Areas, 2006; National Peace, Recovery and Development Plan (PRDP)

⁵⁷ except one sentence in the National Peace, Recovery and Development Plan for Northern Uganda (PRDP) 2006-2009 on page 47 which states that “mechanisms will be established to solve land conflicts and other land access and tenure-based problems”.

⁵⁸ FAO (2005) has rightly pointed out that secure access to land and other natural resources is a crucial factor in the recovery and reconstruction of a country after a violent conflict. It is essential for the realization of the right to food and the MDGs, particularly as they relate to eradicating extreme hunger and poverty, promoting gender equality and empowering women, and ensuring environmental sustainability.

key stakeholders should acquire improved ability to mitigate and resolve conflicts. The program should provide training in communication and conflict resolution skills, negotiation, mediation and reconciliation to a variety of actors working on land issues at different levels of civil society, government and local communities.

Currently, there are different initiatives by different actors on land issues in northern Uganda that are not coordinated or shared, these need to converge and share out responsibility as well as providing a mechanism for sharing results, lessons and learning so that a holistic and coordinated approach on land matters in northern Uganda emerges. This implies that a consensus needs to be built and responsibility apportioned between central government, local governments in northern Uganda and development partners operating in northern Uganda and civil society organizations.

MoLHUD has to coordinate actors on land matters and ensure enforcement of standards in services provided and enhance the capacity of others to deliver appropriate services (including private sector and civil society organizations). Development partners undertaking programmes in northern Uganda can assist to build government, civil society, and NGOs capacity to promote dialogue and the peaceful resolution of land disputes. Advocacy capacity of CSOs at community, district and national levels need to be built. Legal aid and information centres need to be established to educate the returnees about their rights and obligations help prepare claims and help push these claims through the process. Ensure access to some kind of legal advice and assistance to those in need (community-based legal assistance).

4.2 SUBMISSIONS FOR PRDP AND NATIONAL LAND POLICY

It is suggested, on the basis of the findings of this study (and the subsequent findings from Acholi and Lango sub regions in the next phase of this study, which will substantiate or revise this submission) the following be considered (for the interim) for the Northern Uganda Peace Recovery and Development Programme 2006-2009 and the Draft National Land Policy. These submissions will be discussed, refined and finalized by the Ministry of Lands Housing and Urban Development before submission to OPMs office (PRDP) and the National Land Policy Working Group (Draft National Land Policy)

4.2.1 PRDP 2006- 2009

Issue One:

Under strategic Objective One on Consolidation of State Authority, insert a new sub-section on: **Enhancing delivery of Land services and Land justice**

Context:

All the government plans so far released to implement the NPIDP 2004, do not make any provisions on land issues in recovery and reconstruction of Northern Uganda. However section 3.6 of the NPIDP on property makes express provisions for restitution (recovery) of land and property or resettlement in the event that restitution is not possible. In addition to the commitment made in the Draft National Peace, Recovery and Development Plan for Northern Uganda (PRDP) 2006-2009 on page 47, that “mechanisms will be established to solve land conflicts and other land access and tenure-based problems”, it is pertinent that land and property issues are better incorporated in planning for return and resettlement of IDPs and at the commencement of the recovery reconstruction and development of Northern Uganda. This is to overcome a scenario where land tenure issues and land policy, as an elements of peace-building tend to be under-rated and receive little attention yet they play a fundamental role, in recovering from conflict, and ensuring that further conflict does not follow. In particular, recovery and reconstruction programmes need to strive to restore institutions and structures charged with dispensing land justice and delivery of land

services. 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.

Current Situation:

Currently, decentralized land administration institutions and structure as laid out in the Land Act 1998 are sufficient to handle post-conflict needs in terms of justice delivery, land rights verification and ascertainment. However, the entire framework is almost non-functional because of lack of human resources (mainly staff), institutional structures, equipment and operational funds. In some districts apex institutions are formed such as District Land Board and District land offices but are marred by operational inefficiencies, root institutions such as Area Land Committees are non-existent.

In terms of land justice, the quasi-legal structures in form of District land tribunals designed to reduce case backlog on land matters and conventional court intricacies (such as procedural matters in Magistrates) are currently closed down due to lack of resources. Their base supportive structures at Local Council 1, 2 and 3 also lack capacity to expeditiously tackle land matters.

Traditional land administration and dispute resolution institutions especially clans and chiefs who would be instrumental in ensuring mediation, alternative dispute resolution and claims settlement (with reconciliation) are unable to undertake such responsibility, even if their roles and function are viewed as legitimate within communities they lack legal authority on land matters.

Objectives

Mechanisms for land rights protection and land claims settlement are key to avoiding large scale degeneration into land related conflict and violence upon IDP return or resettlement and in recovery programmes.

Strategy

- Acknowledging that state authority has not been functioning normally for over 20 years, management of disputes and claims calls for the establishment of mechanisms and agencies to support the post conflict land administration.
- The District Land Tribunals, District Land Offices and Boards are part of the institutions to be put in place or to be rebuilt to functionality for northern. These are the institutions charged with delivery of land justice and land services IDP on return.
- In terms of operational requirements, recruitment of technical staff at the district level is critical as the current human capacities in land administration institutions are terribly inadequate. Offices will have to be constructed and equipment purchased. Storage requirements for paper documents and land record (for restitution, compensation and resettlement programs) is likely to be massive.
- Administrative steps to ensuring that clans and chiefs authority as first level (first instance) traditional land management and dispute resolution mechanisms and institutions on customary land is restored through issue of express directives intended to integrate their operations, actions and decisions with those of local councils and other statutory institutions on land matters.

Summary of Funding Gap (over 3 years)

(To be provided by Ministry of Lands, Housing and Urban Development: Land Tenure Project)

Issue Two:

Under Strategic Objective 3 on: Revitalization of the Economy, under sub sector submissions insert: **Land Sub sector**

Context:

Revitalization of the economy will nearly be impossible to achieve without with stable land relations, for no empowerment of people on agriculture production can take place if their key resource for production i.e. land is affected by unstable relations. PMA acknowledges the centrality of land to production and the rights of the major producers (women and children) which must be protected in policy and administrative undertakings to avoid situations where female headed household and child headed household further descend into poverty after disposal of land assets because of the economic squeeze on return and resettlement.

Current Situation:

It is evident in post-conflict Teso, that land is often the only readily available asset for production on return and resettlement, henceforth the value attached to land is enormous and warrants special protection and guarantee. For the IDPs who have returned it is considered their “wealth and survival asset”, central to the most basic aspect of production.

Objectives

Ensure stable land relations which are crucial for the resumption of agricultural production and sustainable livelihoods.

Strategy

- CSOs and traditional institutions need to be supported in their roles of mediation, reconciliation, legal aid and alternative dispute resolution. Working with traditional institutions and CSOs on how best to approach land administration and dispute resolution on IDP return.
- Establish an institutional framework for tackling restitution, resettlement and compensation claims on land emerging on IDP return, with an agency right from the grassroots (review IDP policy and locate responsibility to appropriate institutions)
- Undertake public education campaigns for the IDPs in northern Uganda on rights ascertainment, law and dispute resolution mechanism, intents of government on northern Uganda etc. to tackle suspicions, speculation and fears
- Cause dialogue between different stakeholders involved in the conflict in northern Uganda to ensure a common understanding and mutual trust. Ensure that the different stakeholders, institutions and agencies handling land access issues and land administration are aware of current law, policies, strategies and procedures

Summary of Funding Gap

(To be provided by Ministry of Lands, Housing and Urban Development: Land Tenure Project. MoLHUD liaise with UNDP and UN-habitat who are already committed on strategy 3 and 4)

4.2.2 Draft National Land Policy

Land policy must strive to have an institutional approach to post conflict land issues, create institutions, mechanisms, guidelines and laws to meet claims for property restitution (recovery), compensation and resettlement. Such claims will come from returning people, those who acquired land during displacement, and those who lost lands during displacement. Absence of policy can exacerbate uncertainties, inequities and disputes on land. Currently, In Uganda there is no established institution framework responsive to restitution, resettlement and compensation and a number of laws need to be amended for effective response.

