LAND RIGHTS AND PEACE-BUILDING IN GULU DISTRICT, NORTHERN UGANDA:

TOWARDS AN HOLISTIC APPROACH

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LIST OF ABBREVIATIONS

ACTS	African Centre for Technology Studies
ACCORD	African Centre for the Constructive Resolution of Disputes
AFC	Associates for Change
ARPLI	Acholi Religious Leaders' Peace Initiative
CAO	Chief Administrative Officer
CCO	Certificate of Communal Ownership
CORDS	Community Research and Development
CSOPNU	Civil Society Organization for Peace in Northern Uganda
CSOs	Civil Society Organisations
DPC	District Police Commander
ESCRs	Economic, Social and Cultural Rights
FGD	Focus Group Discussion
GoU	Government of Uganda
HURIFO	Human Rights Focus
LAP	Legal Aid Project
ICG	International Crisis Group
ILD	International Law of Development
LRM/A	Lord's Resistance Movement/Army
LSSP	Land Sector Strategic Plan
MP	Member of Parliament
NRC	Norwegian Refugee Council
NUPI	Northern Uganda Peace Initiative
OPM	Office of the Prime Minister
PEAP	Poverty Eradication Action Plan
RBA	Rights Based Approach
RDC	Resident District Commissioner
RLP	Refugee Law Project
RRR	Return, Reintegration and Resettlement
SDIP	Social Development Sector Strategic Investment Plan,
UHRC	Uganda Human Rights Commission
UNDP	United Nations Development Program
UNOCHR	United Nations Office of the High Commissioner for Human Rights

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SUMMARY OF THE WORKING PAPER AND MAIN RECOMMENDATIONS

Ending the conflict in Northern Uganda is long overdue and all efforts towards the resettlement of the people must be pursued at whatever cost. The conflict ranks as the worst humanitarian crisis in the world, particularly since it registered a population displacement of between 1.8 to 2 million people. Displacement has deprived people of their rights of access to and use of land, it has led to the total break down of the livelihood structure and infrastructure, family and traditional support systems, social services, the collapse of the economy and a resulting loss of property, social marginalisation, high levels of poverty and dependence, HIV/AIDS prevalence, and structural as well as physical violence against vulnerable groups such as women and children, and indeed the entire population of the region.

Although not claimed to be one of the causal factors in the conflict, people's access to land is the single most important factor in allowing civilians in the region generate their own livelihoods. However, there are concerns and fears that when the insurgency is finally brought to an end, the next conflict will be over the question of land. Against this background, this Working Paper examines the question of land rights in the Acholi sub region, with a view to identifying the major issues of concern. The study begins by conceptualizing land rights as human rights, and locating their role in the building of sustainable peace, return, reintegration, resettlement, and post conflict reconstruction. Economic, social and cultural rights (ESCRs) as well as civil and political rights (CPRs) should be the foundation of a country's social policy, as they are essential in guiding social and human development.

Among other observations, the study found the following:

- Concerns about the issue of land rights are legitimate. They emanate from fears of trespass, inadequacies in the law, policy and land administration, unclear responses on the question of compensation, distortions of Customary Land rights and other related issues.

- The Government of Uganda (GoU) has made several strides in policy development as well as in suggesting and implementing land reforms for enhancing development, settling the displaced people and ending the conflict in Northern Uganda.

- Despite the preceding observation, there is little that is new in the government responses which comprehensively address the agrarian question and the human development concerns, conflict prevention, and building sustainable peace in the region.

- The GoU policy responses are inadequate in many other instances. For example, they do not adequately address the issue of the social and political marginalisation of Northern Uganda. The institutional

and legal framework, and the social support system envisaged is not commensurate to the challenges involved. The fragility of the situation in Northern Uganda, reconciliation and building sustainable peace will require serious public sector investment.

- GoU policy places considerable emphasis on the lead of the private sector. On its part, the private sector does not seem adequately prepared or even interested in the North without considerable public sector investment.

- Levels of awareness of a rights based approach and its necessity in the whole conundrum of Northern Uganda appear to be extremely low, and have consequently affected the manner in which policy design and implementation is being pursued.

The study buttresses these observations with several arguments, including the following:

➤ The issue of development is among the main structural factors behind the conflict. After 20 years of displacement, development issues must be placed at the center of the post conflict reconstruction and peace building processes.

➤ As over 80% of the displaced population comprises the peasantry, land rights for these communities are developmental issues; they are key in ensuring their subsistence, cultural cohesion and identity. Failing to address land rights in a comprehensive manner is a recipe for further conflict.

➤ Past policy failures in rural development must not be repeated given the devastations of the conflict. However, the country lacks a comprehensive rural development strategy, while the agricultural sector has been neglected.

➤ Post conflict reconstruction and peace building are being pursued without an overall rural and agricultural development strategy. Past failures seem to stem from a conceptual gap between what is provided for in the international human rights standards on the one hand, and domestic practice on the other.

➤ Policy responses in support of the return, reintegration and resettlement of IDPs and the peace building process therefore, must factor in the past failures and address the rural and agrarian question. Social policy is still inadequate, a situation complicated by the economic and social policy approaches pursued by the government.

➤ Policy and legal responses must look beyond normalization. There must be a shift from "palliative," solutions. That is to say, policies

must focus on the structural factors behind the conflict. Many actions have to be undertaken at the same time by the government and other actors for land rights to be realized as Economic, Social and Cultural Rights. This is because land rights standing alone can only be "dead capital" if not complemented with other actions and other rights.

In light of these findings, this study recommends that:

(i)   The role of the public and private sector in post conflict reconstruction needs to be reviewed and harmonized in order to establish precise capacities and responsibilities;

(ii)   Customary land rights in contemporary Acholiland require further clarification and definition;

(iii)   The protection of land rights must be comprehensively addressed as part of the strategy of reconstruction and redevelopment of the region.

(iv)   More resources need to be deployed into the region during the reconstruction phase. Three hundred and thirty million United States Dollars (US$330 m.) has been projected for Northern Uganda for a three year duration, running from 2006 to 2009. This is money the government obviously does not have, and consequently, government will look to donor support. The July, 2006 budget allocation for Northern Uganda was just Ug. Shs. 18 billion (US$ 10 million), which is simply too little to sustain interventions in the area of resettlement and reconstruction alone. It will clearly not be enough to improve the human resources, infrastructure, social services, and to enhance agricultural production, marketing, security and human development.

I   INTRODUCTION

This paper examines the issue of land and property rights within the context of building sustainable peace in the Acholi sub region in Northern Uganda, an area that has witnessed various rebel groups fighting the NRM government, the most notorious being the Lord's Resistance Movement/Army (LRM/A). The northern armed conflict started shortly after the end of the five-year guerrilla war waged by Yoweri Museveni in the Luwero Triangle. It is the longest armed rebellion in Uganda's recent history, and one of the worst humanitarian disasters in the world, and which has continued to afflict the population "under the watchful eye" of the international community.[1] At its peak, the conflict led to the displacement of between 1.7 and 2 million people.[2] In its wake, the conflict has led to the total break down of family and traditional structures, social services, a collapsed economy, and the resultant loss of property, social marginalization, high levels of poverty, dependence and HIV/AIDS prevalence, structural as well as physical violence against vulnerable groups such as women and children.

Within the conflict landscape of the Greater Horn of Africa, the conflict in northern Uganda is characteristic of 'the new wars' traversing much of Sub Saharan Africa, involving both state and non-state actors. Its causes stem partly from the colonial past and its effects on post independence politics and economics. It is also related to the absence of democratic governance and a host of structural problems, although secondary factors have also cropped in and complicated the conflict. As most people in Africa are rural based and agrarian, displacement severely affects their livelihoods, which is largely based on land use.[3] Although not claimed as one of the causal factors in the conflict, land has become a major issue of concern in the Acholi sub region: "Access to land is the single most important factor in allowing civilians in the region generate their own livelihoods. People believe strongly in one resource and that is land."[4] There is no doubt, therefore, that land rights will be a crucial factor in a successful social integration, post conflict reconstruction and the building of sustainable peace in the region.

According to the World Bank, the experience in Uganda's first phase of post conflict reconstruction under President Museveni, places land as a determinant of the successful reintegration process.[5] However, the availability of land *per se* is not necessarily a guarantee that social integration and peace building processes will be successful. The war in Northern Uganda raises many challenges by the sheer magnitude of devastation, the lengthy stay of the population in camps, and the very status of Northern Uganda vis a vis the rest

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[1] See RLP, NRC & IDMC 2006, at 6.

[2] Id.

[3] Huggins, Kamungi, Karuili, Musahara, Oketch,Vlassenroot & Wakhaungu 2004.

[4] RLP, *et al*, op.cit., at 32.

of the country. Availability of land by itself might therefore not be the final solution to the conflict, because land rights are not simply about availability. Indeed, in the case of Northern Uganda land is abundant and under utilized. Land rights are interlocked with other issues and rights, among them the obligation of the state and the international community. Land rights must therefore be examined holistically, and in an interdisciplinary manner, to visualize the kind of policy and legal responses required for early recovery, reintegration, post-conflict reconstruction and building sustainable peace.

Prior to the study, there were many complaints and perceptions about land in the Acholi sub region. However, it was not clear what these perceptions were; what the underlying issues were, and how likely these may affect the return, integration and resettlement, during the post conflict reconstruction and the building of sustainable peace. Uganda lacks a comprehensive social policy to guide its actions in many fields. In the absence of such a policy, it was also not clear how land issues within the context of the realization of economic, social and cultural rights (ESCR) should be responded to by government, the international community, civil society organizations (CSOs) and the communities, in accordance with the obligations enshrined in the International Covenant on Economic, Social and Cultural Rights and other human rights instruments. Secondly, the process of return and resettlement requires a high degree of preparedness and the forging of partnerships between all the parties whether as beneficiaries, providers or facilitators. It was also not clear how the state and other actors were prepared in the event the hostilities ceased, and the IDPs began to return to their villages. The review of the literature on land rights in conflict in general and in the Acholi sub region in particular, revealed a dearth of information on the subject. Most studies are about the impact of armed conflict on land and property rights and land rights are mainly discussed and analyzed within the context of legal rights. Most analyses lack a human rights based approach (HRBA) which was used in the present study.

Against the above background, this study examined land rights in the Acholi sub region with the main objective of understanding the human rights implications of these rights in conditions of conflict. It also sought to locate their role in building sustainable peace, return, reintegration and resettlement, and post conflict reconstruction. A related objective was to assess the impact and implications of the conflict on land rights; and, to conceptualize land rights as human rights. At the same time, it was necessary to identify the key human and other rights elements involved in the conflict, and how these have been or ought to be articulated within the policy, legal, administrative and other responses to the conflict in Northern Uganda.[6]

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[5] World Bank, 1998.

[6] See General Comment on Article 2 of the ICESCR on obligations of the state in the progressive realization of the rights in the Covenant.

The Working Paper is divided into four parts including this introduction. In Part II, it moves on to provide an overview to some of the methodological issues confronted in the research. Part III focuses in on the specific issue of land rights in the Acholi sub-region, while the last part of the paper provides an analysis of the policy and legal responses to the conflict.

II   A NOTE ON THE STUDY METHODOLOGY

The findings in this paper are mainly derived from desk research, complemented by fieldwork. The literature review provided many insights on issues of peace building, post conflict reconstruction and human development. A dearth of studies and publications on land issues in conflict situations in Uganda and the Great Lakes Region was identified. A number of institutions such as the African Centre for Technology Studies (ACTS), based in Nairobi, Associates for Change (AFC) and the Civil Society Organization for Peace in Northern Uganda (CSOPNU) based in Kampala, Human Rights Focus (HURIFO), Oxfam, newspapers and many more, cover various aspects of the subject of land in conflict areas. The studies cover the impact of conflicts on land rights and their implications for building sustainable peace. They are informative on land issues in situations of conflict in general, on the Acholi sub region in particular, and the concerns during return, resettlement and post conflict reconstruction.

Fieldwork was undertaken in three phases. The first involved the identification and collection of available literature on the conflict in Northern Uganda through Internet searches, visits to NGOs and government departments in Kampala. The second phase of fieldwork took place in August 2006 in Gulu district, with visits to Koro Abiri and Unyama IDP camps. The two camps were chosen on account of being in more secure areas and therefore more easily accessible. The second part of the fieldwork was carried out in Kampala and comprised the collection of documents and interviews with MPs and public officials in the Ministry of Lands and the Office of the Prime Minister (OPM)—the main coordinating department for policy and other activities relating to Northern Uganda.

Approximately 40 people were interviewed for the study. Of these, 9 were in Kampala of which 4 are members of parliament including the leader of the opposition, 3 government officials in OPM and Ministry of Lands, and two Senior clerk Assistants in the National Assembly, who act as the secretaries to the various Committees of Parliament. In Gulu district, two FGDs of 10 people each were held in the camps. There were interviews with two camp leaders in Koro Abiri and Unyama, the CAO, RDC, the Chief Magistrate, district planner and speaker, and the DPC of Gulu District, ACCORD, HURIFO, ARLPI, UHRC, UNOCHR, World Vision, Gulu District NGO Forum, Lwo Development Incorporated, and the Legal Aid Project. The proportion of female to male

respondents was dismally small, although it had been planned to enlist an equal number of both sexes. Only two females were interviewed in Kampala, while 3 out of 16 respondents were women. The study was basically qualitative and the findings from fieldwork from the two sites and in the literature reviewed are comparably congruent.

