

Customary Land, Public Authorities and the Reform Agenda: The Background to Three Reports from northern Uganda

Julian Hopwood overviews three JSRP publications on land in northern Uganda, and suggests that useful policy interventions should acknowledge the expertise of customary actors at the local level.

Ambrena Manji has argued that the progressive land reform of post-independence Africa, often involving redistribution, is now rare. In its place we find land *law* reform, perceived by its promoters as a technical exercise to facilitate the natural evolution of customary communal land rights into modern individualised parcels, regulated through state registration. This however is a misapprehension on a number of levels. Land law reform as practiced would seem to be driven by ideological, financial and political interests in land becoming a globalised commodity.^[i] Hernando de Soto, in harmony with much World Bank thinking, has developed pro-poor arguments in favour of securing formal land titles for small farmers.^[ii] Manji and others are, with good reason, sceptical of these in relation to the over 90% of Sub-Saharan African farmland that is customary and communal.^[iii]



In 2011-13 I was involved in creating a **Land Conflict Monitoring and Mapping Tool** (LCMMT) for the Acholi Sub-region of northern Uganda, commissioned by the United Nations Peacebuilding Fund (UNPBF). It was conceived in a context where land disputes in Acholiland were reported to be spiralling out of control, feared as a potential driver of future armed conflict. Even before the end of the Lord's Resistance Army insurgency in northern Uganda, land conflict had been predicted: the entire rural population of over a million people had been

displaced from their land for some years, and in the west of the region, for at least a decade. Following the end of the war on Ugandan soil in 2006, a gradual process of return of the population from IDP camps to their homes took place, mainly during the period 2008-10. Comprehensive oral records of land user rights and boundaries within and between communal land-holding bodies (clans, sub-clans and extended families) had been seriously compromised by displacement; and community cohesion had been ravaged; opportunities for land grabbing were everywhere.

The objective of the LCMMT was to record, measure and map land conflict across all of Acholiland, 28,000 square kilometres occupied by about 1.5 million people, identifying trends and hotspots, with a view to informing land policy.

While the LCMMT was under way, the Ugandan government was drawing up a long-debated national land policy, published in early 2013. The policy articulates a vision of *'optimal use and land management of land resources for a prosperous and industrialised economy with a developed services sector.'* ^[iv] This description of the goal of *land* policy in a country where agricultural produce is the mainstay of the economy, where coffee (much grown by small farmers) is the principle export, and where agriculture provides for the livelihoods and survival of most of the population, might seem unlikely; even surreal, so little does it engage with the real world of the foreseeable future. It begins to make sense, however, if one accepts Ben Jones' conclusion that the state is 'mostly uninterested in rural Uganda.'^[v]

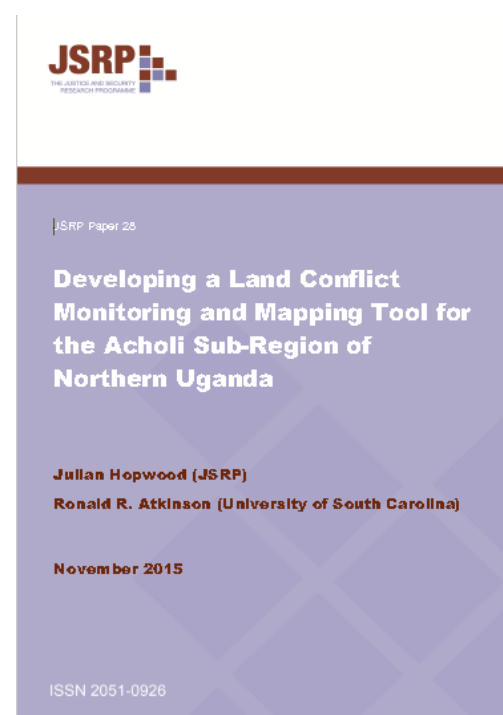


After nearly ten years of living in provincial Uganda, Jones' perception seems to me to be essentially correct; additional evidence is reported in [Holly Porter and Rebecca Tapscott's](#) blog of 3rd April, describing an instance of the Ugandan state unable to provide rule of law in the suburbs of Gulu, one of its largest cities, and encouraging vigilante groups to fill the gap. Jones' 'mostly uninterested' allows for exceptions, including those locations associated with oil and other extractive industries, in which the government, in association with national elites and/or international business, is not only interested, it is the most feared predator, and has demonstrated its enthusiasm for acquiring land, dubiously, on a large scale.[\[vi\]](#)