(a) Restitution

Restitution on land matters is provided for under the IDP policy placing responsibility under local governments. Local Governments neither have the resources or the technical capacity to undertake such responsibility. Besides this is a national function. The policy needs to recommend for amendment of the IDP policy and relocated the responsibility for restitution to a national agency and also provide for formulation of guidelines and principles for restitution (this involves defining qualification, claims handling, claims validation, executing agency and sources of funds for such undertakings)

(b) Resettlement

The current (Draft) National Land Policy's main focus is on IDP returns is limited to place of origin, leaving the option of those who do not wish to return such as widows (due to uncertain land rights) who are now undertaking petty trade in urban areas and others (about 5% of displaced population) who have not returned due to the urban lure or tempt and economic opportunities pertaining in areas where they were displaced to.

- (i) Resettlement is partially covered by the Land Act Cap 227 provides for Land Fund for (among other things) "resettling people rendered landless" section 41. However guidelines or principles to apply for resettlement are lacking and since its establishment the Fund has lacked appropriate administrative and institutional framework; resources and capacity to fulfill its mandate. The policy needs to commit government in ensuring that the guidelines for resettlement are formulated detailing (eligibility, procedures, executing agency and sources of funds for such undertakings).
- (ii) Government in its quest to deal with IDP return and recovery will need to undertake resettlement, given the limited resources to pursue the option of open market purchase of land, it would be important to amend the 1995 Constitution so that permissible grounds for Government to invoke powers of eminent domain for compulsorily acquisition of land include resettlement.

(c) Compensation

- (i) The provisions for compensation in Land Act are insufficient, as section 72 limits compensation arising out of official encampment to damages and losses on private land and exempts encampment by authorized security forces. Modalities for making compensation claims are not detailed and the principles or basis of assessment for compensation needs to be clarified (determining quantum), verification of claims and executing agencies. Rules for treating compensation claims and disputes (note northern Uganda has customary tenure; therefore no land records; nature of evidence) and whether compensation should be tackled legally or politically needs to be dealt with.
- (ii) The Land Acquisition Act (which is the principle law on compensation) is outdated and inconsistent with the constitution.
- (iii) The choice of whether compensation should be handled legally or politically, (in which case both avenues are justified in the law and in policy) has to be made. Legal processes are likely to be cumbersome and costly not only for the rights seeking public but for Government since the sums involved will continuously swell as legal processes take time. In the alternative, it could be handled politically through a designated government department. There are precedents of political handling in Luweero, Teso and Ntungamo

(d) Rural Land Market Regulation

There is a thriving land rentals market on customary tenure (mainly in form of sharecropping, cash rentals, or lending) without any form of regulation. This vibrant rural land-rental market needs a certain level of regulation to safe guard the

interests of the vulnerable groups who are actively engaging in it. The volume and level of transactions is not regulated. This threat to tenure security becomes more pronounced when families are forced to sale in the pertaining economic squeeze on return (given no economic alternatives) leaving the household without livelihood options hence further descend into poverty. Regulation whether introduced through the traditional institutions or statutory institutions would improve tenure security for the vulnerable groups and institute a system of social safety nets for rural land markets.

4.3 ISSUES FOR VALIDATION IN LANGO AND ACHOLI

The follow up in Lango and Acholi should be designed as a participatory rapid appraisal with the aim of covering a bigger constituency and generating both qualitative and quantitative information on land related parameters relevant for post conflict land policy and administration. This will ably overcome limitations borne on scope and provide an empirical basis for making general inferences on post conflict land policy and administration in northern Uganda. The rapid appraisal should specifically validate:

- (i) The extent to which national frameworks (policy and legal) ably respond to peculiar site specific conflict and post conflict situations and issues in Lango and Acholi.
- (ii) The extent and manner in which transformation/evolution of customary tenure has taken place given socio-cultural and demographic changes triggered by conflict. Especially the institutions and practices in land administration and dispute resolution.
- (iii) Threats to IDP land; anticipated conflicts and claims, the basis and prevalence.
- (iv) Urban development issues with respect to slum dwellers and urban IDPs
- (v) IDP categories and attendant land issues for both returned, resettled and those still in camps, particularly priority rankings.
- (vi) Dispute resolution, land administration and management with regard to decentralization, functionality and roles of institutions both statutory and traditional/ customary
- (vii) The land market, evolution, operation, practices, effects; prevalence of transactions in the course of displacement and return along with changes in land values.
- (viii) Resettlement, Restitution and Compensation various local manifestations that need response and the nature of suitable response.

The participatory rapid appraisal will use two key methods; area specific transect walks to administer a highly structured quantitative tool and consensus panels for a qualitative tool. Data collection will be conducted amongst the following communities which will represent sample strata:

- (i) Urban resettlement communities
- (ii) Rural resettlement communities
- (iii) Urban camp communities
- (iv) Rural camp communities
- (v) Returned communities
- (vi) satellite/ decongestion camp communities

Statistical inferences will need to be reasonable; a scientifically proved sample will be arrived at taking into count the different strata detailed above.

5. ANNEXES

5.1 RESEARCH ISSUES AND QUESTIONS

From the review of literature, it was clear that the following major issues had to be dealt with in order to appropriately respond to land issues in post conflict northern Uganda.

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 dynamics 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. The need to assess the social protection needed for IDPs vulnerable groups and specific focus on gender issues (i.e. gender discrimination with respect to land rights and use)

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. In such a circumstance it becomes difficult to determine the scale of land issues to be dealt with. The survey attempted 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%.

Issue three: Governments' Plans and Intent

This addresses the need to know more about governments' plans for the lands in northern Uganda, given the spell of rumours 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?

Issue Four: Constitutional and Legal Framework

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)?

Issue Five: 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?

- (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

Issue Six: 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

Issue Seven: 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 rumours 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

Issue Eight: Dispute Resolution

Disputes are often part and parcel of the continuous process of constitution and reconstitution of social and cultural relations in specific community settings⁵⁹. No

⁵⁹ MWLE, 2006

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

Issue Nine: Land Administration: Three key issues need to be dealt with; capacity and suitability of existing institutions on land administration, adequacy and functionality, identification of institution gaps and options for filling the gaps. 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 superintend 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?