2.1.   The Analytical Framework

2.1.1   The Human Rights Based Approach (RBA)

The RBA was used to analyze the policies and legal interventions in the conflict areas in Northern Uganda, and to configure land and property rights as human rights within the wider context of ESCRs, and the building of sustainable peace and development. The RBA emerged at the UN World Conference on Human Rights in 1993, when then UN Secretary General, Boutros Ghali Boutros underscored it as the methodological nexus between development, democracy and human rights.[7] Since then, RBA has gained prominence as a tool in research, planning, policy design, evaluation, and monitoring interventions. It is also a methodology for mainstreaming human rights and gender in development, which have assumed the status of an international obligation recognized in the International Law of Development (ILD).[8]

On the face of it, the RBA is a "people centered, participatory, equitable and non-discriminatory and empowering" framework. It focuses on 'norms and standards, legal instruments, responsibilities and obligations, as well as on the notions of entitlement of rights holders, the accountability of duty bearers and the rule of law and respect for rights. It also strengthens institutions, generates consensus on norms, legal standards and political processes to strengthen the mechanisms for enforcing entitlements. It brings ethics, human rights and humanity back into economics and development.[9] In conditions of conflict, peace building and post conflict reconstruction, RBA is a useful tool in identifying who lacks access to public resources, why this is the case, and what can be done to ensure equitable access.[10]

The RBA is also a means for achieving social justice, and advocates for a type of development that benefits all people in an "equitable and sustainable manner." It facilitates a wider understanding of the concept of development, which must "have a human face."[11] Many neo-classical economists view development in terms of infrastructure development and the provision of goods and services. Economic success is assessed in terms of "the quantity of modern

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[7] UNDP, 1998.

[8] Hausermann, 1998 at 66.

[9] Parr, 1998 at 50-53.

[10] Hausermann, op.cit.

[11] Van Boven, at 49.

buildings, multi-lane roads, houses, schools and hospitals."[12] This is what Chinsman Babashola dubs "the product approach" to development, a model that has largely failed to ensure the elimination of poverty. According to Theo van Boven, development is not just about growth, in which human beings are "instruments of production, rather than as free entities for whose welfare and cultural advance the increased production is intended."[13] The objective of development is to bring about "sustained improvement in the well being of the individual, bestowing benefits onto all members of society," and widening people's choices. Can peace building be successfully pursued on the basis of a model of development that lacks a 'human face' without running the risk of renewed conflict?

Although economic growth is important, it must be accompanied with the increased socialization and interaction of people through social processes, which are an important component in development. Key elements in social interaction are the dignity and respect of, and fairness to individuals, and popular participation. Participation ensures the ownership of development by the individuals and the community through their contribution to wealth creation and well-being. The social processes must be founded on respect for culture because culture provides the motivation, gives local identity and ownership to the process, which proves the point of the Acholi people who have been demanding the use of tradition and cultural norms, particularly *Mato Oput,* in resolving the conflict in Northern Uganda.

2.1.2   Peace Building and Development in Northern Uganda

Sustainable peace must be built on measures that address the "core grievances,"[14] structural injustices, causes of poverty, and its alleviation, social empowerment and the reduction of horizontal inequalities.[15] Preventing the recurrence of armed rebellion largely depends on ensuring security, well-being and justice for all.[16] Sustainable peace is a concept that combines human security, human development and the protection of human rights, without which there cannot be enduring peace. Preventing conflict begins and ends with the protection of human life and the promotion of human development.[17] Tobi Dress argues that peace building and conflict prevention are multi- and interdisciplinary processes because they involve interactions among many fields—including conflict prevention, human rights, development economics, governance and democratization. Dress observes that there exists a gap between different fields that use their own methodologies, approaches and even "vocabularies," in initiating interventions, planning and operations.governance

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[12] Babashola, 1998 at 42.

[13] Id., at 53.

[14] Doyle & Sambianis, 1999.

[15] Dress, 2005.

[16] Id.

[17] Id.

and democratization. Dress observes that there exists a gap between different fields that use their own methodologies, approaches and even "vocabularies," in initiating interventions, planning and operations.

According to Dress, actors in human rights and conflict resolution often engage in "extremely different and often mutually exclusive approaches for assisting communities in need of development assistance." He observes that the gulf does not serve communities in trouble and need," although he is optimistic that this is changing and the momentum should be sustained. The strategy therefore is for the sectors to close the gaps in their mutual perceptions, in effect underlining the need for inter and trans-disciplinary approaches in conceptualizing, planning and implementing peace building interventions, the essence being to understand reality in its totality. Inter and trans-disciplinarity are concepts about the unity of knowledge. Inter-disciplinarity therefore needs serious attention in policy initiatives. Peace building and the reconstruction of Northern Uganda will require different actors putting their heads together in designing policies and other interventions in resolving the conflict in a comprehensive manner. The conflict in Northern Uganda offers an opportunity for re- evaluating our development paradigms and approaches.

2.1.3 Structural factors in Building Sustainable Peace

Structural factors relate to the way society is organized in the social, political, economic and legal spheres, and the manner in which wealth is distributed in society.[18] It is these factors that determine the inclusion or exclusion of others from the benefits accruing to all members of society. Exclusion is a recipe for conflict. The recipe for creating militancy and insurrection is to single out a group and to close off any forms of communication with it. The conflict in Northern Uganda has all the characteristics of such a closure. Olara Otunnu has even claimed that the government has waged a systematic process of genocide and marginalization against the Acholi. Such feelings often result from the attitude of top government leaders towards the people in Northern Uganda.[19] Conflict prevention therefore requires the "reduction of bias and the creation and strengthening of tolerance building and human rights institutions."[20]

Studies on the conflict in Northern Uganda[21] show that some of the causes of the conflict range from the structural, to the economic, and also encompass social and political marginalization.[22] The failure to resolve the conflict is

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[18] Id.

[19] UNDP, 2005.

[20] Dress, op.cit., at 4.

[21] See the following Reports: HURIPEC 2003; ICG, 2004, RLP, 2004 and UNDP 2005.

[22] The National Peace, Recovery and Development Plan for Northern Uganda (PRDP) points out that social service provision in Northern Uganda is low compared to other parts of Uganda in quality and quantity. It is further pointed out that most of the health indicators in the North are performing poorly and are below national standards. GoU, 2006a at 58 and 62.

partly attributable to the lack of a conflict prevention, management and resolution (CPMR) policy.[23] This paper recommends the initiation of a policy on CPMR, the integration of an Early Warning and Early Response Unit and similar other

measures. It is therefore expected that resolving this conflict will entail a policy response that tries as much as possible to integrate the tenets of a successful peace building and post conflict reconstruction outlined in the expose above.

Structural prevention may also be about interventions that ensure the crisis does not resurface. According to Tobi Dress, Chinsman Babashola and Sakiko Fakuda Parr, conflict prevention requires the following strategies and conditions as one of the essential components of human development:

a. Institution building. In Northern Uganda, reconstruction will require rebuilding State as well as cultural institutions that have collapsed or been weakened;

b. Rebuilding society, through restructuring power relations at all levels, removing social and legal barriers that limit access for some people to economic and political opportunities for development, and the provision of political opportunities aimed at curtailing despotism and empowering people. The government has to address the long-standing concern about the marginalization of Northern Uganda;

c. Developing national dispute resolution mechanisms;[24]

d. Economic growth and meeting the basic economic, social, cultural and humanitarian needs, and the equitable distribution of productive assets and income;

e. Establishing early warning mechanisms;

f. Rebuilding social capital investment, and

g. Enhancing local capacities.[25]

2.1.4 ESCR and Social Policy in Uganda

A 1996 report published as part of a Regional Project for Social Policy Practice and Research in Eastern and Southern Africa[26] defines and analyses social policy development in Uganda, arguing that social policy constitutes the formal and

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[23] NUPI, 2006.

[24] According to the NUPI Issue Paper (Id.) these mechanisms are lacking.

[25] Id., at 17.

[26] Manyire and Asingwire, op.cit.

informal rules of an organized society to deal with needs, social problems of individual groups and communities. Between 1960 and 1970, Uganda was characterized by well formulated social policies that translated into informed quality of life, e.g. good health and education services, higher life expectance, economic expansion with increased employment opportunities, increased participation of the local population in social matters that had a bearing on their livelihoods. The period between 1970 and the 1990s was characterized by disruptions caused by military coups and the introduction of market models of development that has led to the rolling back of the state, with far reaching and adverse implications for social policy in Uganda. Although it is ten years since the report was published, the findings of the study remain valid today as Uganda is now in overdrive mode in its market driven economic and development strategies.

The report demonstrates the important role social policy plays in the redistribution of resources and as a vehicle for human development without which "economic growth cannot easily begin and even be sustained. The lack of an integrated view of social and economic development makes development unsustainable."[27] Social policy therefore constitutes one of the pillars of economic development and growth strategies. Despite this role, the report shows that aid efforts of developed countries and international organizations have not paid sufficient attention to the process of social policymaking. Donors are accused of obscuring social policy development in favour of economic policies that emphasize economics.[28]

Social policy is perceived as merely the provision of social services, which however, are usually instruments of social policy. Social policy is a process by which the state maintains an element of stability while at the same time seeks to improve the conditions of the population, or as actions/programs designed and implemented by NGOs and the state to achieve human development. Due to changing conditions and funding constraints, social policies are 'never developed.' The report further points out that social policy is also about the provision of safety nets, i.e. remedial services designed to help those sections of society that cannot cope without being aided. Some of the measures that could be perceived as a safety net may be discerned from the Constitution of Uganda and a series of policy initiatives that may be indicative of Uganda's attempt at filling the void in social policy albeit in an eclectic manner.

Article 8A introduced in the 2005 amendment to the Constitution of Uganda redefines the National Objectives & Directive Principles of State Policy as binding. These Principles provide for a broad range of social policy issues that

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[27] Id., at 22.

[28] Id.

include the right to development, balanced and equitable development for all areas of the country, and fulfillment of the fundamental rights of Ugandans to social justice and economic development. In particular, under Principle XIV, the state is committed to ensuring that "all Ugandans enjoy rights and opportunities and access to education, health services, clean water, food security…." Chapter IV of the constitution further provides for a broad category of rights, although the scope of coverage is wider for civil and political rights than it is when it comes to the recognition and protection of economic, social and cultural rights and the right to development.[29] The constitution also establishes the Uganda Human Rights Commission specifically to deal with the realization of these rights.

Uganda also adopted the Poverty Eradication Action Plan, (PEAP),[30] serving as the framework for development in Uganda. However, as a social policy framework, it is not clear whether it measures up to the expectations advanced by Manyire and Asingwire, who argue that the Uganda government has not seriously come to terms with the dramatic social crisis, which has emerged as a result of adopting the market model in her social sector.[31] Its impact on human development is yet to be seen by local communities as poverty seems to be moving up particularly in Northern Uganda which has registered 70% poverty levels according to the a Baseline Survey Report published by the National Bureau of Statistics in March 2006. If the PEAP does not seem to have had a significant impact on communities outside the conflict areas, it may be difficult for it to apply to post conflict reconstruction without another review of PEAP. At the same time, many services that should be pursued by the state have been delegated to NGOs and the private sector, which explains the emergence of the NGO sector in Uganda as a response to the diminishing role of the state in social service delivery. Manyire & Asingwire conclude that, "….. It is therefore not by accident that a deteriorating 'social side' of development resulting from the impact of the market driven economic growth on human well being remains unaddressed by government development actions."[32] Secondly, the 'whole process of social policy in the country seems to be characterized by *ad hocism*, and very strong bureaucratic influence on policy making. Consequently, programs and projects tend to be identified in areas from which policy makers originate. This brings imbalances in the level of social development among regions.'[33]

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[29] Article 45 recognizes other rights not provided for in the Constitution.

[30] The PEAP is also known as the Poverty Reduction Strategy Plan (PRSP) in other countries,

[31] Manyire & Asingwire, op.cit. at 23.

[32] Id.

[33] Id., at 40.

The discussion above provides the theoretical parameters necessary for a better understanding of peace building and development, and therefore what the communities in the war-ravaged areas expect, as borne out in their responses during the field interviews. People expect peace building and post conflict reconstruction to mean an economic, social and political process which enables communities emerging from conflict to cope with the impacts of armed rebellion; as a process that generates a peaceful and harmonious society to avoid a return to conflict. They expect that the services and infrastructure destroyed in the war will be re-established. Reconstruction is perceived to be the rebuilding of people's livelihoods and enhancing a decent life for the Acholi in tandem with the rest of the country. It means "mending broken families, rehabilitation of the minds of people as well as behaviours, and infrastructure to enhance a descent living,[34] "creating a heart of forgiveness and forgetting the past as well as building friendship and Mato Oput."[35] They expect mobilization of the communities, educating them on issues of peace and involving everybody in the process of healing, and cultural revival and supporting communities to cope with the impact of the war.[36] In the absence of a well-defined social policy framework, it is doubtful whether these expectations will be realized.