Uganda's Land Act was well received when it was passed in 1998. Land was (unusually) vested in the people rather than the state (perhaps more important as a psychological rather than legal distinction), while customary land was recognised and at least theoretically accorded equal status to formal tenure. However in practice, the Act's functioning depended on a massive bureaucracy that has never been put in place.[\[vii\]](#)

Like the Land Act, implementing the new land policy would have huge and unaffordable cost implications, acknowledged perhaps by the caveat that the policy will be phased in gradually according to priorities yet to be identified. Not a lot of space is given to securing customary land, and individuals' access and usufructuary rights thereon; though strengthening of customary land dispute adjudication processes through formalising a role for traditional bodies is a goal. If undertaken with attention to the complexity of Uganda's diverse ethnic identities, this could be positive (though costly). Done badly and cheaply, this could amount to an invitation to customary elites to join the land-grabbing feast. The most easily implemented elements of the new policy are land *law* reforms strengthening government powers of land appropriation.

This is the perhaps unreceptive environment in which LCMMT still hopes to fulfil its brief to inform policy. Findings so far are reported in two JSRP-sponsored papers, one describing the methodology and the [initial \(quantitative\) findings](#); the second, published in the International Journal on Minority and Group Rights, looking at those disputes involving [women](#) and female headed households as one or both of the principle parties. We found, as expected, that almost all land in Acholi is not only customary but communal. Unexpectedly however, overall numbers of land disputes were falling during 2012, with high rates of resolution in relation to those at an intra-community level. Larger disputes are more problematic and enduring, especially those involving government. We found that customary principles, practices and methods are largely effective at protecting the land access of those with strong kinship or, in the case of women, formalised marriage bonds to land-owning clans. However, a range of factors are making the land access of non-kin 'guests' more vulnerable; while the informal land market is a snake pit of confusion and risk.



A third report, [Elephants Abroad and in The Room](#), looks at public authorities in two sites on the Uganda – South Sudan border, dominated by complex disputes over previously unsettled but customarily claimed land. In Elegu to the west, the dispute is between two clans of the Madi tribe from different sides of the international border: according to some the clans are being used as proxies by two competing Ugandan Districts, Amuru and Adjumani. In Ngomoromo, about 70 km eastwards, the dispute is between three Acholi chiefdoms, one in South Sudan and two in Lamwo District in Uganda. This is articulated in terms of a dispute over the location of the international border, even though this has remained theoretically static since 1913. There have been some killings and abductions, and the area is tense due to regular brawls between the young men of the parties. At the same time, the South Sudanese have unilaterally moved their border posts [several](#)

kilometres inside Uganda on a few occasions. Seemingly local elites, political and customary, in both sites are competing for the power to dispense patronage to peasants in need of land.

What is clear is that the state *qua* state plays a marginal role in land management and dispute resolution. Formally elected village and parish counsellors are highly involved, but as community leaders, working with customary methods to attain customary ends. Partly they work in partnership with traditional leaders; partly they function as a check and balance to them. Formal law is neither understood nor applied at this level, nor as it stands would it have much to contribute even if it was. Where the state becomes formally involved in a customary land dispute, when an appeal is made to the high court, there are no resources to visit sites, nor to transport witnesses, nor to enforce rulings; nor is there much pertinent law to rule on, unless a party's constitutional rights have been infringed through discrimination on the basis of gender or disability.

In these circumstances it is hard to conceptualise land *law* reforms that might have a positive impact on securing communal land holdings against external predation, or in protecting the usufructuary rights of individuals within a customary land holding. By the same token it is hard to imagine what could be done in practice through law reform to create a functioning market in customary land.

This doesn't, though, mean there is nothing that can be done. The local leaders who provided the LCMMT data recognise the changing environment they are working in and the new challenges this presents. They want guidance, as they are often fearful that they are making bad decisions because tradition has not provided them with precedents for the situations they are encountering. The problem with this is that there is no one more knowledgeable than them on Acholi customary land in general, and their localities in particular, to guide them.