Issue Ten: 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, complementarily 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

5.2 PROFILE OF DONORS, DEVELOPMENT PARTNERS, CSOs AND OTHER STAKEHOLDERS IN SOROTI (IDP ISSUES)

AGENCY	ACTIVITIES/INTERVENTIONS
Food and Agricultural Organization (FAO)	<ul style="list-style-type: none"> Activities are recovery – oriented (agricultural intervention and livelihood support for IDPs in northern and north eastern Uganda. food for education (agro-forestry in schools producing own food, food for health (maternal & child health nutrition; support to HIV/AIDS infected persons; support to therapeutical feeding centres) Food for assets (food resources used to facilitate communities to create assets which they can use e.g. fish ponds; community wood-lots; rehabilitation of roads). food for life (relief in Acholi)
Teso Private Sector Development Company Ltd.	<ul style="list-style-type: none"> capacity building (training; business and technical skills; support to micro-finance institutions) social-economic integration of IDPs in 3 centres (Soroti, Lira & Gulu-ex-combatants); training of IDPs & re-integration kits
World Vision	<ul style="list-style-type: none"> 3 projects in Soroti (Tubur Area Development Programme; Arapai Area Development Programme and Kamuda Area Development Programme) Resettlement programme in Tubur (Tubur agricultural recovery project (250,000 US\$) –tools, oxens, seeds, cows, goats, training farmers, environment management, agro-forestry and fruits. peace-building project-training in conflict management; peace-building committee at each parish; LCs trained in peace building; there is a district peace building plan and strategy other development interventions (health, education e.g. Tubur Senior Secondary School & 2500 children supported in Tubur)
Teso Dioceses Planning & Development (Diocese of Soroti & Diocese of Kumi)	<ul style="list-style-type: none"> livelihood programmes (agricultural in puts, agricultural extension, agro-forestry, bee-keeping; & contracted by NAADS & WFP) peace, emergency and human-rights programme – empowering the people to manage their conflicts; training <u>peace promoters</u> in the community – 10 peace promoters in each parish trained in peace and conflict resolution capacity building Mediate, reconcile & sensitize people about land, solve land disputes and domestic problems (drinking) and abuse by soldiers. Network with Peace NGOs
Uganda Human Rights Commission (UHRC)	<ul style="list-style-type: none"> Services in conflict areas in partnership with the civil society and the UPDF to cater for people who may not be in position to travel to the UHRC regional offices. services offered through the Civil Military Co-operation Centres (CMCCs) at Katakwi, Kumi & Kaberamaido) Acts as information points on human rights issues and to assist populations displaced; monitor human rights and humanitarian issues in the affected districts; resolve conflicts among the different ethnic groups where possible. Conflicts settled in a timely manner that is not legalistic and costs (centres are informal in their procedures and always seek for mediation and settlement of conflicts as an alternative system of justice.
The Northern Uganda Social Action Fund (NUSAF)	<ul style="list-style-type: none"> NUSAF empowers communities by enhancing their capacities to systematically identify, prioritize and plan for their needs within their value systems, and implement and manage sustainable development initiatives through community action, leadership development and resource mobilization. Community development initiative (improving and developing socio-economic infrastructure Vulnerable group support (including widows and widowers, orphans, and disabled persons; ex-abductees, people living with HIV/AIDS youths whose education was interrupted by the long civil strife, female headed households, the aged and others) Community reconciliation and conflict management Youth opportunities programme
World Bank	<ul style="list-style-type: none"> The Labour Based Safety Nets programme-returning IDPs expected to provide labour by working on community infrastructure like clearing roads and wells among others in return for cash
UNHCR	<ul style="list-style-type: none"> Responds to the protection and assistance needs of the IDPs. Repatriation and resettlement programs for IDPs
USAID (ACDI/VOCA)	<ul style="list-style-type: none"> Food Security Recovery Program for the Conflict-Affected Areas of Northern and Eastern Uganda (food security interventions for the conflict and post-conflict regions of Acholi, Lango and Teso
Refugee Law Project (Under the Faculty of Law of Makerere University)	<ul style="list-style-type: none"> Promoting and protecting rights of forced migrants Conflict and transitional justice Provision of free legal assistance Psychosocial counseling Action-oriented research for advocacy purposes (policy, law and practice regarding displaced persons and monitor full implementation of international and domestic human rights law Awareness on land rights and facilitating legal resource in land dispute resolution Training in areas of human rights, humanitarian and refugee law. Training in human rights, Guiding Principles on Internal Displacement and the National IDP policy

(ARC)	<ul style="list-style-type: none"> • American Refugee Committee International works in 8 IDP camps and their surroundings in Gulu District to collect and disseminate information on IDP camps and return issues, assistance gaps, and freedom of movement
UN-HABITAT	<ul style="list-style-type: none"> • Has recognized expertise on housing, land and property issues (HLP) • Has developed a series of tools and strategies for implementation of sustainable relief in human settlements in crisis. • Leverages investment in emergency response with longer term recovery and development gains (by linking humanitarian relief with medium to longer term programming and planning. • UN-HABITAT has an interest in HLP issues, both from an early recovery and a rights perspective and seeks in its programming to support sustainable planning and management of HLP issues in ways that contribute to return and (re) integration. • UN-HABITAT has been designated by the Inter-Agency Standing Committee (IASC) under the Cluster Approach Framework as the focal point for <u>shelter, land and property issues</u> in close co-operation with the lead agencies • UN-HABITAT interested in providing long-term support to HLP programs, particularly those that help the process of <u>sustainable return, resettlement and (re) integration; housing and land tenure restitution mechanisms; shelter rehabilitation; land use planning and regulatory systems; and livelihood projects.</u> • UN-HABITAT also supports capacity-building projects aimed at local government and other institutions dealing with HLP issues and restitution (both formal and informal mechanisms).
DANIDA	<ul style="list-style-type: none"> • Danida has been active in Acholi and its support centres around human rights of people living in the North and empowerment of civil society actors' organizations & networks to actively engage in <u>conflict resolution and peace building</u>. Justice and reconciliation in communities – including promotion of conditions & mechanisms for peaceful dispute resolution land issues and alternative livelihood among those sections of the local communities (especially the youth) who may be easily mobilized into violence. • The Danida Agriculture Sector Programme Support (ASPS) supports recovery and development for Northern Uganda under its Restoration of Agriculture Livelihoods in Northern Uganda Component (RALNUC) interventions (<u>mainly vouchers for work approach</u>) • The intervention mobilizes returning IDP farming communities to plan for and rebuild their rural infrastructure, paying them for this work <u>with vouchers</u> that are redeemable with inputs at participating agro-input dealers. • Danida is interested in supporting land rights issues.
European Commission (EU)	<ul style="list-style-type: none"> • Under the Northern Uganda Rehabilitation Programme (NURP) • Projects aimed at improving coping mechanisms and self-reliance of IDPs and supporting their voluntary return to home areas. • Types of action cover the following themes <ul style="list-style-type: none"> ○ Promotion of protection, legal and, social work and psycho-social support of IDPs ○ Support to livelihoods, income generation and food security ○ Re-integration of ex-combatants to communities ○ Support to the voluntary return of IDPs, including to basic infrastructure in return areas ○ Targeted measures in favour of the most vulnerable persons.
UNDP	<ul style="list-style-type: none"> • <u>Justice and Security Sector Reform Programme for Northern Uganda</u> assists in the design and implementation of transitional justice activities including truth commissions, reparations and reconciliation events. It trains local leaders in the war affected communities to support the locally owned approaches to justice and reconciliation. • <u>Transition to Recovery Programme (TRP)</u> is one of the UNDP Uganda's Crisis Prevention and Recovery Programme (CPR) components whose overall objectives to reduce the regional imbalance in the north through the <u>creation of an enabling environment for peace and resettlement, reintegration and socio-economic recovery</u> of conflict affected populations and lost communities. • TRP project aims to address these challenges through a package of interventions directed at the <u>promotion of livelihoods, capacity building and social reintegration.</u> • In particular strengthen Government capacity to address the problem of internal displacement, at central level and in selected conflict affected districts (5 District Disaster Management Committees) • An evaluation of the TRP • Transitional Justice in Northern Uganda, Eastern Uganda and West Nile (in conjunction with the Justice, Law & Order Sector (JLOS) – explores alternatives to formal justice in criminal, commercial, land and family justice).
The Germany Government	<ul style="list-style-type: none"> • Programme executed by NGOs; the German Agro Action (GAA); German and Uganda Red Cross; Lutheran World Federation (LWF) and Arbeiter – Samariter-Bund (ASB) • Provides seeds for cross farm tools non-food items (blankets, mosquito nets) and fixing new and rehabilitating old bore holes
The Danish Refugee Council (DRC)	<ul style="list-style-type: none"> - Development objective: durable solutions found for the refugee, displaced and affected persons in West Nile region. - Immediate objectives are self-reliance capacities among refugees, IDPs and host communities are protected and strengthened, enabling them to meet essential needs in a sustainable manner and with dignity; the districts' capacities to respond to and co-ordinate emergency and crisis situations enhanced.