III.   LAND RIGHTS IN THE ACHOLI SUB REGION

3.1   Conceptualizing Land Rights

Land rights have been hazy issues in the development of human rights standards, because of the different perceptions attached to property rights in different ideologies and traditions. These juridical and philosophical notions of land rights, "should not be treated as the highest order of land related rights particularly in cases where actions to guarantee property rights contribute to the violation of other basic human rights for a wide segment of the population."[37] Thus, in her essay on the land rights of the Maasai Annika Karlsson correctly argues that, "The issue of land rights is very infected due to the fact that the Maasai peoples' perception of the right is not corresponding to the perception of the Kenyan authorities..."[38]

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[34] Interview with a Councilor, Paicho Sub County.

[35] Interview with Acen Florence, from Bungatira Sub County, August 2, 2006.

[36] Interview with the Human Rights Program Assistant, UN Office of the High August 2, 2006 Commissioner for Human Rights.

[37] Report of Electronic Consultation on Draft European Union Land Policy Guidelines, published by the International Land Coalition, Italy, 2004. http://www..caledonia.org.uk/land/commodity.htm.

[38] Karlsson, 2001 at 3.

Land policy development in Uganda has mainly been concerned with titling rather than with the dynamics of tenure relations as a whole. This is one area where there are immediate problems about land in Acholi, namely, the status and security of customary land, which has largely been denigrated by government and policy makers as unconducive to development. And yet, if land rights are actually able to empower vulnerable groups and communities such as IDPs, they must be conceived in a way that is understandable and acceptable to these communities, while also conforming to international standards. That is why Rexford Ahene, a consultant in the Ministry of Lands, argued that land rights must be understood as widely as possible taking on board cultural elements which include the obligations imposed on society to ensure that everybody has access and rights of use of land.[39] What then is the conceptual problem?

First of all, customary land rights are not defined in law, such that land law and land rights have developed within the purview of western jurisprudence and notions of property relations.[40] Although Uganda and its neighbours attained independence, Okoth Ogendo claims that they simply "re-entrenched and sometimes expanded the scope of colonial land policy and law." Okoth Ogendo further stresses the point that land tenure systems in Uganda to date have never progressed "further than they were immediately after the 1900 and 1901 Agreements." Land reform has therefore remained stuck in the colonial legacies and 'no innovative land rights and complementary infrastructure has been designed.

As part of the regime of property rights, land rights was one of the most controversial issues during the formulation of the Universal Declaration of Human Rights (UDHR). The essence of the debate was on how best to provide for property rights that met the essential needs of descent living, although what that meant in practice was equally controversial. There was however agreement within the UN on the entitlement of a person to a minimum amount of property without which he or she loses his/her rights to dignity and self-respect.[41] This principle is reflected and provided for in the national IDP policy in Uganda. Under the IDP policy, government is committed to ensuring that IDPs return voluntarily, in safety and dignity to their homes or places of habitual residence. Under this objective, land rights are crucial because it is only upon the basis of these rights that one can build shelter, produce food and earn an income.

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[39] Interview with Dr. Rexford A Ahene on August 30, 2006. Ahene is a Ghanaian Professor in the Department of Economics and Business and African Studies Program Coordinator, Lafayette College in the United States, seconded to the Ministry of Lands, Government of Uganda.

[40] Okoth, 1999.

[41] Johannes, 1999 at 146-147.

According to Ahene, policy makers do not treat land rights as human rights, due to the dichotomization based on the argument that "there is no direct human right to land" although "the right to land can be derived from several human rights instruments."[42] Ahene underscores the point that "Dichotomizing land rights as different from human rights, causes confusion." This tendency it seems stems from the perceptions and definition of land rights within the context of security of tenure, which only serves the "prohibition function" of rights through land administration. The dichotomization seems to arise from William Edmundson's concept of the "prohibition" and "permission function of rights."[43] The "prohibition" function is to exclude others by guaranteeing legal protection against "encroachment by the political authority" or other individuals, while the "permission" function allows individual choice, which is the options open to an individual or community to enhance opportunities for realizing their rights.

Understanding land rights merely as about securing tenure is therefore problematic. While it cannot be denied that securing land tenure is important, it is another issue getting those rights transformed from what the Commissioner for the Pacification of Northern Uganda, Okello Bwangamoi calls mere "subsistence" to "economic life." Land rights perceived merely about security of tenure, would constitute "dead capital" to use Dianna Hunt's metaphor, if they are not supplemented with the idea of "permission" or what Ahene would call "secondary/tertiary rights." But what constitutes primary vis-à-vis secondary or tertiary rights? It may be a little difficult to draw the line between primary and secondary rights but Edmondson's categorization above may be helpful in ascertaining such rights. In determining the primary aspects of land rights, we need to look at those entitlements that guarantee a minimum amount of property without which a person's dignity and self-respect is lost. Rugadya defines land rights as constituting access, use and ownership of land, but it is not clear whether this set of rights is being treated as human rights or merely as rights to security of tenure. She does not show the basis of the categorization. However, if land rights are simply understood as being about access, use and ownership, in this sense there is plenty of land in northern Uganda and it might not be an issue of concern in the return, reintegration and resettlement of IDPs.[44]

Rugadya's concept of land rights has its basis in Article 14 of ILO Convention 169, which recognizes ownership, possession and access to land as necessary for the subsistence of marginalized groups such as indigenous people. For agricultural communities, the essence of land rights as human rights is with respect to the guarantee of subsistence. Rural communities need land essentially

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[42] Electronic Consultation on the Draft European Union Land Policy Guidelines, op.cit., at 8.

[43] William, 2004.

[44] Ministry of Finance, Planning and Economic Development , Discussion Paper Non Peace and Conflict Resolution, Kampala.

for their survival in terms of securing food and shelter. That is why both Article 1 of the ICCPR and that of the ICESCR recognize people's right to self-determination to pursue their economic, social and cultural development, and are therefore guaranteed protection against deprivation of their own means of subsistence. Article 11 of the ICESCR recognizes the right to be free from hunger and the rights of everyone to an adequate standard of living for him or herself, and his or her family, including adequate food, clothing and housing and to the continued improvement of one's living conditions.[45] These provisions are further reinforced by Article 21 of the African Charter, which provides for the freedom of a people to freely dispose of their wealth and natural resources and in no case shall a people be deprived of these rights. Connected to the survival rights of communities is the concept of social justice that is linked to the issue of land rights and peace. The ILO Constitution rests on the principle that lasting peace can only be sustained if it is based on social justice. Social justice accordingly constitutes the right to pursue individuals' material well-being and spiritual development in conditions of freedom and dignity, economic security and equal opportunity. That is the same position in the Constitution of Uganda, which in Principle XI (iii) of the National Objectives and Directive creates obligations for the state to regulate the acquisition, ownership, use and disposition of land and other property in accordance with the Constitution. In effect, this jurisprudence makes land central in the quest to ensure access to social justice.

The 2003 World Bank Policy Research Report defines land rights "as social connections that regulate the distribution of benefits that accrue from specific uses of a certain piece of land."[46] Issues about land ownership and control are as much about the structure of social and cultural relations, as they are about access to material livelihoods. This is one reason why land tenure in Africa tends to revolve around the "structure and dynamics of lineage and cultural communities rather than around strict judicial principles and precepts."[47] Thus land rights cannot be perceived merely as being about the guarantee of security of tenure and therefore it is not correct to pursue individual and private rights concepts per se as constituting the alpha and omega of land rights.

Although the World Bank definition of land rights appears vague, because the phrase "…distribution of benefits that accrue from specific uses of a certain piece of land.." may be subject to different interpretations, it however recognizes the fact that land rights traverse, embed and reflect the socio-cultural

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[45] The Electronic Consultation on the Draft European Union Land Policy Guidelines (supra) reviewed several international human rights instruments, which by deductive methods make land rights human rights. These instruments include the ICCPR, ICESCR, the ILO Constitution and Convention 169. But there are other instruments upon which land rights can be regarded as human rights.

[46] Batungi , 2005 at 25.

[47] Id, at 29.

relations of communities. Under Customary Law, therefore, everybody is guaranteed a source of livelihood through easy access and usage of land, and there are rules and procedures under which a person may seek access.[48] As long as you belong to a family and clan, traditions have provided for ways in which each member of a family can access and use land for a livelihood. The system is constructed to ensure cooperation rather than competition. In this respect, ownership of land in Acholiland has several elements:

i)   Land is vested in the community although usage is private;

ii)   Clan leaders exercise control over matters of access and usage, in terms of power of allocation to clan members according to individual needs, and

iii) Although usage might be private, tradition encourages the pooling of labour and other resources for production purposes under the management of the family head.

Secondary or tertiary rights may be derived from measures the state must put in place to 'permit economic efficiency' and facilitate sustainable management. These includes infrastructure, such as roads, markets, financial and information resources, security and institutional mechanisms for participation. Such items become entitlements, without which land rights as conventionally understood would remain dead capital. These entitlements are explicitly recognized in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 14 not only protects women against discrimination, but recognizes their right of participation in and benefit from rural development, through access to agricultural credit, marketing facilities, appropriate technology and equal treatment in matters of land and agrarian reform and resettlement schemes.

In conditions of devastation by armed rebellion such as what has occurred in the Acholi sub region, land rights and issues cannot be confined to mere access and ownership but should include those measures that enhance the capacities of communities and will have an impact on their lives. These measures are necessary in creating enabling conditions for rural communities to access cheap credit facilities, which has always been a constraint in developing rural areas and will inevitably be so in the reconstruction process. As pointed out by Diana Hunt, banks are not interested in financing rural areas. Reconstruction and development cannot take place for the whole country when the financing institutions are reluctant to extend credit facilities to rural areas. The inadequacies in rural financing have been raised before in Parliament. In its report of February 17th 2004, the Sessional Committee on Agriculture, Animal

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[48] See CSOPNU, 2004.

Industry and Fisheries raised concern "about the lack of financial programs appropriate for rural agricultural development."[49] The report pointed out that banks were not keen to extend loans for agricultural projects while microfinance institutions were too expensive for agricultural investment: "Government was urged to learn from the Indian case where government has established a rural development bank specifically to make funds available for agricultural sector development."[50]

In Mozambique, credit support services and institutional capacity building were instrumental in supporting government initiatives in post conflict reconstruction. CSO organizations provided credit concessions to "... small rural agricultural producers for the purchase of agricultural products produced by peasants and for engagement in commercial and production activities. They also engaged in reconstruction infrastructures such as schools, health services and communication."[51] In the case of Uganda, it is not clear what CSOs are likely to do during the process of post conflict reconstruction. The Government of Uganda's position paper plans to divest post conflict reconstruction to the private sector for micro financing and other developmental activities. This might be too ambitious and ultimately futile because the private sector in Uganda is very small, and has not made any significant impact on rural conditions in areas outside the conflict zone. It is not clear how effective micro finance providers might be in assisting the war-ravaged population in Northern Uganda. Are they expected to provide concessionary loans, which is unlikely given their record of charging high interest rates that even prompted threats from President Museveni over the matter. On a related point, the *bonna bagagawale* scheme does not appear to have specifically addressed the situation in the conflict zones with any particular concern for the differences in that situation to the rest of the country.

These measures should also enhance community capacities to access and negotiate in the markets. This can contribute to a strengthening of the private sector. One lesson from Mozambique in the post conflict reconstruction process was the lack of interest by the private sector in rural areas. Although the reasons for this tendency were "hard to determine," it is seems to be attributable to the weakness of the African private sector, "which lacks the financial muscle to confront issues of the post conflict environment,... and the human and material capacity to contribute meaningfully to reconstruction."[52] Therefore, the role of the public sector will be a prerequisite in providing groundbreaking initiatives in the post conflict reconstruction. At the same time, it is important to recall that the private sector always seems to follow the public sector. The

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[49] See Paragraph 3.1.17.

[50] Id.

[51] Committee on Human Development and Civil Society, 2003.

[52] Id., at 15.

private sector would perhaps not have effectively been able to enter the market in Uganda or any former colony without prior public sector investments. The success story of China is attributable to the large public sector development in the country. For the domestic private sector to be stimulated, government will have to invest massively in Northern Uganda. However, the government also needs to enlist the support of the people of Acholi and other Ugandans both locally and in the Diaspora to invest in the region, especially in the areas of agriculture and dairy production. This will however depend very much on the outcome of the peace process, the situation in Karamoja and the government's overall attitude towards the region.[53]

Economists and policy makers argue that the pluralist land tenure systems prevailing in much of Africa do not make much sense for land markets, thereby making banks reluctant to advance credit to farming communities. There is nevertheless evidence to prove that titling has not made much difference in facilitating access to credit.[54] The Report of the Electronic Consultation on the Draft EU Land Policy Guidelines supports this contention, which acknowledges that the argument that titling is a necessary measure to secure tenure, productivity and access to credit is incorrect. The Report points out that titling "can bring increased hardship for poorer people where land rights are complex and information about the procedures as well as their cost and accessibility mean that most vulnerable groups do not have effective access to such processes."[55] Hunt underscores the point in her claim that banks in Uganda as a matter of policy do not finance agriculture because of a number of factors, including the following:

a. The remoteness of rural areas to enable banks easy access to prospective clients and the assessment of their collateral. Additional difficulties include the problem of realizing securities in rural areas due to the lack of a vibrant land market;

b. The viability of agricultural enterprise because of the small market and natural hazards. Farm output largely depends on the availability of profitable markets and the easy ability to access those markets. Government must address this issue in the post conflict reconstruction in northern Uganda, given the degree to which rural infrastructure has been destroyed;

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[53] At the time of completing this paper (April, 2007), the peace talks had stalled, although there were indications that they would restart shortly.