In the past there have been efforts here and there to 'build the capacity' of local councillors on land dispute resolution. However this has usually been through teaching land law which, as discussed above, doesn't much apply: customary land is an area where it behoves outsiders – government, donors, international NGOs, academics and Ugandan civil society – to take a humble approach, and this is, perhaps, one of the biggest challenges of all.

It seems to me that what would help greatly is the opportunity for local leaders to come together at intervals to share issues with their peers and discuss and work towards formulating ethical responses to new situations and challenges. If we outsiders (as identified above) have agendas we want to pursue, we should remember that legislation and compulsion are not the only ways of promoting change, as advocates of 'nudge theory' are arguing in other arenas. Strengthening, for example, the land claims of non-kin 'guests', or requiring the documentation of informal land transactions, would be extraordinarily difficult to legislate, let alone enforce; but they can be encouraged and facilitated, not to say nudged.

An example might be drawing up a simple form in the local language for recording informal land transactions. This could prompt for endorsement by clan leaders, family members and spouses; specify key issues such as duration of leases and rentals; and make space for a sketch map. These could be printed in bulk and distributed for little money, and would, I predict, be widely adopted. They might have little weight in formal law, but as a means of settling local disputes at community level they would be very useful indeed.

Perhaps most helpful of all would be holding elections for village and parish councils. These have not been held since 2002 due, it is claimed, to lack of funds. Even when incumbents have retained the confidence of their communities, their legitimacy has been damaged by this; and parish councils, following legal action by opposition parties, have been suspended from their formal role holding land courts since 2013. The impact of this has been less than might be imagined, as their principle role, in keeping with Acholi custom, seems to have always been as mediators rather than adjudicators. Nonetheless, it has undermined their self-confidence and authority as important land dispute actors.



By focussing on actual, functioning public authorities in their interactions with ‘end-users’, it becomes possible to see that at a practical level in matters of land administration and dispute resolution these are *local* in rural Acholiland. Distinctions between ‘customary’ and ‘state’ local public authorities emerge as largely irrelevant – the ‘law’ as practiced by all is in essence customary. Useful external interventions for the foreseeable future are likely to be at this village and parish level, and will carefully tailor projects in recognition of the superior knowledge, on numerous key matters of custom and conditions on the ground, of these local actors.

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Notes

[i] Ambrena Manji (2006), *The Politics of Land Reform in Africa*, London: Zed Books

[ii] Hernando de Soto (2000), *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, New York: Basic Books.

[iii] See Manji (2006) *ibid.*, and Celestine Nyamu-Musembi (2008), “Breathing Life into Dead Theories About Property Rights in Africa”, Chapter 1 in Birgit Englert & Elizabeth Daly (Eds.), *Women’s Land Rights & Privatization in Eastern Africa*. Kampala: Fountain Publishers, are particularly acute. Recent World Bank reports including Frank Byamugisha (2013), *Securing Africa’s Land for Shared Prosperity: A Program to Scale Up Reforms and Investments*, Africa Development Forum series. Washington, D.C.: World Bank, are more nuanced, and apparently sympathetic to strengthening communal customary land holding (albeit as a temporary solution); and aware of the evidence that titling is not an effective way of securing land access for the poor.

[iv] Ministry of Land, Housing and Urban Development (MLHUD) (2013). *The Uganda National Land Policy* (p. iii)

[v] Ben Jones (2009). *Beyond the State in Rural Uganda*. Edinburgh: Edinburgh University Press. p. 164.

[vi] See Ronald R. Atkinson & Arthur Owor (2013), “‘Land Grabbing’: The Ugandan Government, Madhvani, and Others versus the Community of Lakang, Amuru District.” *Journal of Peace and Security Studies*. Vol. 1: December. *Special Issue: Unfolding Land Conflicts in Northern Uganda*. pp 49-63; and Lioba Lenhart (2013), “Alleged Land Grabs and Governance: Exploring Mistrust and Trust in Northern Uganda – The Case of the Apaa Land Conflict”, *Journal of Peace and Security Studies*. Vol. 1: December. *Special Issue: Unfolding Land Conflicts in Northern Uganda*. pp 64-85

[vii] The Land Act 1998 required the creation of 7000 local land administration bodies. As of 2013 almost none of these had been set up. Today there are some but often not yet functional.

Note: articles present the views of their authors, and not necessarily the position of the Justice and Security Research Programme, nor of the London School of Economics and Political Science.

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