5.3 LEVELS OF IDP RETURN IN SOROTI

SUMMARY OF SOROTI IDP FIGURES, JUL 06

S/no	County	Sub county	Camp	District of Origin					Total	
				Soroti	Amuria	Katakwi	Kaberama	Lira		
1	KASILO	Bugondo	Kabola	37	168	0	0	0	205	
			Kadungulu	Kadungulu	38	132	0	5	0	175
		Kadungulu	Kabulabula	-	133	0	0	0	133	
			Kagwara	213	151	40	13	6	423	
			Pingire	Pingire	7	383	11	0	0	401
			Labori	364	180	0	0	0	544	
		Kasilo	Omugini	67	290	0	4	0	361	
			Sub-total	726	1,437	51	22	6	2,242	
2	SERERE	Kyere	Kyere S/C	12	44				56	
			Olio	Olio Main	11	335	5	0	0	351
		Olio	Olio Kakus	12	53	16	0	0	81	
			Kidetok	8	194	0	0	0	202	
			Sub-total	31	582	21	-	-	690	
3	SOROTI	Katine	Atirir	646	54	6	23	0	729	
			Tubur	Acuna	1367	26	0	0	0	1,393
		Sub total	2,013	80	6	23	0	2,122		
4	SOROTI M		Obuku	1,982	3,385	36	722	4	6,129	
			Swaria PS	185	746		27	3	961	
			Baptist B	126	313			40	479	
			Light SS	110	132	0	15	0	257	
			Akisim	25	23	0	0	0	48	
			Moruapesur	19	166	33	19	0	237	
			Opiyai PAG	11	335	5	0	0	351	
			Asianut	178	321	4	4	0	507	
			Alliance HS/Orwadai	26	122	7	24		179	
			Sub-total	2,662	5,543	85	811	47	9,148	
GRAND TOTAL				5,432	7,642	163	856	53	14,202	

Source: UNOCHA, July, 2006

5.4 LEGAL AND POLICY FRAMEWORK FOR IDP RETURN

The legal framework is mainly in the Constitution of Uganda, 1995 in article 26(2) a and b protects private property and the National Policy for Internally Displaced Persons, 2004 in Chapter 3 on security of person and property, in provision 3.6 on property rights reaffirms article 26(2) of the Constitution and commits to assist IDPs to recover their land according to the provisions of the Land Act Cap. 227 and in the event that this is not possible, then Local Governments take responsibility to acquire and allocate such land (in essence undertake restitution) taking note of the rights of vulnerable groups to the extent of ensuring that they acquire certificates of customary ownership. The following findings emerge as far as post conflict legislation is concerned.

(iv) Land Fund and Resettlement

The Land Act Cap. 227 in section 41 provides for the establishment of a Land Fund, whose management is entrusted to the Uganda Land Commission. Amongst its functions stated in section 41 (4c) is to “resettle people who have been rendered landless by government action, natural disaster or any other cause” and in section 41 (6), government is specifically mandated to purchase or acquire land such land and pay prompt and fair compensation as per the provisions of the Land Acquisition Act 1964.

As a legal framework, the provisions of the Land Fund in the Land Act are sufficient to respond and satisfy the principle of resettlement of IDPs should the need arise. However since its establishment, the fund has lacked an appropriate administrative and institutional framework, this has combined with inadequate resources to undertake its operations. It has been largely driven as a political protégé that serves the interests of the ruling government in solving land issues it considers pertinent at a particular time mainly for political correctness. For northern Uganda to utilise such a fund in resettling IDPs it must be politically sanctioned, which requires harnessing the political will to indulge in such a process, currently such political will is still lacking.

Secondly, the Uganda Land Commission lacks the capacity to manage the fund, in addition the Land Acquisition Act, 1964 is inconsistent with the provisions of the Constitution and above all, the guidelines or principles for resettlement are not detailed. The conditions for one to qualify for resettlement are unclear. In Teso for example, some IDPs are yet to return to their homes (below 10% which is low, could be higher in the rest of northern Uganda where displacement has been for longer period than in Teso) for a number of reasons⁶⁰. In addition, for urban camps, slum dwellers have moved in and are now sitting tenants in the semi-permanent structures have purchase occupancy interests from IDPs departing to return home.

This scenario presents circumstances that the IDP policy and the Land Act Cap 227, did not anticipate, hence a gap that will have to be filled, because, in the event that the land owners (central government, local governments / authorities and private land owners) evict IDPs who have failed to return, a crisis likely to arise despite the fact that they may be in such a state due to circumstances not of their own making. However, for those who voluntarily stay for business opportunities can be planned for later or government can consider drawing up a framework for regularizing their stay in consultation with the land owners.

(iii) Encampment, Occupation and Compensation

⁶⁰ a number of reasons are advanced for failure to return, among them; offer of better income opportunities such as petty trade and sale of labour, and social services, preference for urban life and awaiting the delivery of the resettlement package, which is considered by many as “a promise by government is a debt, so we shall wait for its payment”

Compensation on the other hand is a matter partially addressed within the existing legal framework, overall State obligation to respect private property is outlined in article 26 (a and b) of the 1995 Constitution, which lays the premise for compensation. Section 72 of the Land Act details the rights of public officials to encamp on private land in the execution of their work. The terms and conditions spelled out were certainly not applied in the establishment of camps in northern Uganda;

- Three days notice
- Acceptance of owner to occupancy
- Payment of reasonable fees promptly for each day of encampment for produce or other things taken from the land
- Payment for damages caused on land

According to OPMs office, there was no systematic procedure for set up of IDP camps, establishment was adhoc, there were no formalities at commencement of displacement, security threats determined the location, hence camps emerged as the security situation demanded either on government or local government land at sub-county or parish, on institutional land (mainly schools or prisons), in agreed areas by the residents and the military without regard to land in the area being privately owned or in urban centers, as long as the it was identified by the communities and in agreement with the military⁶¹. In such a situation, it is going to be difficult to determine compensation amounts, periods and areas (lands).