[54] Hunt, op.cit.

[55] Id., at 16.

c. What kind of markets do rural areas offer?[56] Even if production of thesecommodities increases ten fold, they might not make much difference because of the vagaries of international trade. It is debatable whether the return of peace in southern Sudan and DRC will provide opportunities for an expanded market in the war-ravaged areas;

d. There is a lack of experience in running commercial agricultural enterprises; and,

e. There are no extension services or educational facilities to provide information and skills for people in the rural areas to enable them make use of their land resources in an effective way.[57]

Another factor arises from the administrative infrastructure, which Okoth Ogendo,[58] and Odenda Lumumba[59] correctly castigate as an impediment to land development throughout the East African region, because the state has interfered so much in land administration while it really has no capacity in land management. Consequently, inefficiencies are passed on to the land users. Land use decision-making is characterized by disputes, abuse and corruption. "Indeed throughout Eastern and Southern Africa land bureaucracy became corrupt, inefficient and largely insensitive to the ordinary land using public which they were designed to serve."[60]

The other core elements of the secondary rights are reflected in the draft Land Use Policy framework being proposed for Uganda.[61] The policy is based on the desire to achieve sustainable and *equitable* socio-economic development through *optimal land management and utilization*.[62] The draft land use policy framework has several objectives and principles for sustainable land use. One of the objectives is to "adopt improved agriculture and other land use systems…..."[63] It recognizes *community based, participatory land use planning* as an important strategy for fighting poverty and ensuring sustainable land use. The draft policy recognizes the importance of rural infrastructure as key in making land rights real. Transportation facilities are critical in integrating rural

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[56] One respondent Member of Parliament pointed out that the market for agricultural products is very small because much of the agricultural produce is unprocessed and consumed locally, except for traditional export crops such as coffee and cotton.

[57] For a comparison to the situation in post-conflict El Salvador, where the combatants abandoned the land because of a lack of aptitude and interest, see World Bank (1998) at 9.

[58] Okoth-Ogendo, op.cit., at 7-8.

[59] Odenda, 2004 at 46.

[60] Id.

[61] Ministry of Water, Lands and Environment, 2004, at 12.

[62] Id.

[63] Id.

areas into the economy, permitting freedom of movement and access to markets. The *Daily Monitor* quoted one Ochaya as lamenting that, "The problem of land ownership particularly becomes a complex one for those who have lived in IDP camps for a long time. We are going back to a land (villages) that has no water, health facilities, schools and other social services."[64]

Okoth Ogendo also acknowledges the importance of the support service infrastructure as a necessary component for a land rights system to operate effectively.

> *This is not an issue which designers of land policies and laws often advert. The general perspective has always been that changes in the technical description of title per se is all that is required for a new land rights system to function. Experiences from those countries where experiments with new tenure regimes have been conducted indicate clearly that reform of complementary institutions relating to physical infrastructure, supply of agrarian inputs and services are important levers in the operation of land rights systems. Although such infrastructure exists in various degrees in each country, they have not always been effectively coordinated or fully activated.[65]*

Against the above background, the RBA is an important tool "for perceiving land rights as human rights although this has not yet been achieved."[66] It is the basis for the new thinking represented in a new concept, viz., "land rights administration," as opposed to the conventional concept of land administration, which is mainly concerned with security of tenure, and the institutional and procedural mechanisms for processing and securing title. According to Okoth Ogendo, what is currently regarded as land law is actually administrative law because,

> *... the colonial government concentrated rather on the development of an administrative infrastructure around land relations. The result is that much of what counted as land law was in effect the law of land administration; hence land tenure became part and parcel of administrative law.[67]*

According to Ahene, Land rights administration is a more comprehensive framework that goes beyond mere security of tenure and involves a wider scope of issues such as land rights awareness and avoiding the inequities in land access and use. Land administration is merely intended to deliver a service

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[64] See, *Daily Monitor*, September 26, 2006, at 14.
[65] Okoth-Ogendo, op.cit., at 10.
[66] Interview with Dr. Ahene, 20 August, 2006.
[67] Okoth Ogendo at 6.

and is not concerned with the consequences of land alienation, while land rights administration is a sector wide approach integrating the RBA.

While rural areas are poorly served with roads throughout Uganda, conflict areas present a special case. Almost the entire population is displaced and encamped. All rural settlements have been abandoned. Community roads have disappeared or might be polluted with landmines. Government has been constructing security roads and given the need for reestablishing the administrative infrastructure, access to markets and effective law and order will require the provision of transportation facilities in order to stimulate the necessary rural development.[68]

In conclusion, it can be argued that there is a body of international, regional and municipal human rights law that conceptually turns land rights into human rights. The protection of a person's right to own property individually or in association with others, enshrined in Article 26 of Uganda's 1995 Constitution, clearly brings out the notion of land rights as human rights. The most essential elements in these rights for rural communities are the issue of equity and social security, equal opportunity, cultural cohesion and the protection of identities. The people in the Acholi sub region prefer customary land rights. It is the system they understand, and guarantees them equity and cultural cohesion. Adoko points out that contrary to the assumed insecurity of tenure underlying customary land rights, people feel more secure under it than under freehold.[69] Thus, it is important to reiterate the point that land rights are not merely about securing tenure and ownership to the exclusion of others; they need to be complemented with guarantees of freedom of movement, participation, and other rights and interventions that are necessary in enhancing a decent living. Such interventions may include the construction of institutional mechanisms for ensuring equitable access to and use of land, the development and improvement of credit and agricultural support services and the right against usurious taxes that "inhibit the development of a vibrant agricultural sector" that needs to link up with other sectors of the economy.[70] While these factors are lacking in the land administration frameworks, Acholi tradition provides for them in a bid to ensure equity. I shall return to this point after examining the general issue of land rights in Acholiland.

3.2   Contemporary Land Rights Issues in Acholi

Prolonged mass displacement and the encampment of people can lead to trespass, landlessness, land degradation and resultant disputes. These may arise either from loopholes in the law and policy, land grabbing and expropriation, or from the degradation of the estate. It is of no surprise that

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[68] Draft Land Policy, at 19.

[69] Adoko, 2005 at 5-8.

[70] GoU, 2006a, at 69.

such tensions abound in areas where IDP camps and military detachments are located, or where there has been the illegal extraction of forest products and other natural resources, and also where boundary marks have been destroyed. In such a situation, there are a number of issues of concern, starting with the legal and policy framework, extending to the question of land loss and landlessness.

3.2.1 Legal and Policy Concerns

Although the land reforms represented in the Land Act of 1998 give some limited assurance of security of tenure over customary land, there is no absolute guarantee against the loss of land due to the vulnerability of that tenure. This is possible in several ways under the existing policy, legal, political and administrative environment, all of which is made even more problematic by the massive displacement of the population that has taken place in Acholiland.[71] Consequently, while many of the problems affecting the situation in Acholi are generic to those elsewhere in the country, the unique situation of both the prevalent tenure, as well as the impact of the conflict, require a more nuanced perspective on the matter.

Article 237.2(a) of the 1995 Constitution of Uganda empowers government or a local body—subject to Article 26 of the Constitution—to compulsorily acquire land in the public interest. This is an area fraught with serious problems. Although prompt compensation is required in the instance that such an acquisition is made, there are problems with land owned under customary law. First of all, the term 'public interest' is not defined either in the Constitution or in the Land Act of 1998. Secondly, under section 60.1(a) of the Land Act, Land Boards are empowered to allocate land under their jurisdiction, which is not owned by any person or authority. Such a provision cannot be without problems, because of the high propensity for the law to be abused.[72] In the first instance, the statute does not define with any precision 'land not owned by any person or authority.' Under the laws of Uganda ownership may be derived from freehold, leasehold or from a certificate of customary ownership. Therefore, as correctly observed by Judy Adoko, Land Boards can allocate land purportedly not owned, either because those who can assert their interests are dead, or simply because they are unable to establish their claims.

Additional problems emerge if one looks at the different types of lands that abound in Uganda. There are areas such as wetlands that are managed communally and reserved for herding, as Acholi communities before the outbreak of the war were agro-pastoralists. Access was secured largely under the tenuous control and management of clans for grazing. Such areas can be open to abuse by the Land Boards. Although it was difficult to verify it, there

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[71] Adoko, 2005 at 5-8.

[72] Adoko, 2004.

are claims that land in Awer and Nile plains has been allocated to well-connected people and yet, these plains and other wetlands were the mainstay of the pastoral culture.[73] Animal herding is as important to the Acholi as is the cultivation of simsim, sorghum or cassava. Among pastoralists or agro-pastoralists, herding is a symbol of power, prestige and nobility.[74] It was not simply a joke, for instance, when Joseph Kony, leader of the LRM/A, demanded that government compensate the conflict affected people with three million heads of cattle. Therefore, the restocking of the lost herds is a critical demand by the Acholi and will obviously feature prominently in the demands for economic redress in the post conflict reconstruction period. Whether they get restocked with large or small numbers of cattle, the Acholi people will need their traditional grazing land, which they may find has been privatized. If grazing rights are curtailed or disorganized because of the privatization of grazing land, post conflict reconstruction will certainly be more problematic.

Judy Adoko examines the vulnerability of customary land rights in Acholiland in conditions of armed rebellion. She analyzes the nature and character of customary land rights and her concerns are similar with the findings of other writers on the subject. The problem is that such laws are unwritten, and consequently not easy to ascertain, which mainly works against the disadvantaged and under-privileged.[75] Secondly, Adoko observes that the rules governing customary tenure are undergoing statutory modification without people realizing and coping with what is happening. Consequently, unscrupulous people are exploiting the vagueness and changes in the rules in customary land rights to rob unsuspecting victims of their land.[76] Adoko does not believe much in the protection value of Communal Certificates of Ownership (CCOs)—which are provided for under the Land Act, although at the same time she supports the concept. She however ponders over whose names would be on the CCOs given the fact that land is held in trust for the dead, the living and the unborn? Will all the names of the claimants be included? This demonstrates that the Land Act of 1998 has not conclusively dealt with the fundamental issues underlying the characteristics of the customary informal relationships and informal land tenure systems respectively, which is due to the lack of a clear policy to inform legislators in the enactment of these laws.[77]

These fears are also enhanced by the emerging practice of the President of Uganda to allocate land to investors without following established procedures. Public concern over the issue of such allocations has grown to such an extent that President Museveni was recently challenged to follow the established legal

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[73] Id.

[74] Sutton, 1992 at 5.

[75] Adoko, 2005 and Okoth, op.cit.

[76] This claim was reiterated during various focus group discussions and interviews.

[77] Batungi, 2005 op. cit. at 60.

standards, as it is not clear how certain investors have obtained leases.[78] Moreover, these allocations have affected land that is both urban and well defined in terms of ownership. In contrast, as land not owned by an authority is not defined in the law, there is no reason to believe why land grabbing cannot take place in areas of armed conflict under the guise of an accelerated post conflict reconstruction and modernization of agriculture. Retired Lt Colonel Walter Ochora, former LC V Chairman and current Resident District Commissioner (RDC) of Gulu district, recommended the leasing of land in Acholi sub region to investors. It is believed by the Government of Uganda that the modernization of agriculture under the PMA is the solution to unemployment and underdevelopment. According to a *Daily Monitor* editorial, this is a legitimate concern, although we must be cautious about the manner in which under development should be tackled.[79]

Government attitudes towards land owned under customary or communal ownership is also a source of concern. One characteristic of government land policy in Uganda is its "contempt" for customary land tenure.[80] The traditional ownership of land is not considered conducive to development—a thesis based on western economic and social perspectives.[81] The Museveni government greatly favours the "uniformisation" of land tenure through titling and for the creation of formal property rights through the "establishment of a formal, comprehensive, generally accepted and accessible system of property rights documentation, development of a credit system, the multiple ownership through shareholdings and the provision of utilities to identifiable property rights."[82] It is argued that such measures provide a positive environment for the creation of land markets and to facilitate access to credit. This is the thesis upon which government has based its land policy and law as expressed in the Land Act, and effectively makes customary land rights vulnerable.[83] Though the Land Act of 1998 extends some recognition of customary tenure, the "state would be happier if that system was phased out of the judicial landscape all together."[84] This attitude has left customary land law undeveloped and has "created serious problems for the evolution of land rights and land relations."[85]

State policy has therefore contributed to, if not intensified the denigration of customary land tenure by subordinating traditional institutions for the protection of the land rights of rural communities. This situation has been worsened by the prolonged rebellion in Northern Uganda. Thus, many of the respondents

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[78] *Daily Monitor* (Editorial), September 28, 2006.

[79] Id.

[80] Okoth, op.cit., at 5.

[81] Hunt, op.cit., at 2.

[82] Id.

[83] Id.

[84] Okoth, op.cit.

[85] Id.

interviewed expressed fear about the declining influence of the traditional systems due to the disappearing traditional values under the custodians of traditional authority. Furthermore, the prevalence of HIV/AIDS and western gender ideologies, are undermining some of the cultural social security values, thereby increasing the vulnerability of widows and orphans. Although controversial in HIV/AIDS debates and prevention programs, Adoko has not been constrained to argue that widow inheritance is a positive social security system that protected widows and orphans from losing access to land and livelihood.[86] Thirdly, heads of family who held land in trust for the family or clan are now assuming private ownership owing to the confusion and break down of law and order arising from the conflict and subsequent displacement.

