

**ENHANCING TENURE SECURITY, ACCESS & UTILIZATION OF THE
COMMONS AND CUSTOMARY LAND IN THE GREATER REGION OF
NORTHERN UGANDA THROUGH STRENGTHENING THE CAPACITY OF CLAN
STAKEHOLDERS, AND BUILDING NETWORKS OF INDIGENOUS COMMUNITY
MEMBERS.**

Development Context and Problem Statement:

In Uganda, land is regarded as one of the most essential pillars of human existence and national development. The land question in Uganda has origins in the legacy of colonialism, which resulted in a legal dualism in the property rights system, a multiplicity of tenure regimes, multiple rights and often overlapping interests resulting in a legacy of evictions, dispossession, land disputes and conflicts¹. This phenomenon has, in some cases, broken across national boundaries, spread to tribal and ethnic groupings, and merged with contemporary phenomena such as the discovery of extensive deposits of petroleum resources. The resulting formal tenure insecurity facing much of the population is exacerbated by inadequate implementation and enforcement of mechanisms to ensure land rights of all -including women are realized, a situation further challenged by the reported breakdown of mechanisms for land dispute resolution, with no clear institutions managing clan land, holding land rights and land justice systems². Work conducted by Uganda Land Alliance provides greater insight into the causes and consequences of unequal land rights and the gaps that exists in the management of the rights of the commons and customary land.

Northern Uganda has been impoverished by civil war, traumatized by the atrocities and increased moral decadence which are all a social factor to be considered. Despite the silence of guns, the regions is in state of negative peace

¹ Pers comm., 2011, B. Twinomugisha.

² GoU, 2011, Land Policy: Final Draft, March, 2011; and LANDac, 2011, Uganda: Food Insecurity and Land Governance, Factsheet compiled for the Royal Tropical Institute, Netherlands, 7p
The National Land Policy; February 2013

due to land conflicts. There is need therefore to increase avenues for seeking redress where there are rights violations, especially where poverty and apathy are the limiting factors through strengthening and setting up institutions to manage the affairs around it. ULA also compliments the strategic objective 2 of the PRDP – to rebuild and empower communities in northern Uganda.

In accordance to Art.237 land is vested into the citizens of Uganda and shall be utilized in accordance to the following tenure systems: (1) Mailo, (2) Freehold, (3) Leasehold, and (4) Customary. This implies, in all the four regions of Uganda, land is held or registered differently and the rights that accrues from it differs as well. Under the customary tenure, land is neither demarcated, mapped nor surveyed but only certificated. In case of government interest to hold land in trust of the citizens (development) as provided for in art. 26 of the Constitution of the republic of Uganda, adequate compensation will be provided to the communities affected but most considerations are given to land that's titled in accordance, to the physical planning Act. This means that, the owners under commons and customary land, suffers the effect under payment or under paid estimation not according to the market values of land. Eminently, this increases tenure insecurity since most of the population depends on agriculture for livelihoods. Therefore, this calls for the need to set-up and strengthen the bodies like Clan Land Association, who reports to cultural land management and protection committee (Governing body), being managed by Northern Uganda Customary Land Platform, etc. in every region or every districts in Uganda where commons and customary land exists. However the roles of this platform, will be distinct in order to avoid duplications as followed: (1) First point of contact in case of investment tendencies (or need to acquire large chunks of land, (2) Decision makers on matters of transactions on land, (3) Consulted by government or non-state actors on land acquisitions and or land policies reforms (amendments), (4) Advocate for the rights of minority, commons and customary land owners, (5) make bye-laws on conflict sensitive acquisitions for those with investment tendencies, (6) Settlement of

land dispute as provided for in the Land (Amendment) Act 2010, Cap.227, Section 88, etc. This will promote conflict-sensitive approaches to land governance in Uganda since land in this areas are richly endowed in order to eliminate potential conflicts and promotion of tenure security under the commons and customary land. They will have a very Terms of reference backed up and aligned to the laws of Uganda to operate and be consistent.