Section 72 of the Land Act Cap 227 limits itself to compensation claims in relation to damages and losses; it is not clear what modalities are to be applied in the assessment of quantum of rights and interests to be compensated and what principles are to be applied. In addition, it exempts such claims in instances where the armed forces occupy land⁶², which is one of the strongest claims emerging from private land owners. The nature of claims so far emerging for compensation⁶³, include the following:

- (a) Claims for return of property / land occupied by IDPs or the military to either urban authorities, sub counties, parishes or institutions (such as schools) government departments (e.g. prisons) especially in instances where IDPs have failed to vacate such areas, even if the camp is declared closed. Some IDPs do not want to go back or have no where to go. Soroti Local Government is of the view that the occupants should be able to leave peacefully, however if the need to stay arises then the municipalities or local authorities need to work out a system to address this issue, otherwise the institutions that own such land need it back. In case of the military, landowners do not know how and whom to approach, so that their land is vacated since the insurgency has ended.
- (b) Claims for removal of camps on private land and restoring of degraded land mainly from private land owners under customary tenure for military detaches, also includes the asserting that removal goes hand in hand with restoration of their land. Claims here include use and occupancy of land during the period of displacement, loss of products that were subsisting at the time of displacement either as wood trees or perennial crops, since the LRA incursion is viewed as a lapse on government's part and a failure to protect its citizen. The feeling is that compensation has to be considered for such a lose, in addition such losses are also attributed to the Uganda Peoples Defense Forces in construction of military detaches or falling woodlots for security and visibility reasons.

⁶¹ In interview with Senior Resettlement Officer, OPMs Office

⁶² Consultant's still unable to discern which legal framework covers the armed forces

⁶³ OPMs' Office is already receiving claims on land restitution and compensation as this study takes place especially from West Nile, based on IDP policy

- (c) In instances where property was destroyed, especially housing, there is a general feeling, that this ought to be compensated, even if the resettlement package provides for 30 iron sheets, its insufficient in most instances to cover the losses incurred in terms of housing and other household chattels. Such claims however, may not stand in law, therefore appeal to the morals of the state to consider such an action.

Given the existing legal framework, some of these claims are not dealt with besides it will also be important that verification and ascertainment of claims from land owners (especially individual owners) is undertaken especially if the cost of use and occupation of land has already been directly borne by the IDPs themselves, during the period of displacement. In Teso, there is evident that:

- (a) land owners having been charging IDPs land rental fees per acreage of land utilized for specific periods (often per seasons for food production) covering time from planting to harvesting, in such a case compensation may not be warranted, as the specific owner has been adequately paid for use of land. Initially, the charges were minimal at the commencement of displacement, this eventually rose to commercial rates as the period of displacement extended beyond one year.

“Initially land was free, by the second year a levy or fee from 5,000/= to 10,000/= was charged, this has been continuously revised upwards until return happens”⁶⁴.

- (b) In other instances land owners have sold their customary rights or sold resource tenure (trees, sand, murram etc) to IDPs during the displacement period, it is anticipated that such land owners will not attempt to make double claims or suggest forceful occupation without approval, harvesting and use, thus lodge compensation claims on such grounds, this is outright fraud.
- (c) Lastly, it will be important to determine as a matter of policy, the definition of what is to be compensated, whether it use, occupation, degradation, or will it stretch as far as harvesting of wood trees, used by the military in construction etc.

Addressing compensation is inevitable given that the following precedents and considerations:

- (a) The President of Uganda has already made promise to people in northern Uganda to compensate them for their land or losses on land arising from the war⁶⁵. A fact pointed out by the majority of the rural respondents in this study.
- (b) Compensation for loss of property in war or insecurity situations in Uganda is not new and has been undertaken in the case of Luweero Triangle (during the NRM struggle) and in Teso (during the 1980/90 Insurgency Period). Therefore precedents for such actions exist, though the criteria and modalities of such claims were not scrutinized for this report.
- (c) There are instances where the GoU of Uganda has paid for rights of encampment, the most recent being in Ntungamo District, where Uganda Peoples Defense Forces (UPDF) encamped in a detach from 2002- 2004.

⁶⁴ In interview with CAO, Katakwi

⁶⁵ The research is still unable to trace a particular occasion where such a declaration was made or statement issued by the President or the Presidents' office on such a matter; however this promise is constantly referred to by the respondent group as commitment by the GoU to undertake compensation in post conflict period.

- (d) Demand by the LRA for comprehensive compensations for all losses suffered as a result of civil strife and or state instigated schemes⁶⁶.

It will also be important to make choice on how compensation should be tackled either politically or legally:

“it is cheaper to tackle compensation politically, because then you to get to determine a formula on your terms, then quantifies costs of damages, offer payment to parties involved with less room for challenges and distortions”⁶⁷. Politically determined compensation will be ideal in order to avoid legal battles and costs, it is the cheaper option. The ideal would be to be pro-active and identify the land occupied by IDPs then assess what has happened to it. Some issue which is not legally or constitutionally plausible can be politically handled and use manageable rates instead of rates set in court or on valuations between disputing parties”⁶⁸

(iv) Capacity and Institutions

From reading the Constitution 1995, the Land Act Cap 227 and the IDP Policy, it is not clear which government agency or department is responsible for compensation, on property matters for a case, such as northern Uganda. Indeed, during an interview with an official from the OPMs office, it was clear that despite, the office being the lead institution on IDP matters not much thought had been given to such an issue. On the other hand, the officials' view on compensation was that, such claims should not even arise given the fact that the North was in a state of emergency and war. However, this wish away attitude has not helped matters, because in practice, the claims are already being made to the Districts and OPM office.

The IDP policy points to local governments as the responsible centres for restitution (recovery), it not clear which institution will be responsible for compensation in northern Uganda. It is the view of this study, that this location is inappropriate because of the technical capacity required for restitution and the fact that it is state (function) responsibility to undertake compensation. GoU needs to clarify whether such claims will be handled by the line Ministry of Lands Housing and Urban Development, or Office of the Prime Minister or Ministry of Justice and Constitutional Affairs or Ministry of Finance? This will not only require clarification of institutional responsibility (both horizontal and vertical linkages articulated), and a set of guidelines to apply. The guidelines could be technically prepared and approved by the responsible line ministries (MED, MoLHUD and OPM) or could be handled politically as a directive from the President's Office (or Prime Minister's Office??). The fact that compensation on land matters is a national function executed with approval of the Central Government and the Office of the Chief Government Valuer places the responsibility squarely on the shoulders of government

⁶⁶ Daily Monitor 18th July 2006, Government / LRA Position Statement on the Northern Uganda Insurgency

⁶⁷ In interview with Judy Adoko, LEMU

⁶⁸ Proposed formula: $\frac{1}{4}$ of harvest per annum per acre multiplied by the no. of years in displacement

5.5 LAND MATTERS IN GOVERNMENT PLANS FOR IDP RETURN

Majority of the peace and reconstruction programs so far designed and implemented in northern Uganda⁶⁹, aim at among others; empowering communities in northern Uganda by enhancing their capacity to systematically identify priorities, and plan for their needs and implement sustainable development initiatives that improve socio-economic services and opportunities, through various projects including NUSAF⁷⁰, EU-Karamoja Projects⁷¹ and EU-Acholi projects⁷². Such programmes however, have steered clear of land issues, opting to imply a “no policy position” or a “wish away attitude” that has not only left land matters unattended to but silently beginning to simmer on the basis of fear, ignorance and rumors.