3.2.2 The Question of Loss of Land and Landlessness

The assumed guarantees of security of tenure under the Land Act have not produced the desired effect. "On the contrary" Adoko argues, "stories of land theft, land grabbing and land conflict abound." Respondents interviewed during focus group discussions in the two camps claimed that individuals are selling family land illegally, child mothers and orphans are being denied access to land, and rich people are buying off customary land without the full consent of the interested parties, while others are selling off their neighbours' land. An official in the Gulu District Land Tribunal claimed that Acholi in the Diaspora are also offering very high prices to entice the sale of land. Prominent government critic, Olara claims that 250 acres of land were allocated on private land in Amuru to individuals with the support (read 'coercion') of a senior military officer.[87] Concern has also been expressed over General Caleb Akandwanaho's (a.k.a. Salim Saleh) Security and Production Program (SPP) which is based on an assumed abundance of unutilized land that is communally owned, and which could be allocated by the District Land Boards. Olara has further claimed that the "...cultivation of land by illegal occupiers is widespread in Acholiland. Senior army officers are alleged to have taken possession of privately owned land, which they have been farming for their own personal benefit.[88] No permission was sought from its owners who had already been driven into concentration camps. Nor has any compensation been paid to the affected people. He concludes by arguing that the conflict has created "a strong culture of impunity for the powerful" throughout the region and that the threats of being named a 'rebel collaborator' have been enough to intimidate the landowners into silence."[89]

Professor Ogenga Latigo—the official leader of the opposition in Parliament—is said to have bought over 1000 acres in Agago County in Pader district, and

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[86] AIDS Prevention campaigns discourage risky practices and widow inheritance is one of those considered to contribute to the spread of HIV/AIDS.

[87] Acholiland: The Next Likely cause of Conflict? See the Examiner Issue # 2/2005.

[88] Claim by an official in the District Land Tribunal.

[89] Id.

the acreage might expand to 2000. Unsurprisingly, the acquisition of large chunks of land is strongly defended by Professor Latigo, who views the sale and purchase of large chunks of land as a positive development towards commercial and mechanized agriculture, which he claims had already emerged in the area long before the war. Latigo further justified the acquisitions on the basis that commercial farming activities are offering employment opportunities to many destitute Acholi. He also pointed out that land is still abundant in the Acholi sub region.[90] Serious development would however depend on the government building roads connecting the borders of Uganda with the Democratic Republic of Congo (DRC), Sudan and Kenya. Latigo is convinced that with such roads traversing the whole of Northern Uganda, not only will rural development be stimulated, but it will also have an integration effect for the whole country and the region at large. Such vision however is countered by the apparent resentment of many Acholi people against non-Acholi buying land in the sub region. Okello Okello, a member of parliament from the region was quoted in the media saying: "The issue of land allocation to private investors is a contentious....We want our people to be very careful not to issue their land titles to investors. We are suspicious of these investors."[91] The same paper made reference to utterances by Otto and Godi, members of parliament from the Acholi sub region threatening to mobilize residents to spear any investor who attempts to grab their land.[92]

Another Member of Parliament interviewed also claimed that a senior military officer from outside the Acholi region had deliberately been destroying traditional boundary marks and buying land in strategic places through proxies.[93] These allegations have generated considerable anxiety and xenophobia among the communities from the Acholi sub region. Indeed, on this issue, Latigo sings a different tune, arguing that the acquisition of land by "foreigners" is risky as this might spark off a Kibaale-like impasse over land. Respondents in the two IDP camps of Koro Abili and Unyama, also expressed opposition to "foreigners" buying land in the sub region airing the belief that it "would cause conflict." Members of parliament from the Acholi sub region are reported in

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[90] Ministry of Finance, Planning and Economic Development, Discussion paper No 7.

[91] *Daily Monitor*, Thursday November 28, 2006 at 13.

[92] Id.

[93] The issue has generated heated political controversy to the extent that some MPs from the region have publicly vowed to cut down any foreigner acquiring land in the sub region. In frontline headline in the Daily Monitor of December 12, 2006, General Salim Saleh, President Museveni's brother and Minister for Micro Finance, was accused by Honourable Okello Okello of illegally acquiring land through his "social friend" one Harriet Abel, an allegation Saleh denied. However, he argued that as a Ugandan he is entitled to acquire land any where in Uganda. The paper also named the army officers who have acquired large chunks of land, including Maj. General Julius Oketa, Col Walter Ochola, 4th Division Commander Col Charles Otema and Brigadier Nathan. It was further reported that Abel was in a bitter wrangle over a 5 square mile piece of land in Amoro with Major General Oketa. However, the accused army officers claimed they have a right to use land that belongs to their clans.

the *Daily Monitor* to have rejected Salim Saleh's Divinity Union, his private company's program to fight poverty because it was perceived 'as a ploy to grab people's land at Gotapwoyo area.'

The other concerns about land are the anticipated land disputes that will invariably follow the return of the displaced. There can be little doubt that there will be many land disputes when the IDPs return to their villages, which disputes might aggravate the psychosocial problems that are already prevalent.[94] These disputes will mainly be over land boundaries that have disappeared, are unrecognizable or have been destroyed.[95] The above fears—some genuine, while others may be the expression of more overt political interests—nevertheless bring out certain issues the market driven policy makers overlook, namely, the connection between ethnicity, land and culture.[96] This contradicts Nathan Batungi's argument that formalized tenure has an integration effect on communities, i.e. it would encourage and facilitate the free movement of communities around Uganda.[97]

Okullo Epak and Ojok B'Leo, who are members of Parliament from the neighbouring Lango sub region, pointed out that there were already conflicts emerging even in places such as Lango where the displacement has not been as severe as has been the case in Acholi.[98] The disputes are over assertions of claims by different claimants, and this is happening in a situation when clan or family members who would assist to assert or verify these claims might not be available,[99] they are unwilling to return to their villages, or they might have been compromised by corruption or disabled by poverty.[100] Children born in camps whose parents are dead or disabled might not know or be able to retrace their roots and land without the aid of elders might not be there or whose life styles, interests and demands have changed as a consequence of the setting in of the 'displacement culture.' The clan structures that would mobilize, organize and process land or property claims have been weakened by the long years of displacement, economic liberalization and "monetization," which according to Hon. Epak was promoting individualism and killing the spirit of solidarity among rural communities. Though weakened, clan structures still exist and should be factored into the return, reintegration and resettlement plans not

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[94] All the Members of parliament and respondents from the two camps who were interviewed expressed fears about the likelihood of many land disputes.

[95] Interview with Hons. Ojok B'Leo and Okullo Epak.

[96] Elliot, 2006.

[97] Batungi, op.cit., at 63.

[98] Interview with Hon Okot B'Leo on August 23, 2006.

[99] One respondent—an LC V Councilor representing Koro County—stated many elders have died and this might make it difficult for surviving relatives to reassert their claims over land.

[100] Hon. Ojok B'Leo, MP representing Kioga County.

simply to service government administration, but also to assist in the mobilization and organization of the population to enhance their capacities in production and bolster the social support system.

Epak calls for the strengthening of these institutions. He cited the example of the institution of the *Rwot Wang Tic*, whose function was to mobilize rural communities for self-help and communal work. The *Rwot* was key in mobilizing rural solidarity labour teams and therefore acted as custodians of information about their communities. The surviving *Rwot Wang Tic* can be identified and mobilized to help in clearing boundaries and settling family and clan disputes. Although the government is planning to revamp the judicial and administrative institutions and structures that were in place before the conflict, they do not seem to be focusing on traditional institutions and resources that have to be injected in the building of partnerships necessary during the resettlement and reconstruction process.

Members of Parliament from both the Acholi and Lango sub regions were of the view that landlessness is not yet a problem in Northern Uganda. There is still enough land to resettle the landless people through the clan structures, which can take care of the vulnerable groups who might not have land. This may be true, but can only apply in the short term. Rapid demographic expansion, and the individualization and privatization of land might soon render such belief untenable. The areas afflicted with conflict have an extremely high rate of population growth.[101] Secondly, it is not quite clear how the onset of individualization and camp life might be changing land access regimes. These are issues that might require closer observation and analysis when the war ends and people begin to resettle in their villages.

Despite the prevalent belief that there is abundant land in the sub-region, there are already categories of people who may not have access to land. These include amputees who in 2002, numbered 6000.[102] They have special needs and many of them are dependent on relief assistance. The other category of affected individuals includes widows, child mothers, former child soldiers who have now attained adulthood and child-headed families.[103] There is also the category of Congolese women who were married or cohabited with soldiers who have either died or have been abandoned, and yet they have children born to these soldiers. Measures must therefore be put in place to take care of these categories of people, instead of hanging on to the illusion of an abundance of land when there are no effective mechanisms for resettling those who already fall within the category of the landless.

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[101] UBOS Baseline Survey Report of the NUSAF Districts.

[102] See Ministry of Finance Discussion paper No. 7, op.cit.

[103] Focus Group discussion with camp leaders Paicha and Bungatira Sub-county on 2, August, 2006.

Another factor that has made land and property rights in the conflict areas extremely vulnerable to exploitation is the interlock between conflict and poverty. One of the impacts of the conflict on the people of Acholi has been their reduction into a highly dependent population which has affected the lifestyle of the IDPs.[104] Such high dependence lifestyles generate their own dynamics and consequences. It is not clear how such lifestyles are going to affect the processes of return, reintegration and resettlement. The conflict also resulted into the loss of cattle through rustling on part of both the NRA (predecessor to the UPDF) as well as Karimojong rustlers. Before the war, pastoralism and agriculture in Acholiland depended on each other. The Acholi are an agro-pastoralist community and cattle is as important to their culture and livelihood as land. Pastoralism provided among others, a source of income that could be ploughed back into agriculture and other livelihood needs and vice versa. In the absence of cattle, the easiest tangible source of income for an impoverished community would be the sale of land. Restocking will therefore have to be factored into the equation, not just to supply oxen but as part of the reconstruction of the lives of the Acholi community.

Finally, it is important to point out that land in and around the camps and military detaches has been severely degraded over the course of the last several years. At the same time, it is not clear whether the owners of such land will be compensated. The degree of degradation and landlessness was difficult to establish and no statistics were recorded in the two camps. A recent study on the impact of the conflict on the environmental and natural resource management issues nevertheless noted the destruction of wood cover especially around the urban areas of Kitgum and Gulu districts and IDP camps, in Apac and Lira districts,[105] although the report points out that there has been a recovery of woodland areas where the LRA has been active in Pader and Kitgum districts.[106] Several issues emerge with regard to the question of land degradation, including the interventions to sustain the woodland recovery in some of the areas mentioned, tree replanting in the devastated areas especially around the camps, in Apac and Lira districts, and compensation for the loss of timber and other environmentally degrading activities.

3.2.4 Mechanisms for Dealing with Land Issues
There are several different approaches to addressing land issues in the Acholi sub-region in a bid to reduce vulnerability during return, reintegration and resettlement. The first of these would be to record land transactions on customary land. This might require an amendment to the Land Act or the enactment of regulations that would nullify land transactions during

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[104] UBOS, 2006.

[105] Namindo & Plumptre, 2005 at 9-10.

[106] Id., at 10.

displacement for the purposes of verification. Such verification would be carried out with the assistance of both local government operatives and the traditional leadership of the area. In the same spirit, there is a need for the codification of customary land rights. It is a truism that the content of customary land law is not well defined. Okoth Ogendo's concern that the content of customary land law needs to be defined should be taken seriously as a precondition for the codification of customary land law. However, there is also a need to be cautious about what is actually to be regarded as 'Customary Law.' It is argued that no such notion exists in traditional legal systems and was a European invention to find an equivalent close to their own jurisprudence.

Secondly, the acquisition of CCOs for widows and orphans needs to be supported either by government or by CSOs. Vulnerable groups need legal assistance to acquire CCOs. This is what the Community Research and Development Services (CORDS) an organization working on pastoralist issues in Tanzania has done for the Maasai communities in Monduli district.[107] It has undertaken surveys to demarcate village land under the Land Policy and Land Acts.[108] Such interventions need to be pursued as part of securing the interests of the vulnerable groups who will face considerable adversity in the process of return. At the same time, there is a need for the organization of awareness campaigns to educate people about the implications of the Land Act and of the benefits of the CCO.

Given that there will be numerous transactions taking place with regard to land matters, there is a great need to establish land registries at subcounty level in order to facilitate the recording of the transactions that have taken place or those which may occur in future. However, this requires other interventions for the communities to make use of such facilities and this requires putting in place mechanisms for ensuring that land rights are realizable. It is not clear how the Land Act can be implemented in every district to suit local conditions, and indeed there is a need to ensure that there is compatibility between the law and the different local contexts. Suggestions have been made for the enactment of Land Ordinances under the provisions of the Local Government Act. One Councilor Okello Joseph even claimed that, "We as leaders have already started telling people to demarcate their land and we are also putting in place ordinances and bye laws to restrict the selling of land or preventing people spoiling other people's land."[109]

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[107] Interview with Benedict Ole Nangoro, Coordinator of Community Research and Development Services (CORDS) on February 22., 2005.