Generally in Uganda, the land rights of the commons or ethnic minorities such as ancestral, and traditional owners, users and custodians of different customary inhabitants, have not been acknowledged. The establishment of national parks, forests reserves, and conservations areas managed by governments such as public lands, acquisition of large chunks of land to investment purposes, mining, commercial plantations, oil explorations, etc, often takes place at the expense of the rights of the commons and customary land owners. Since the duo occupies land on the basis of ancestral and unprotected or unregistered land, they are exposed to constants evictions, removal and displacement. In some cases the government has been non-compliant to the provisions of Art. 26, clause 2(b) of the constitution which provides for prompt, fair and adequate compensations prior to taking possessions. As a platform, their roles will be distinct to ensure that the rights of the inhabitant under the customary setting is observed and ensuring tenure security through prompt follow up of such developments.

However, there is and has been a mismatch, policy gaps and mis-link between the operationalization of the different justice systems in their jurisdictions although the NLP policy statement 115 (strategy 116, section V & VI) states that, legislative and other measures will be taken to: (V) Empower customary / traditional leaders to keep proper written records of all disputes dealt with under their jurisdictions, and (VI) define a clear hierarchy for dispute resolutions structure to guarantee finality and authoritativeness of decision subject to appeal of higher levels of jurisdictions. But this hasn't been legalized

or formalized when the traditional elders mediate on any land conflicts, their proceedings aren't recognized by any court systems in case the aggrieved parties aren't satisfied by the outcome and the court won't make reference to any attempt to any proceedings undertaken to resolve the conflict. The Land Act (Amendment) cap.227, Sec. 85 stipulates clearly on the formation of the land tribunals and their roles, however, the operation of the above bodies (sec.5.6 (sub sec.114), page 41) declares that, the operations of the land tribunals has been suspended by the judiciaries due to limited resources and duplication of services with the magistrate court (G2). Overlaps in dispute resolutions, customary land management arms, and the absence of a clear hierarchy of institutions in handling the tenure security of the commons and customary land per se, have resulted in fora shopping by aggrieved parties. Access to timely, efficient and affordable dispute resolutions mechanism – in case of conflicts, decision making and management issues for efficient land market, tenure security and investment stability in the land sector is impacting on the realization of the vision and objective of the National Land Policy of Uganda.

The effects of the 20 years civil war in Northern and Northern Eastern part of Uganda, displaced people to be settled in different parts of the world. When the GoU declared that, there was relative peace in the regions, they didn't know their boundaries to the land since physical features like forests, shrubs and trees had covered their areas. The transition processes from the camp to their homestead, created enormous conflict. In order for them to realize their land rights and tenure security, there is need to set up a platform or institutions with vested powers and authorities that would ensure land rights observance and resettlements.

With financial support from Irish Aid, about 40% of traditional, local, district stakeholders and community leader's capacities were built on land rights or management, alternative dispute resolutions – mediations, conflict analysis,

management, and resolutions, and human rights in order to promote conflict sensitive land governance in Northern Uganda. It was in the district of Otuke, Nebbi, Nwoya, Amuru, and Adjumani respectively. This therefore calls for more capacity building of the traditional leaders and other stakeholders are supposed to be authentic in promoting land rights and ensuring tenure security.

The Land act 1998 (amended 2010), Section 4, provides a stipulations of how customary land can be managed and administered, but it didn't clear align it to complement the roles of various legal land management institutions. It therefore creates a disparity between formal and informal systems. There must be a platform settings who will be legally established and recognized by law to work closely with institutions and would even matter in processing and issuance of certificates.

Further, 80% of most land in Uganda hasn't been legalized through the formal registration processes since it's mostly held under the customary tenure. All land is subjected to the planning zone in accordance to the government development plans and is subject to mandatory utilization, or else the owners are subject to taxation (National Land Policy, February 2013), and there has been no specifically strengthened formalized institutions set in place to govern such lands under customary settings like traditional elders.