In the last two year, with the anticipation, that peace will return to northern Uganda, the Government of Uganda (GoU) through the Office of the Prime Minister (OPM), which is responsible for coordination and monitoring the return, resettlement and reintegration of IDPs at national level, has in collaboration with development partners designed a number of strategies for northern Uganda. These strategies in essence respond to commitments laid out in the National IDP policy, the most significant ones in relation to land are:

- (i) National Internally Displaced Persons Return, Resettlement and Re Integration; Strategic Plan for Teso and Lango sub regions, 2005;
- (ii) Comprehensive Peace, Recovery and Development Strategy for Northern Uganda⁷³ ;
- (iii) Emergency Plan for Humanitarian Interventions in Lord’s Resistance Army (LRA) Affected Areas of Northern Uganda” launched in April 2006.
- (iv) Land Sector Position Paper for Northern Uganda, 2006

These strategies are the implementation framework for GoU’s policy for Northern Uganda recovery, whose commitments are reflected in the Poverty Eradication Action Plan (PEAP), the IDP policy and Land Sector Strategic Plan.

(iii) *National Internally Displaced Persons Return, Resettlement and Re Integration: Strategic Plan for Teso and Lango sub regions, 2005.*

This plan was developed by the inter-ministerial technical committee pursuant to Cabinet’s approval of the IDP policy⁷⁴ in which GoU committed its self to end the northern Uganda insurgency and facilitate the voluntary return, resettlement and re-integration of IDPs. It was prepared on the basis of information provided by the sectors, ministries and the District Disaster Management Committees (DDMCs) from the affected districts in both Teso and Lango regions. This plan considers immediate and short term essential needs and priority conditions for return and resettlement in the sub regions of Teso and Lango⁷⁵. Amongst the needs considered, land issues are

⁶⁹ The Government of Uganda, World Bank and other international organizations have implemented several programmes in the northern region aimed at reconstruction and improving the lives of the people and ensuring peace.

⁷⁰ NUSAF is a 5-year Government of Uganda community driven project funded through an IDA credit of the World Bank to Uganda. The community is required to contribute 25% of the estimated costs of the projects.

⁷¹ The EU-funded Karamoja projects are being implemented by the Karamoja Projects Implementation Unit (KPIU), which was established in 1995. Communities are required to contribute 25% of the estimated costs of the projects. See the Republic of Uganda and European Commission (February 2001). Karamoja Implementation Unit Final Evaluation Report

⁷² EU-Acholi Programme covers Gulu, Kitgum and Pader districts and its projects work through the local government structure. The community is required to contribute 25% of the estimated costs of the projects.

⁷³ In addition to the short-term emergency plan, the government together with the World Bank is developing a Recovery and Development Programme that will focus on medium- and long-term objectives of peace, recovery, post-conflict reconstruction and development

⁷⁴ In August, 2005

⁷⁵ The first priority condition is security, second is physical and mental preparation for IDPs, third is bush clearing implements and agricultural tools, the fourth is relief food supplies, the fifth is food production

not a priority nor are they anticipated in anyway, however should land issues (disputes or claims) arise in the communities being resettled, then it is assumed that the re-establishment of state institutions especially the police administration, the court system and the prison services, is sufficient mechanism to take care of any land matters; which are viewed in terms of civil or criminal issues⁷⁶.

This Plan seems to imagine that all land matters will eventually end up in courts of law either as criminal case or civil cases, which in essence is a narrow perception and view of land issues to be dealt with in post conflict land administration. This assumption does not foresee complexity of land matters that are likely to arise beyond disputes in communities such as compensation which is a state function. It is also evident in this plan, that there was insufficient technical input on land issues from the relevant line ministry and other stakeholders that would have helped shape appropriate response. Lastly, it is assumed, that land and property issues, do not necessary deserve domain and positioning at the commencement of return and resettlement, such issues may have to be tackled as they arise, latter on, which is a dangerous presumption that could escalate into violent confrontations in the communities.

(iv) Emergency Humanitarian Action Plan-LRA Affected Areas, 2006.

This Plan was designed to enhance protection of the civilian population, increase humanitarian assistance to IDPs, and promote peace building and reconciliation. It aims to improve and enhance government responses in a number of key areas, namely cessation of hostilities and regional security, peace building, protection and assistance of IDPs, return and reintegration⁷⁷. Its main focus is the guarantee of security of persons and property by availing services, which will trigger voluntary spontaneous return. In addition, it attempts to utilize existing mechanisms provided by the National IDP Policy, unfortunately, many of these mechanisms are non-functional.

Civil society is skeptical of this plan, sighting the fact that they were not consulted and local government representatives were not included in its formulation⁷⁸. This plan dwells on priorities already set in the Internally Displaced Persons Return, Resettlement and Re Integration; Strategic Plan for Teso and Lango sub regions, 2005. Similarly, it does not adequately recognize that land is part of property which requires a systematic framework to guarantee security on the return, in resettlement and reintegration process. The level of perception of land matters is still low, hence no significant or broad guidelines are availed to respond to the realities on ground; in essence the plan is blind to land matters that need conscious government effort in ensuring smooth return and resettlement.

The Joint Monitoring Committee which is responsible for steering this Action plans is not free of criticism, its legitimacy and transparency has been questioned. While the Committee identifies different institutions (government ministries and other semi-autonomous institutions such as the Amnesty Commission and the Uganda Human Rights Commission) as responsible for the implementation of the Action Plan, there is ambiguity about the constitutionality of these new roles. In particular, it is doubtful whether Uganda's courts of law can hold any government official accountable should they fail to fulfill their responsibilities under the Emergency Plan (a criticism which can also be applied to the IDP policy).

inputs, the sixth is shelter materials, the seventh is mosquito nets and lastly the repair and rehabilitation of boreholes and other water sources.

⁷⁶ In interview with Senior Resettlement Officer, Office of the Prime Minister, October 2006

⁷⁷ Joint Monitoring Committee (JMC) Chaired by the Prime Minister, and comprised of various government ministries, donors and two civil society groups, the Emergency Plan using the existing bodies, mandated by the National IDP Policy, to mobilize the necessary resources to meet the plan's expected results.

⁷⁸ UNOCHA, June 2006

Some individuals, particularly those working in northern Uganda⁷⁹, assert that the JMC, like many other government initiatives concerning the north, was developed without consulting the people whose lives it most affects. Indeed there remains a disjuncture in understanding between officials in Kampala and those in northern Uganda regarding the function of the JMC. Furthermore, while the objective of identifying, discussing and monitoring issues related to the Emergency Action Plan and ensuring its timely implementation is sound, the current six month time-frame is unrealistic, in light of its ambitious aims⁸⁰.

(iii) *National Peace, Recovery and Development Plan for Northern Uganda (PRDP) 2006-2009.*

This plan was prepared on the basis of results from a nine months consultative process with stakeholders at district and national level spearheaded by the Inter-Ministerial Committee (IMTC)⁸¹. It is a commitment by GoU to stabilize and recover the north in the short-term (3 years) through a set of coherent programmes under a consolidated framework, it is considered by the OPM's office to be a follow-up on the NUSAF programme⁸². It specifically acknowledges the impact of conflict status and extent of vulnerability in communities affect by war by adopting a conflict framework rather than a development framework, acknowledging that state authority has not been functioning normally for over 20 years.

This plan should be considered to be a statement of affirmative action for socio-economic growth and resource mobilization for northern Uganda. It clearly states how programmes will contribute to the achievement of PEAP goals. Its programmes reinforce and strengthen in a consistent manner undertakings of Lango and Teso Strategic Plan 2005 and commitments in the Emergency Humanitarian Action Plan, 2006. For the Teso region however, it is geared towards addressing lawlessness and underdevelopment arising out of cattle raiding incursions by the nomadic Karamojong warriors, which results in displacement and destruction of property, since the LRA threat has almost ceased in this region.