[108] Respectively Act Nos. 4 and 5 of 1999.

[109] Interview with LC V Councilor representing Koro County on August 5 2006.

The legislative functions of the local government authorities are an important source of empowerment for local communities especially in safeguarding their rights over, and enhancing the protection of natural resources. It is however an area that does not seem to be exploited especially on matters of land. This could however be attributable to constraints in the Land Act, which has decentralized land administration but centralized land policy formulation and legislation. This makes it difficult for local authorities to enact ordinances outside national policy and legal framework, much as it might not serve their best interests and aspirations rooted in their tradition and culture.

IV. ASSESSING THE POLICY AND LEGAL RESPONSES TO THE CONFLICT IN NORTHERN UGANDA

4.1 Government's Conceptual Framework and Policy Responses

In mid-April 2006, the GoU published "Our North", as a position paper on Northern Uganda. The paper outlines government's position on the issue of "humanitarian action" for people that have been afflicted by conflict in Northern Uganda. It provides a strategic framework for dealing with the challenges posed by the long years of insurgency, and it highlights the programs that have been implemented and others being planned for the region. These include among others the Consolidated Humanitarian Action Plan, the IDP policy, the Peace, Recovery and Development Plan (PRDP) and the establishment of a "high level Joint Country Coordination and Monitoring Committee" (JCCMC) as the framework for an orderly coordination of activities and responses for resolving and rebuilding the war ravaged areas.

The paper recognizes the failings in Northern Uganda noting that interventions have often been "incoherent and not linked to the necessary humanitarian development and security elements."[110] It highlights the president's 12 points strategy for the recovery of the North stresses the following areas:

- Ending the insecurities by building security enhancement infrastructure such as security roads to enable delivery of relief to IDPs.

- Provision of public goods like water, schools, health and emergence relief.

- Introduction of ox plough to enhance food security and income generation for the poor.

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[110] 'Our North,' op.cit., at 8.

- Building light processing plants and enhancing the availability of micro finance for micro business for ex combatants as well as "the general impoverished population" to enable them "to reclaim their livelihoods."

- Retraining ex combatants and the rest of the communities in vocational skills.

The 12-point strategy does not however include issues relating to reconciliation, land and building partnerships with CSOs, although JCCMC was established as a short term intervention for six months as a framework for partnering with other actors who are mainly government of Uganda and the core group of donor countries, viz., the USA, UK, Netherlands and Norway. Thegovernment's concern is mainly security, low capacity in human resources, inadequate resources and inadequate coordination, although the position paper was written with the Millennium Development Goals (MDGs), the PEAP and Decentralization as the basis for the responses. The Government also has plans for an Acholi program, a three-year project to assist the people of Acholi to fight poverty under PEAP.[111] The program is aimed at supporting the improvement of rural standards of living, through investment in community based and identified investments. The EU also supports the following components of the program: human rights, resettlement and reintegration, strengthening decentralization, peace building and socio-economic reconstruction.[112]

The paper also stresses rebuilding the justice, law and order sector and institutions in a bid to enhance their capacities. The capacity in law enforcement in Uganda is extremely low. Although the focus is on increasing capacity, attention is mainly on state institutions. There is no mention of revitalizing traditional institutions yet they are vital in conditions where state authority and democratic governance have been tenuous.

Government plans for enhancing food security include the mechanization of agriculture in the area. Government has acquired 40 tractors for seven districts, to be used in growing food and cash crops, which could be described as an indication of the importance of the public sector in procuring 'investable' goods for rural development. Government's decongestion plans are also considered as part of the food security enhancement measures, and described as "…a practical way of getting the population to re-colonize their ancestrallands."[113] It is not clear whether decongestion will be a transitory stage of moving people from camps or it is an attempt to reconfigure rural settlement patterns and economic activities. Professor Ogenga Latigo argued that much as displacement

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[111] Id., at 11.

[112] Id., at 36.

[113] Id., at 32.

has been a disaster for the Acholi communities, it also offers opportunities for a fresh look at rural settlements and land use. Rwot Achana II had initiated discussions to rethink the future of land use and settlement patterns. Okullo Epak was of the view that the return of IDP should be well managed with new resettlement patterns along the main roads, leaving the hinterland for block farming. However, government was allegedly suspicious about Rot Achana's initiative and no discussion of the issue has been pursued further.

A number of issues emerge from the position paper. In the first instance, the paper demonstrates the low capacity of the state to fulfill its obligations. Government does not have enough resources—whether human or financial—to pursue the undertakings expected of it. Concerning the issue of land, the paper talks about the Acholi people reclaiming their ancestral land, ensuring food security, reconstruction of livelihoods, introducing mechanization but without laying out the strategies for rural development.

The response to the position paper has not been satisfactory. Members of Parliament interviewed have reservations about the adequacy of the responses. They believe Government decisions are not well informed and adequately prepared, although they acknowledge the IDP policy was an important and positive step in the government initiatives. They also complained about the absence of a resettlement policy to complement the IDP policy, and of an inadequate budget for the North. The Suruma budget of 2006/7 allocated about Ug.Shs.18b/- for Northern Uganda, although government has plans to spend about USD 330 million for northern Uganda reconstruction, and the UN is also fundraising. Furthermore, there is no serious commitment to support agricultural development. Hon. Ojok B'Leo, a member of the Natural Resources Committee, pointed out that government has to take agriculture as a "top priority if we are seriously thinking about sustainable peace in Northern Uganda." However, he does not think that government is inclined in that direction because of the meager budgetary allocation to this sector of a bare 2% of the national budget, an amount too insignificant to have any impact on rural development. B'Leo underscored the need for a new focus on Northern Uganda with a budget adequate enough to address the conditions that have been generated by armed rebellion. If government can secure the USD 330 million, and spends it well, it might provide the necessary stimuli for the revival of the economy.

Rampant corruption committed with impunity is a threat to a successful post return, reintegration, resettlement and peace building endeavours. A lot of money has been raised for Northern Uganda under NURP I and II, and NUSAF. The interventions were made for the purposes of enhancing poverty reduction programs in the region, which could not be covered adequately under the PEAP. Despite these infusions of money, poverty is on the increase in all NUSAF districts. The average poverty levels for the NUSAF districts is 69%,

with Nakapiripirit district in Karamoja at 100%.[114] The region has the lowest human development indicators. The question is why is this so? Corruption would appear to be one of the main causes of this situation. The *New Vision* reported the minister for the North expressing concern about the mismanagement of NUSAF.[115]

Plans on return, reintegration and resettlement are inadequate and disorderly. According to Honorable Ojok B'Leo, government is focusing on distribution of seeds, hoes, and household goods, activities being pursued by CSOs. He did not think that should be the preoccupation of government, although the Chair of the Natural resources Committee of parliament defended government indulgence in distributing relief as an inevitable short term measure and consequence of the situation. B'Leo was of the view that government should complement the initiatives of NGOs in sensitizing people on land issues. He also suggested that the return, reintegration and resettlement program of IDPs must have a strong component for youth development because of the risks this category poses for the future.

Ojok B'Leo's concerns need to be taken seriously. The Government of Uganda is aware and recognizes the youth "as amongst the most vulnerable and poor groups in the region as they do not have the instruments and means to manage shocks."[116] This vulnerability is a recipe for continued rebellion, especially given the brewing conflicts over land, failure to attend to the youth is a big risk factor. Government has instituted youth programs with the objectives of offering skills training, "cross cutting activities." It should however be noted that it is not skills that are the most important factor, but how these skills can be used to engage the youth in meaningful employment. The rampant unemployment in the country generates more pessimism about the prospects of the youth in the sub region to be gainfully employed. In conclusion, there are already underlying conflicts in the interventions for the regions, and all concerned must take due cognizance of these conflicts. Policy planners, makers, implementers and beneficiaries should have been sensitized about conflict sensitive approaches for them to realize that while they might trying to solve a conflict, the initiatives and interventions may be inherently conflictual.[117]

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[114] See *The New Vision*, Wednesday December 6, 2006, at 9.

[115] Id.

[116] 'Our North,' op.cit, at 34-35.

[117] *The New Vision*, December 13, 2006, Kasese, Arua pilot project on the use of Conflict sensitive Approaches. The concept is about identifying inherent conflicts in development initiatives, programs and projects. It seems to be an early warning mechanism that is now in use by NGOs such as Safer World International.

4.2 Assessing the Policy Responses and Gaps

A number of policies—some finalized and others still in draft form—are in place. Some of them are general while others are more specific to the region and have a bearing on the process of peace building. At a national level there is the National Gender Policy 1997, PEAP (1997, 2004) the National Food and Nutrition Policy (2003) the draft Housing Policy (2003), the Decentralization Policy 1992, and the Social Development Sector Strategic Investment Plan (SDIP) 2003-2008. Those specifically targeting the conflict areas include the IDP policy (2004), the Consolidated Humanitarian Action Plan (2004) and the National Peace, Recovery and Development Plan (PRDP) for Northern Uganda, which had not been adopted by Cabinet at the time this paper was finalized. The following analysis briefly examines the most important of these and considers both the positive and the negative features in them.

4.2.1 The Peace, Recovery and Development Plan (PRDP)

In guiding its actions for the conflict areas in Northern Uganda, government has been designing the Peace Recovery and Development Plan (PRDP) for Northern Uganda. The plan is based on Pillar 3 (Human Rights and Conflict Resolution) of the PEAP and is being supported by DANIDA and USAID. According to the Commissioner in the OPM in charge of the Pacification of the North, the PRDP stresses the humanitarian and emergency aspects of the return, reintegration and resettlement of IDPs, which does not "constitute a clear road map for dealing with the conflict."[118] According to the official, this arises from the manner government has treated the conflict in Northern Uganda. It has been managed as a disaster, although the region has never been declared a disaster area.

The political attitude and management style by government towards the north seems to explain the slow pace and often piece-meal approach in the adoption of the PRDP. This has created suspicions that there is no political will in dealing with the conflict in Northern Uganda comprehensively. For example, government undercut the UN initiative and decision to send a special envoy to monitor the humanitarian situation of the conflict, pending the completion of the PRDP. The maneuvering resulted into a six months project under which the Joint Country Coordination Monitoring Committee (JCCMC) was established. According to a statement of the Ministry of Foreign Affairs, JCCMC is the framework for coordinating all interventions on northern Uganda. Without the proposal for the appointment of a UN Envoy, JCCMC would not have been established.[119] The JCCMC is chaired by the Prime Minister and has three sub committees: i) Humanitarian assistance, ii) Peace building and reconciliation and iii) Cession of hostilities and regional security. The committees report to

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[118] Interview with Mr Bwnagomoi Alex, Commissioner, Pacification of the North, Office of the Prime Minister.

the JCCMC. The JCCMC will dissolve into the PRDP once the latter has been finalized and kick started. The question however is what exactly is the JCCMC monitoring?

The formulation of the PRDP was an initiative of an inter-ministerial committee that produced a working document. The initial process did not involve local government although in January 2003, the first draft was submitted to local authorities and donors who made inputs resulting into the first draft. It was however overtaken by the increase in the number of IDPs to almost 2 million, following Operation Iron Fist and the LRA invasion of the Teso and Lango sub regions.[120] Consequently, the first draft was rendered irrelevant. Government went back to the drawing board with the help of consultants from WB and EU. The recommendations of the consultation were referred to the Inter-Ministerial Committee, which has produced another draft to be further scrutinized by local authorities. CSO involvement will be expanded to make further inputs as claimed by the Commissioner for the Pacification of the North. CSOs made inputs to the first draft and more specifically, the Gulu District NGO Forum was involved.

The initiatives under the PRDP are intended to create an enabling environment for the stabilsation and recovery of the North for a period of three years running from 2006 to 2009.[121] This will be achieved "through 14 priority programmes, agreed upon by the districts" concerned as the most critical in stablizing the region.[122] The priority programmes are categorized under three thematic areas, namely,[123]

- Restoring security and dealing with the consequences of the conflict and improving regional equity;

- Restoring sustainable growth of incomes, and

- Enhancing human development.

Restoration of order and dealing with the consequences of the conflict are intended to enhance state capacity. This will involve rebuilding and strengthening the administrative, security and judicial apparatuses, which had been rendered ineffective and made the area ungovernable. The components of this activity are summarized in the following table:

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[119] Interview with one MP on August 14, 2006.

[120] The formulation of the PRDP is a process built on earlier interventions in preparation for the eventual return of the displaced population. The process had to cope with the disruptions caused by Operation Iron Fist launched in 2002.

[121] See Executive Summary of the draft at 2.

[122] Id., at 4.

[123] Id., at 32.

TABLE 1
RESTORING ORDER AND SECURITY

ACTIVITY	COST (US DOLLARS)
Peace Implementation	1,800,000
Policing	64,524,720
Prisons	17,641,720
Auxiliary Forces	11,631,157
Judiciary	7,549,560
Local Government	46,010,820
TOTAL	**103,147,157**
SOURCE: PRDP 2006 at 35-50	

The other two components are summarized in Table 2:

TABLE 2
SUSTAINABLE INCOME GROWTH AND ENHANCING HUMAN DEVELOPMENT

ACTIVITY	COST (US DOLLARS)
Emergency assistance	23,735,100
Return/resettlement of IDPs	37,319,792
Community Recovery and development	59,158,033
Livelihood support	73,009,671
Production and marketing	22,529,020
Infrastructure Rehabilitation	29,153,850
Electrification	19,050,000
Environment and natural resources	40,866,818
Reconciliation Programs	3,424,253
Amnesty, demobilization and reintegration	9,783,514
TOTAL	318,029,451
SOURCE: PRDP 2006 at 54-92	

The focus of the PRDP and its human rights implications appear to be a positive indication in the peace building and post conflict reconstruction initiatives. Human development is key in successful peace building process. Secondly the justice, law and order sectors are critical in sustaining a peaceful environment and the enjoyment of human rights. The focus on human development which is a positive endeavour is however, faced with many limitations. First of all, is it possible to achieve human development under an economic model that puts so much emphasis on growth and lacks a human face? The neo-classical economic model under which the PRDP is going to be implemented is likely to reproduce conditions of inequality that are often the cause for conflict.

Secondly there is the question of state capacity. Achieving human development requires state capacity, without which social service delivery—a vital element in the realization of ESCR—would not be possible. The PRDP does pay attention to rebuilding the state. However, the viability of the neocolonial state remains uncertain whether under conditions of peace or conflict. Many states in Sub Sahara Africa are undemocratic and have instead become criminal and riddled with corruption.[124] They cannot sustain themselves without massive support from the West, a recipe for recycling dependence and under development.[125]

The impacts of the conflict on the social, economic and cultural aspects of the communities require approaches, which may not be compatible with neoclassical economic policies. The assumption that economic growth generated by a private sector driven economy would trickle down has thus far proven illusive. It is therefore difficult to ascertain the trickle down effects of the interventions under the PRDP, just as it is difficult to ascertain the impacts of PEAP or NUSAF programs even for communities outside the conflict areas. The implication therefore is the need for massive public sector involvement and investment as crucial in stimulating economic conditions and as a stimulant for the private sector.

Thirdly, the empowering aspects of the PRDP seem to be focusing mainly on humanitarian assistance without addressing the long-term economic implications that require looking beyond the resettlement of IDPs and stimulating subsistence production. Supplying relief and the rudiments of production is a short term benefit. The three years within which the PRDP is to be implemented is a short term intervention. There is no long term program to address the more sustained aspects of the conflict. Fourthly, the realization of human rights not only depends on state capacity, but also requires support from below. This presupposes a wide involvement of the communities in determining priorities and agendas for development. However, the degree of participation of these communities in governance remains peripheral, if not just a rhetorical claim by government under decentralization. In the first instance, participation in decision-making depends on the level of awareness of the issues at stake. Availability of information is crucial in enabling people's participation and therefore an important component in enhancing participatory rights. But there is a lack of participation and awareness among people working in the grass roots institutions and structures.[126]

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[124] See Bayart, 1999 and Tindifa, 2006.

[125] Over 50% of Uganda's budget is donor supported.

[126] RLP, NRC and iDMC, 2006.

Likewise, the PRDP does not address the role of civil society and its engagement in the peace building process. All the activities outlined in the Plan are state centred. However, planners will have to pay attention to civil society in building partnerships and identifying the support they need in addressing some of the immediate or even the long term human rights challenges such as access to justice and the defense of human rights. Partnerships will also be needed for monitoring the implementation of the policies, which are however not clear in PRDP.

Many countries in Africa have experienced armed conflict of a scale and devastation similar to what has happened in Northern Uganda. These experiences are important in evaluating the current initiatives of government of Uganda with respect to the situation in Acholiland. Based on Angola's return, reintegration and resettlement experience, one notes that there are several gaps in Uganda's responses to the conflict in Northern Uganda. It is for instance, not clear how local government institutions have been prepared, and what level of involvement is expected of them in the whole process of return. And yet, under the IDP and Decentralization policies for instance, they are expected to play a crucial role. A number of steps need to be taken to address these lacunae. In the first instance, there is a need to undertake confidence building measures to inculcate a sense of dignity, self-esteem, and self-sustenance, by providing training to the communities and local government authorities. These must be supplemented by adequate housing, quality school, preventive and curative health care, poverty reduction programs, ensuring physical security, raising awareness about land mine and their clearance, removal of small arms and rebuilding administrative as well as legal institutions. The Angolan government prioritized agriculture, food security, rural extension and provision of technical assistance, micro credit and micro finance, cooperatives, schooling and diversification of production in rural areas in terms of non-agricultural activities. In Angola, these measures were among others aimed at minimizing social exclusion and food insecurity, without which it was not possible to integrate the population in activities that are socially useful, create income and are sustainable economically.

As was done in Angola, there is an obvious need to ensure wide consultation with local communities and traditional authorities, in the identification of available land and the allocation of at least a minimum hectarage of land to every family. Participation should be at the lowest level of the population. At the same time, it is necessary to undertake vulnerability assessment and identification of the actual numbers of categories that have to be attended to and availed sanitation and water. The government needs to ensure that return and resettlement corresponds with the agricultural season patterns to enable the returnees to plant in time. Finally, there should be the promotion of the sustainable development of target groups, which entails a reduction of people's dependence on humanitarian aid in favour of self-sustenance, and guaranteeing

special protection of children, youths, orphans, widows, the elderly and people with disabilities.

The PRDP does address some of the elements that the Angolan government focused on, but there are some items missing such as wide consultations with the communities, preparing them adequately to get back to their villages, and the clearing feeder roads as part of rebuilding marketing capacities of the communities. It is also not clear whether all the displaced people (now returnees) will have access to land. Instead we have just been hearing bickering about investors and land grabbing, which demonstrates that the government has not yet addressed the issue of access to land by all the displaced people. The local authorities also do not seem to have received adequate training in handling emergency return and the subsequent administrative bottlenecks. It should have been necessary for all the district authorities to have a common emergency plan for resettlement and reintegration.

It is also not clear whether the program for the return, reintegration and resettlement is geared to address the realization of durable solutions. The confidence building measures for IDPs do not seem to be adequate. Instead, what has been witnessed thus far are wrangles between government and members of parliament from the region over land issues, the intransigence of the ICC in the prosecution of the top commanders of the LRA, and the shaky and protracted Juba talks.[127] In this connection, the success of the Juba talks is crucial in ensuring security for the returning population. If the ICC were to insist on prosecuting Kony *et all*, this might be a disincentive for the remaining LRA fighters to surrender or continue with the peace talks. Finally, it is important to note the critical involvement of the United Nations in Angola—a level of engagement missing in the situation of Uganda. Instead, the Ugandan government has been trying to block UN direct involvement in resolving the conflict in Northern Uganda.[128] In summary, although the PRDP

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[127] The fragile Juba talks have been on and off and required the facilitation of former Mozambican President and UN Special Envoy Joaquim Chissano, for a meeting between Dr. Rugunda, Minister for Internal Affairs in Uganda and the LRA leadership for the resumption of the talks in Juba. See the *New Vision* of Saturday March 17, 2007. The LRA demanded better security as a condition for the resumption of the talks. The fears of the LRA seem to emanate from the absence one important element in the talks: peacekeeping, a task that has been left to the UPDF and SPLA, which is ironical. Peacekeeping is one of the confidence building measures that is glaringly missing from the Juba talks. See further, Zachary Ochieng, "Insecurity, Poor-planning and mistrust hit LRA-Uganda Talks," *The East Africa*, May 7-13, 2007 at 1.

[128] The establishment of the JCMCC was done largely to preempt the appointment of a UN Envoy for Northern Uganda and the JCMCC proposal was hastily put together and submitted to the Security Council. The JCMCC was an attempt by government to demonstrate to the so called international community that it had plans to address the urgent issues of the conflict.

is generally a useful attempt to address the situation, it is still riddled with conceptual problems very much influenced by government outlook. The proposed interventions have been molded in an economic paradigm that is anti people and responsible for perpetrating under development and the crisis of the state. It is therefore, hard to envisage any better quality of life in the sub region.

4.2.3. The IDP Policy

The IDP policy was adopted and approved by cabinet in August 2004. Its main objective is to mitigate the suffering of internally displaced people by providing humanitarian assistance during displacement and return. It also provides guarantees against involuntary displacement as well as for voluntary and safe return. For the purposes of resettlement, the policy provides for the land and property rights of the displaced persons. The policy has safeguards against the arbitrary loss of property, except as may be permissible under the Constitution of Uganda. Institutionally, local authorities are entrusted with the responsibilities of protecting properties left behind against pillage, destruction, arbitrary and illegal appropriation, occupation or use. The local authorities are also entrusted with the responsibilities of recovering land which might have been acquired illegally or to resettle the returning population where recovery of land is not possible. Such functions appear to be based on the assumption that the local government administrative structures have sufficient capacity to discharge such functions, and would themselves not be affected by the disruptions causing the displacement.

Ensuring the proper administration in the Acholi sub region has been a daunting task for the UPDF, with particular respect to sustaining civilian administration. At the height of the fighting following Operation Iron Fist that also heightened the LRA attacks, the entire administrative infrastructure of Pader district had to be relocated to the relatively calm district of Lira. In Lango, the population moved closer to sub county headquarters abandoning the rural areas.[129] It was therefore the belligerent forces in control leaving the displaced population confined to the camps. So at the very minimum, administrative authority has remained around urban centers. Therefore, where there is total break down of civilian administration, the policy should envisage a situation where the military authorities are vested with the responsibilities of taking care of properties of the displaced persons. This is derived from the principle of the responsibility to protect. However, this would depend on the capacities of the UPDF to carry out administrative responsibilities in conditions of total break down of law and order and the level of transparence in the execution of such duties. Presently however, it is hard to envisage the UPDF being transparent given the concerns about corruption in the form of ghost soldiers and land grabbing by senior army officers.

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[129] Ojok B'Leo Interview.

While the IDP policy and its provisions on land are generally positive, it is however not clear whether the local government institutions have the legal powers and political muscle to perform the tasks conferred upon them in the IDP policy, i.e., the resettlement of people in any part of the country, revoking legal interests that might have been acquired in land during the process of displacement. It might therefore be necessary to re examine the law particularly the Land Act, the Registration of Titles Act (RTA) and the Local Government Act to incorporate those elements in the IDP policy to give them efficacy and to harmonize the activities of other institutions with the powers to deal with land matters. As pointed out above, it is necessary to look into the possibilities of enacting land ordinances governing specific land matters in a district.

One area that requires particular attention is the legal status of land transactions taking place in conditions of a serious break down of law, order and the administrative functions of the state as well as massive displacement. It is not clear whether the law of prescription would operate in a situation of massive displacement. Countries like Burundi and Rwanda are grappling with land and property claims arising from displacement. A decision of the High Court imposed an interim ban on land transactions in Kibaale district.[130] Following the basic tenets of this decision—in light of the Expropriated Properties Act of 1982—would vindicate the need for legislative interventions to suspend land transactions in conditions of armed conflict, civil unrest or massive human rights violations that might lead to property loss.

Other issues have been raised that would affect early return and recovery. The Refugee Law Project study[131] and the Report of a Workshop on Effective Implementation of Uganda's National Policy for Internally Displaced Persons have highlighted several areas that need attention, among them, the point that camp culture may make people dislike returning to villages. Furthermore, DP and PRDP policies do not appear to have conflict prevention measures and seem more concerned with the short-term aspects of dealing with the humanitarian problems relating to the return, resettlement and reintegration of IDPs and ex combatants, and not the long-term developmental issues that address the structural problems that underlie chronic conflicts.

There is no doubt that there is a chronic lack of capacity in local government institutions vested with many of the tasks for the implementation of the IDP policy. Furthermore, resources and awareness of the policy are inadequate. The IDP policy provides for the sensitization of people about their land rights, which sensitization is supposed to be part of the education programs carried out by the Human Rights Promotion and Protection (HRPP) Sub-committee.[132]

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[130] Id.

[131] op.cit.

[132] GoU (2004).

However, there has not been enough training on the policy and its implementation process. This is an important issue that those designing the PRDP should take into account. Awareness about the IDP policy is important in many ways. Many rural people are illiterate, poor and not well informed about their rights, which become even more precarious in conditions of displacement. For example, one district councilor stated: "The Land Act is not very clear to the local people, which might breed further conflict." A sub county chief remarked that "people are not so knowledgeable about land titles." Under such conditions therefore, the likelihood of the abuse of land rights is high. Almost all respondents interviewed for this study expressed fears about the likelihood of many disputes over land boundaries, and the fraudulent sale of land by relatives. Education on various aspects of property rights during the process of return is therefore necessary and is being demanded by the communities. Many of the respondents gave hints on the kind of education needed. It would for example cover civic and human rights education, property rights and how to make use of legal and political mechanisms to recover one's property. Legal assistance, which does not seem to have been anticipated in the IDP policy or in the PRDP, will be a necessary element of support in the return process. In this respect, CSOs will have to complement and fill the void in the policy instruments and implementation.

Insecurities arising from weak infrastructure, i.e. poor roads, lack of water facilities, the presence of small arms and land mines, and the problem of Karamoja have to be reckoned with. The media *r* reported that Karimojong rustlers were marauding in Pader district disguised as LRA rebels.