In objective one of this Plan on consolidation of state authority [*specifically 1.2: re-establishing law and order in communities, 1.3: functioning judicial and legal services*] and objective two, on rebuilding and empowering communities [*2.1: improving the conditions and quality of life of IDPs in Camps, 2.2: Completing return of displaced population - rural, peri-urban and urban, 2.3 initiating community rehabilitation and development activities - social services and livelihood support*], issues pertaining to land in post conflict situations ought to have been addressed. However, they were not considered to be part of the overall problem analysis hence could not feature in the responding programmes of the plan. It suffices to say that objective 3 on revitalization of the economy will nearly be impossible to achieve without with stable land relations, for no empowerment of people on agriculture production can take place if their key resource for production i.e. land is affected by unstable relations.

In recognizing, the need to re-establish state institutions and functions in northern Uganda, there is failure to focus on specific institutions that are charged with delivery of land justice and land services. The District Land Tribunals, District Land Offices and Boards are not envisaged to be part of the institutions to be put in place or to be rebuilt

⁷⁹ RLP, 2006 "Only peace can restore confidence amongst IDPs"

⁸⁰ RLP, 2006 Only Peace can restore the confidence of IDPs

⁸¹ Was established under the leadership of the Head of Public Service and chaired by the Permanent Secretary, OPM, supported by a technical Secretariat and a senior Cabinet advisor. Members are Ministry of Internal Affairs, MAAIF, MFPED, Ministry of Justice and Constitutional Affairs, Ministry of Health, Ministry of Education and Sports, Ministry of Water, Lands and Environment, Ministry of Works, Housing and Communication, Ministry of Gender, Labour and Social Development and various institutions under respective ministries such as Amnesty Commission.

⁸² Interview with Resettlement Officer, OPM's office

to functionality for northern in ensuring the realization of objective one (instead there is support to the magistrates' courts and others) yet, these are the institutions charged with protection of land rights including the establishment of land settlement arrangements necessary for IDP on return. It is assumed that support to the Justice Law and Order sector, is sufficient to cover concerns in the land sector⁸³, an assumption that is short sighted and absurd.

Similarly, the mechanisms for land rights protection and land claims settlement are not dealt with in objective two, yet they are crucial to resumption of sustainable livelihoods and require specific social protection strategies, in order to avoid large scale community degeneration into land related conflict and violence, since it is evident in post-conflict Teso, that land is often the only readily available asset for production on return and resettlement, henceforth the value attached to land is enormous and warrants special protection and guarantee. For the IDPs who have returned it is considered their "wealth and survival asset", central to the most basic aspect of production⁸⁴.

The PRDP seeks to re-activate the productive sectors within the region (strategic objective 3 revitalization of the economy, with particular focus on production and marketing, services and industry. But the role of the land sector in this strategic objective is also missing and yet PMA acknowledges the centrality of land to production. Yet NAADS and PMA, acknowledge the rights of the major producers (women and children) are not dealt with, and in essence the plan is blind to land issues in post conflict situations. The land sub-sector ought to incorporate its own strategy, in this broad framework for the immediate term and short-term period, while at the same time positioning itself to respond to the enormous challenge for provision of services and protection in the long-term.

According to the available statistics in the PRDP, most of the staffing levels in the departments in the districts are below those recommended by the restructuring exercise. In the Teso sub-region the approved staffing is 6293 and of these 3488 is filled, with a 44.6% gap. In Acholi sub-region, the approved staff establishment is 1971 and of these only 725 is filled, implying a 63.2 percent gap. This computation was made without Kitgum District data. In Lango sub-region, the approved staff established is 927 and of these 453 are filled, with a 51.1% gap.

(iv) Land Sector Position Paper for Northern Uganda

In response to the challenge⁸⁵ above, the Ministry of Lands, Housing and Urban Development, has a developed a position paper⁸⁶ on service delivery in line with the National Peace, Recovery and Development Plan for Northern Uganda, 2006-2009. The Draft position paper utilizes the justice and human rights leverage to ensure that those who occupy, use and depend on land resources are guaranteed a livelihood system. It notes that tenure insecurity and uncertainty of land rights are the most important challenges that have to be addressed for IDPs in northern Uganda since they are closely linked to access, control and management of land resources.

The paper addresses eight crucial issues on land for northern Uganda;

- (a) Status of Customary tenure;
- (b) Squatters (Claiming Occupancy Rights);
- (c) Land grabbing (By neighbors or Family Members);
- (d) Boundaries (Neighbors and Demarcations in Villages);

⁸³ In interview with Senior Resettlement Officer, OPM's Office

⁸⁴ Deninger, 2003

⁸⁵ Though delayed, it is happening now

⁸⁶ Still at zero draft level, and open to discussion and concretizing of strategy and intended actions. This study should serve as a stepping stone for the actions that the Ministry may undertake.

- (e) Gender Issues;
- (f) Compensation and the Land Fund;
- (g) Settlements Planning and;
- (h) Land Institutions Capacity, among these, land institutions capacity is considered a major priority.

The paper asserts that Ministry's intervention will be guided by the Land Sector Strategic Plan (LSSP 2001-2011) and proposed the following strategies and programmes to address the issues raised above: First, is the provision of land rights information (through media and other channels) to improve tenure security and rights abuse awareness, backed by access to justice (dispute resolution) seen in light of improving capacity of lower level institutions (mainly local council courts) to resolve land disputes.

The second strategy proposed is systematic adjudication, demarcation survey and registration/ certification, this assumes the nature of customary tenure which is predominant in Northern Uganda, doesn't allow for appropriate recognition and certainty of individual rights hence the value of land and real estate is jeopardized⁸⁷ initial piloting is envisaged over a period of three years for 15 parishes for the whole region. Third strategy is to do with set up and strengthening of land services delivery institutions; District land Boards, District Land Office, Area land committees and Local Councils. The fourth strategy is the updating of topographic maps given the fact that those available today were last updated in the 1960s, yet they are crucial for planning especially in provision of services for returnees. Another programme is assessment of compensation and valuation, which anticipates that once the IDPs are resettled, claims are likely to arise for infrastructure development etc, it doesn't however, anticipate compensation claims for land use during displacement period or where camps were established on individual lands or property.

In housing and urban development, the focus is on preparation of comprehensive land use plans to avoid haphazard, uncoordinated and sometimes conflicting development and urban sector profiling study for northern Uganda, to generate an overview of urban sector development and the situation of housing in the region. The housing sub sector also has plans for piloting rural centers, as a way of destroying peasantry, subsistence farming and land fragmentation, leaving room for development of mechanized agriculture through cooperatives and creation of nucleated settlements, the overall vision is one of transforming Northern Uganda into a modern society⁸⁸. Monitoring and Evaluation is also part of this position paper. In terms of priority action areas, MoLHUD feels that the priority action areas are; institutional setup and support for operations of both statutory and traditional land management structures. Sensitization of the public on land rights is also considered a key action area.

The fact that it is still a draft depicts failure to be proactive, MoLHUD which is reacting to land issues in northern Uganda. In this position paper, the intentions of the land sector are noble and necessary, the perception and magnitude of land problem / issues is broad and generally well grounded, but there is a disconnect between strategies and problem analysis, the strategies put forward are typical of technocrats prepared with little input from the intended beneficiaries and other stakeholders. This position paper still projects the school of thought that castigates customary tenure as backward and incapable of supporting development, therefore wishes it away or ensures a strategy of doing away with it in order for a more modern and development oriented tenure to sprout. However for decades and generations, this tenure has been resilient to grand interventions such as titling which have failed to put it away.