> *About 150 Karimojong cattle rustlers are said to have crossed from Karamoja and interfered with the ongoing resettlement of IDPs into their homes in Kalongo and Lutanya sub counties. Residents say the rustlers have been raping and killing people in Agago and parts of Aru County in the last months. As a result the residents have been forced to abandon farming for the past two months because of continued invasion by Karimojong cattle rustlers.*[133]

Much as the IDP policy and the PRDP are concerned with ensuring the physical well- being of the returning population, the lack of capacity to ensure security is very glaring. The situation in Karamoja illustrates this challenge. Therefore, the Karamoja problem needs to be tackled more seriously and comprehensively than as envisaged in the PRDP. Secondly, since the PRDP has been designed following the adoption of the IDP policy, it is imperative that the gaps identified in various studies referred to above, should be taken care of to avoid obvious mistakes. This does not seem to have been the case.

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[133] *Daily Monitor*, September 26, 2006.

4.2.3 The Land Sector Strategic Plan

The Land Sector Strategic Plan (LSSP) is the operational, institutional and financial framework for the implementation of sector wide reforms and land management including the implementation of the Land Act.[134] It recognizes that unequal land distribution, land tenure insecurity, inequitable systems and processes, are key areas that impact on the livelihoods of rural communities. It is therefore intended to be the framework to guard against marginalization of the poor in matters of land. On the face of it, the LSSP appears to be progressive, especially in view of its concerns with the prevention of marginalization. However, design and implementation of policies arising from these human rights sounding instruments is in most cases influenced by an ideology which stresses the individualization and privatization of land which has its attendant inequities that have already been highlighted in this study.

4.3   Other Gaps in the Policy Framework

4.3.1 Absence of a Rural Development Strategy

Though there are recognizable and laudable policy developments in the country, there is a feeling that government is approaching the peace building and post conflict reconstruction at a slow pace. Many respondents interviewed for this study expressed concern about the absence of a comprehensive policy for rural development. They also complained about the neglect of agriculture in budget allocations, in comparison with other activities to encourage investors such as the granting of tax holidays, and other subsidies, or in terms of sustaining the presidency. Government spends Ug.Shs.23bn. on presidential advisors alone. More money is increasingly being spent on the creation and sustenance of the bureaucracies in the new districts instead of investing in rural, areas which seem to have been abandoned.

During the 2006 launch of the Baseline Survey Report by UBOS, it was pointed out that the high incidence of poverty in the Northern Western region of Uganda, was attributable to the falling productivity and role of agriculture. The collapse of the cash crop based economy in the region seems to have devastated the area, and has relegated the region further into a peripheral economy.[135] It is not clear whether government is coming up with any plan for land use for the transformation of subsistence agriculture into more economic empowering production. Government adopted the Plan for the Modernization of Agriculture (PMA), "designed to implement the agricultural sector embodied in PEAP."[136] However, according to the Sessional Committee on Agriculture, the PMA is not a plan but merely a framework, and government was called upon to formulate "Comprehensive Plans" from the framework which appears not to

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[134] Cap. 227.

[135] O'Connor, 1988.

[136] Report of the Sessional Committee on Agriculture, April 2004.

have been done. The absence of a rural development policy to develop agriculture and improvement of rural livelihoods is a recipe for disaster. It is argued in a report on Agriculture for Peace that,

> *Many conflicts have their origin in rural, predominantly agricultural areas, which cannot provide their resident population with sufficient food, other basic needs, services or employment opportunities. Such areas provide many people with low "opportunity cost" that might choose to join a violent conflict in the hope for a better life.*[137]

The report notes that the foundation of global peace must be built on agricultural development in poorer countries that will provide strong local incentives away from perennial conflicts.

There is also no national resettlement policy in Uganda. Although the IDP policy provides for mechanisms for resettlement, it is not comprehensive enough to be a substitute for a national resettlement policy. In March 1995, a consultancy report on a framework for a resettlement policy and institutional capacity for resettlement planning in Uganda was submitted to the GoU. It was pointed out in the Report that Uganda did not have a resettlement policy. In view of this gap, the report took note of the following:

a. The need for a resettlement plan to deal with people who are involuntarily relocated, a plan that must be based on national resettlement policy.

b. Designing the plan in such a way that 'people will be enabled to return at least to their former standards of living and income earning capacities on a clearly defined trajectory.'

c. Respect human and property rights and a development plan that ensures sustainable livelihoods in the new location. This at least is provided for in the IDP policy.

d. Institutional and legal mechanisms that are effective.

e. The need to build institutional capacity for resettlement in Uganda that requires designing effective organizational mechanisms to mobilize multi sectoral resources through inter agency coordination. This implies coordinated mobilization of resources by different actors, sectors and agencies. Resources needed may include land, transport, food, shelter, and economic and social infrastructure. Long-term development must be the major objective of resettlement.

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[137] Taeb, op.cit..

f   Methods and practices of acquiring land for resettlement that must comply with modern standards. The WB has guidelines for resettling people displaced by development projects.

The report reviewed the existing policy and legal framework on resettlement and made the following findings:

i.   As of 1995, it was only the Land Reform Decree (LRD) that provided for the resettlement of customary tenants in the event their land is leased to another under the decree. However the decree did not provide for the rights to resettlement and rehabilitation.

ii.   When people are evicted, they have no alternative, and the legal and administrative machinery of land allocation are beyond their reach. They also lack the requisite political connections.

The report makes a number of recommendations, including the following:

a.   There is need for a clearly articulated resettlement policy;

b.   Focus should be on the institutional and legal framework to support resettlement;

c.   Planning guidelines should be in place, and

d.   Identify the stakeholders in the resettlement who must include: NGOs, donors, government, although the list in the report leaves out the people to be resettled as stakeholders.

It seems these recommendations have not been acted upon. Legislators and public officials interviewed were not aware about the existence of a resettlement policy, although some of the recommendations above have been incorporated in different policy documents. Chapter 3.4 of the IDP policy provides for the right of voluntary resettlement of IDPs. It is nevertheless important to emphasize the point that so much of the success of a policy of resettlement will be dependent on the extent to which the purposes most affected by the process are involved in its implementation.

4.3.2   The right of participation

The right to participate is key to the operationalization of the HRA and for areas in transition from conflict. Participatory rights need to be part of the strategies followed in building and achieving sustainable peace and development. This was one measure that was integrated into the Angolan RRR program. The African Charter of Popular Participation recognizes the

significance of popular participation as a key element in the processes of development. Chapter IV of the Constitution of Uganda also provides for participatory rights. However, it is quite clear that the level of participation by the local communities in policy making and in the decisions affecting these communities in areas of conflict is questionable, although one government official claimed that the level of participation in Uganda was very high. It was for instance pointed out that the PEAP was formulated after very wide consultations at different levels, and that many other policies including the PRDP are subjected to public scrutiny and input. However, people in the affected areas have a contrary view about their level of participation. A NUPI publication on peace building dialogues shows that the lack of participation in decision-making has "been characteristic of government approach to the interventions in Northern Uganda."[138] The absence of effective participation seems to be a result of the perception that agendas are determined from outside government, by the Breton Wood Institutions to be specific, which institutions are not accountable to the people.

One respondent however, questioned the need for participation arguing that it is very difficult and expensive for communities and individuals to be involved in policy design, which is a technical matter. He argued that in the 1960s there were many good policies but people never participated in their making. Instead, he argued that what is needed is democracy, and the democratic institutions in place can initiate and execute policies that will be beneficial to every body. To these respondents, the participation of communities may be necessary only in determining priority areas. This raises the question about what constitutes participation and how it can be effected.

Participation is about the mechanisms and institutional frameworks that enable communities to "bring relevant facts to decision makers, argue their position before decision makers, propose reforms, be co-decision makers, veto legislative or administrative proposals."[139] Uganda's decentralized structures of governance believed to be the essential framework for participation do not seem to be sufficiently fulfilling the task. So what mechanisms should be put in place to facilitate participation in post conflict reconstruction processes? As the Angolan experience demonstrates, these might include cooperatives, and other grassroots organizations for engagement in economic, social and political activities. In Mozambique, NGOs took an active part in post conflict reconstruction and development of the country. "Much of what has been achieved especially in the rural areas has been due to their involvement and dedicated work. These CSOs including local peasant associations and community based groups have and continue to play significant role in the post conflict reconstruction process..."[140]

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[138] NUPI, op.cit., at 4.

[139] Ghai, 2003.

[140] Committee on Human Development and Civil Society, op.cit., at 14.

Finally, there is a need to study the existing traditional institutions in order to understand their potential for creating an enabling climate for participation. They also need to be integrated into the existing structures of governance. They can also be useful in rebuilding social capital. In fact, cultural or traditional institutions are an embodiment of social capital. It is argued that conflict impacts on social capital adversely "particularly institutions of governance and civil society and such basic attitudes and behaviours as trust and participation."[141] Traditional institutions therefore, need to be studied and their potential exploited in peace building processes.

V. CONCLUSION AND RECOMMENDATIONS

The armed rebellion in Northern Uganda is one of the longest and most devastating internal conflicts ever experienced in East Africa. It has affected the population in many different ways, but displacement has had the worst humanitarian, social, political and economic impacts. The displaced population has lost almost everything and has been reduced to a situation of abject dependence. Their access to the only means of production—land—has been severely restricted because of the existing insecurities and this has affected everything that was Acholi. Land among agrarian communities is the cornerstone of their social, economic, spiritual and political relationships and identity. Restoration of their rights to land is therefore as important as the restoration of that identity. The process of restoration must be well thought out and all-encompassing. Although economic imperatives might be the main element driving government policy, these should not be pursued in isolation of the other variable factors as is often the case when it comes to land policies that emphasize security of tenure at the expense of equity, and in total disregard of traditional land systems. There must be a shift from the dominant paradigms that are no longer sustainable.

Although the government of Uganda has made several strides in policy development as well as land reforms for enhancing human development, settling the displaced people and ending the conflict, they do not measure up to the demands and challenges of post conflict reconstruction and the building of sustainable peace. There is nothing new in the policy responses to address the agrarian question, key in the reform and development of rural areas, and addressing the marginalization of Northern Uganda, conflict prevention, and building sustainable peace in the country. Uganda's development paradigm does not measure up to the human development requirements of such policies. The Rights Based Approach, although advocated by development agencies such as DFID is not even heard of in government, although environmental impact assessment, financial implications analysis and regulation impact approaches are operationalised in the process of policy formulation. As a consequence, there is minimal policy clarity on the social support system for

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[141] World Bank, 2005.

people reclaiming their transgressed land, lost property or compensation for land occupied and degraded by camps and military establishments. The institutional framework for addressing the land rights issues is inadequate and inherently conflictual, and is further compounded by the lack of capacity on the part of government to comprehensively address the peace building process. The international community and CSOs must therefore supplement government efforts otherwise the peace building process will be skewed, and particularly affect the more vulnerable returnees. Unless immediate steps are put in place to address the policy deficit, there will be no need to seek explanations if there is renewed conflict or its continuation in Northern Uganda or else where.

Deriving from these conclusions, the following are the main recommendations of this Working Paper:

■   It is quite clear that the private sector does not have the capacity or the interest to invest in Uganda's rural areas. Neither has the role of the private sector in post conflict reconstruction and peace building been lucidly elaborated and explained. There is consequently a need for public sector investment in the social and economic support services, and to assist the displaced people reclaim and reassert their entitlements and enhance their economic capacities. Support services should be geared towards helping communities establish their rightful claims, conducting surveys of land and the acquisition of CCOs or titles, the hosting of educational and awareness-raising programs about land rights and the laws governing immovable property, skills training in farming and alternative livelihoods, and the establishment of financial institutions to enhance the displaced people's capacity to access credit and rebuild their livelihoods.

■   Although criticized for a lack of clear objectives, the government decongestion plans should be carefully studied as to whether they can be a basis for new resettlement patterns and perhaps more efficient land utilization.

■   Forcing out traditional land rights systems in favour of titling has proved futile and ultimately unproductive. Efforts directed at titling should be abandoned for a more objective approach that recognizes customary land rights and the land uses appropriate for such systems. Titling is a concept of private property representing a culture of privacy, private rights and exclusion, and which has been the basis for the economic doctrine and development of the West. It does not represent a universal principle around which everyone has to be driven and governed. Further research is required to define and expand on the contents of customary or traditional land systems as a necessary step towards the eventual codification of customary/traditional land law. Furthermore, where titling provides a mechanism for defending the rights of the poor over land, there is need for institutional structures to handle the registration of certificates of customary ownership.

■   There is a need for legislative interventions to support the IDP policy especially with regard to the functions and responsibilities of Local Government Authorities on matters relating to land and property rights. The law should also provide for the suspension of land transactions during internal armed rebellion and the massive displacement of population. Local Government Authorities should be empowered to enact Ordinances to implement the land related matters in the IDP policy. Comparative experience shows that local government structures must play a central role in the resettlement of displaced persons, and in the processes of reconstruction and peace building. However, such bodies need to be sufficiently empowered with information skills and other resources to enable them carry out these functions.

■   Whereas the IDP policy was adopted to deal with displacement, it is not sufficient to cover other resettlement needs and processes. It is therefore necessary for the adoption of a comprehensive social policy and a comprehensive national resettlement policy with respect to the returnees.

■   There is a need to harmonize traditional, cultural institutions with the laws in order to develop an effective solution to land disputes, and to give meaning to Article 126(1) of the Constitution of Uganda, which stipulates that judicial power is derived from the people and shall be exercised in the name of the people and in conformity with law and with the values, norms and aspirations of the people.

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