⁸⁷ MoHLUD, 2006, Position Paper on Northern Uganda

⁸⁸ Defined in these terms to mean restructuring the society for fresh social economic settlement and production dynamics

GoU through the housing sub sector notes that the insurgency has availed opportunity for piloting of an urbanization policy that emphasizes the growth of sustainable rural centers, hence could be instrumental in destroying peasantry, subsistence farming and land fragmentation, leaving room for development of mechanized agriculture through cooperatives and creation of nucleated settlements reflective of a modern society⁸⁹, especially if IDPs decide to remain in the locations where the camps are situated or choose not to return at all for a number of reasons (no rights to claim at home for vulnerable groups who have been dispossessed, or pursue of better socio-economic activities). This concept would be ideal and feasible, if the complex interests and rights under customary tenure are understood and captured. The beneficiary population is mobilized to respond to such a programme on demand basis.

However, today this notion is completely misunderstood and distorted (through agencies of the media and civil society organizations) to imply a massive compulsory acquisition of land in northern Uganda, with little regard to private customary interests (since customary tenure is not surveyed nor titled) with the end result of land grabbing in favor of the powerful from the south (some ethnic and tribal undertones here). Henceforth, the position paper presents an excellent image on paper that could turn cumbersome or disastrous on ground, when implementation is undertaken because of one major challenge, the real and imagined fear of a grand government plan to grab and alienate all land in northern Uganda⁹⁰ (and Teso region).

(v) *The National Land Policy Draft*

The draft national land policy (NLP) upholds the land rights of IDPs under the principle of enhanced equity and social justice in society. But the NLP lacks in-depth analysis of post-conflict land issues and proposes only one strategy in the entire 132-page document i.e. *resettle all internally displaced persons in their areas of origin and guarantee their security of tenure* (page 45). The policy's emphasis is only on resettling IDPs in their areas of origin. This fails to address the desire of those who may prefer to remain in camps or around the IDP camps which places have over the years become urbanized and currently offer opportunities, facilities and services which may not be readily available in their places of origin. In terms of land administration, the only envisioned mechanism seems to focus on dispute resolution and does not address the rather important aspect of delivery of land services and ascertainment of rights. The NLP also fails to address the role of traditional/customary/informal land administration and land dispute resolution mechanisms, systems and structures and how these will relate and interface with the statutory mechanisms.

⁹⁰ From the review of literature

5.6 BEST PRACTICES IN LAND POLICY FOR TRANSITION TO PEACE

From international experience, the following principles and best practices need to be kept in mind when dealing with land policy and land administration in transition to peace:

- i. Core Issues: The core issues in relation to conflict potential and land are: “security of tenure”, “access to land” and “equitable distribution of land”. 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 finally, 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 context.
- ii. Nature and Importance of Land Policy: There is recognition that land policy, as an element of peace-building missions, tends to be under-rated and has received little attention in the literature. Yet land policy clearly plays a fundamental role in recovering from conflict, and ensuring that further conflict does not follow. The importance of land issues in post-conflict development (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. In addition to the problems that may have existed previously, absence of policy can exacerbate uncertainties, inequities and disputes on land. 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, reconstruction slowed, and social and political stability put a 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 property destruction and return are handled well, resolution of more long-term issues relating to property restitution and land administration in general will be greatly hampered. It is not possible to disentangle land policy from politics, its determinants and impact from the material and political interests of the individuals and groups involved. Politics needs to be factored in from the start. 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.

- iii. Tenure Security: Secure tenure in land and resources is only and only achieved if a persons' interest in land can be successfully defended when challenged. It includes protection against risks, particularly eviction, and not living in fear or threat of having claims denied. 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. However, today it is ideal that land policy is more reflective of existing tenure arrangements, provides more sustainable direction and should steer towards formalization strategies rather than impose them. Land tenure, has to be 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 arrangements. Land titling programs by weak states contaminate customary systems and result in the in-formalization of land tenure and deepening tenure security, which impacts on concentration. 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)

- iv. Context Specific: It is now accepted 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.
- v. Land Law Needs to be ground in reality: Patrick McAuslan 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. 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. Conflicting claims commonly emerge over a 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 claims. Care must be taken to approach interventions with neutrality and not to “demonize” or “sympathize” with one part or another, risking a politicized process.
- vi. Restitution and Compensation: Tensions may arise between restitution of property and achieving peace. 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. 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 situations.
- vii. Management of Disputes and Claims: 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-development. 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 likely. 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 cases.

Institutional Approach: 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 disputes and claims. Focus on land policy development and institutional strengthening has improved land administration model designs in post conflict situations. The context of land policy is time sensitive, i.e. it has to be responsive to changes, and 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 post conflict land and administration.

5.7 LIST OF RESPONDENTS

KAMPALA RESPONDENTS

1. Bwiragura, A J Government Valuer
2. Moki Abubaker PPA
3. Karibwende, Edward, Ag. CLR
4. Kulata Sarah PLO
5. Richard Oput PC, LTRP
6. Mugenyi Stephen Economist, PQAD
7. Ogaro, E. W, SD
8. Mpala G. K., PRT
9. Naomi Kabanda
10. Obbo Dennis, Information
11. Shem Mwesigwa, OPMs Office
12. Wilson Masalu Musene, Registrar District Land Tribunal
13. Emaru Makayi, OPMs Office
14. Etienne Peterschimtt, FAO
15. Adoko Judy, LEMU
16. Rhita Aciro, Uganda Land Alliance

SOROTI RESPONDENTS

1. Omuge George William, CAO, Soroti District
2. Ebitu James, NUSAF: NUMU District Technical Officer, Soroti District
3. Sam Oinya, DDMC Soroti District
4. Okalebo, Chairperson, DLT Soroti
5. Francis Opolot, DLT Soroti
6. Arumet Gabriel, DLT Soroti
7. Adakun Samson, DLT Soroti
8. Edweu Peter, Records Assistant, Soroti
9. James Ebitu, NUSAF Soroti
10. Etalu Simon LC3 Chairperson, Tubur S/County
11. Ekagi Michael, Orieta B, Tubur S/County
12. Okello Wellborn, Block Leader Tubur, Obuku Camp
13. Juliet Mbaaga-Kaayo, Teso Private Sector Development Company
14. Abel, World Vision, Tubur Area Programme, Soroti District
15. Samuel Okiror-Eibu, CoU-TEDDO

KATAKWI RESPONDENTS

1. Kenneth Eteku-Onyait DDMC, Katakwi District
2. Nelson Ocakara, CAO Katakwi
3. Eunice Agoro, District Land Office

VILLAGE GROUPS (40-50 RESPONDENTS EACH)

1. Community members of Orieta Village, Tubur Sub County
2. Clan Leaders and other Institutions that tackle land issues in the community
3. Women and Children of Orieta Village, Tubur Sub County
4. Elders and Opinion Leaders of Orieta Village, Tubur Sub County
5. IDPs originating from Tubur Sub county but still living in Obuku Camp
6. Resettled Urban IDPs in Nakatunya adjacent to Obuku Camp
7. Resettled Rural IDPs in Nyorobye Village Olio Sub County, Serere County