

Return or transformation? Land and the resettlement of IDPs in Northern Uganda



As the security situation in Northern Uganda continues to improve, more and more displaced people are able to move home or closer to home. It is hoped that this movement will continue and that a definitive resolution will be found soon to the conflict. It is fairly clear from many studies that in such a case, the vast majority of families will move back as soon as they can to their own land in their home villages. Some may have to wait for children to finish the school year, and there may be delays if peace comes at a time when there is no thatching material for reconstructing houses, but within a few months, most will have returned home. The old and infirm will probably not be able to move immediately. They will need the help of their relatives and communities to build homes, which may not be possible immediately, if people are too busy trying to re-establish their own homes and re-open their fields. Many of the elderly believe that they will have to remain in the camps for a few additional months, but that within a year their families will have helped them to move. If they are right, then within a year few will be left in camps: some people who have chosen to buy small commercial plots in places which they believe will grow into permanent trading centres; those who have nowhere to go; and a few who simply do not want to go back home.

Many have expressed fears that conflicts around land could rapidly multiply and worsen, as people return home and as peace makes the land a more valuable attraction for outsiders. It is extremely welcome that the Government of Uganda is increasingly paying attention to the importance and the sensitivity of land issues in the resettlement of IDPs in Northern Uganda. Recognising the highly charged atmosphere surrounding land, public statements have repeatedly been made by the Government, in particular by the Minister responsible for land, that the Government wishes to help protect people's land rights and that it has no intention of taking anyone's land itself or allowing anyone else to do so. These objectives are made very strongly and

more formally in the position paper on land and resettlement in Northern Uganda of the Ministry of Lands, Housing and Urban Development (MLHUD)¹.

We welcome this position paper. We agree with the prioritisation by the Government of the need to help people protect their land rights, to empower communities to make better use of their land resources and to fight for poverty eradication, human and social rights and democratisation. We also agree with the Government's identification of key threats and dangers to reaching these goals, in particular:

- a dysfunctional land administration
- land grabbing and encroachment, from neighbours, squatters and others
- a general breakdown in law and order.

We strongly support the Government's desire to improve people's security of tenure over their land (owned almost entirely under 'customary tenure'), to help people know their rights, and to support local systems of justice and administration which bring together the State justice system (LC2 and Sub-County courts) and the customary (clan based) justice system.

We have been working on the ground in Northern Uganda, studying and working to support land rights for a long time. We believe that the knowledge and understanding which we have gained, particularly relating to customary tenure, can be useful to the Government in designing its interventions to achieve these laudable goals. The Ministry rightly stresses that land rights are a complex area, needing understanding of legal, political, economic and cultural aspects and a good analysis of the realities of public administration in practice. Our understanding of these aspects of the situation has shown us that measures intended to achieve certain objectives will not necessarily succeed.

¹ *Position Paper on Service Delivery on National Peace and Development Plan for Northern Uganda*, MLHUD, first draft September, 2006.

Returning to the old, or creating something new?

There is concern that the life to which IDPs will return will be backward, and without adequate services. The mass displacement, despite its human cost, is therefore seen as an “opportunity for a fresh start” with a “potential contribution to total social, economic and physical transformation of the region”. The transformation proposed is indeed far reaching.

- urbanisation – transforming some IDP camps into urban settlements with well planned services
- land rights – systematically turning land owned under customary tenure into titled land
- economic – replacing the family small-holder agricultural system and creating large cooperatives with mechanised farming, and formal employment for those who become unemployed.

An important question that needs to be answered: is resettlement an opportunity to create something so radically new?

Several Governments in East Africa have tried to discourage people from living in scattered homesteads which makes the provision of services so much harder. Although the goal has been to help people, ‘villagisation’ policies have not only failed, but have been a major cause of political resentment where they have been tried in Ethiopia, Tanzania and Mozambique. This does not mean that they will inevitably fail in Uganda. However, if they are selectively introduced in Northern Uganda, there is a huge danger that this will create resentment with strong tribal overtones. The creation of a new society can only be achieved where people feel secure with their rights, with each other and with their Government. Resettlement after many years of forced displacement is the time for rebuilding this security, which can only be done by supporting people to do what they want and for which they have waited for many years. Their return to their homes is not merely for economic advancement: they want to try, if possible, to rebuild what is left of their social structures and their culture, which lives through their social organisation and their farming. Any attempt to ‘encourage people’ off the land to which they dream of returning will surely provoke feelings of personal and social insecurity, social unrest and, most dangerous of all, mistrust between people and their

Government. In future years, an agricultural transformation of the North may be possible along the lines suggested here. This may happen gradually, through ‘natural’ economic processes or may be an accelerated process, supported by the Government. A successful return home and the re-establishment of social harmony will be the precondition for this to be possible. Investment in agriculture – through irrigation, processing for ‘added value’, improved storage and marketing – is welcome, but cannot be tied to people leaving their own land. Mechanisation of agriculture and the production of cash crops is not new in Northern Uganda: the restocking of the area with oxen will quickly allow farmers to produce surpluses for commercialisation, and the evolution of improved social organisation for their marketing.

Protecting land rights through systematic demarcation

One of the main vehicles for strengthening people’s land rights in the Government’s Land Sector Strategic Plan² is by turning land held under customary tenure into titled land, through a process of ‘systematic demarcation’. By systematically surveying all land in an area (where the land owners agree), the high costs of surveying individual plots for titling is removed. The owners then have the choice to register their land and to process formal titles. The belief is that titles will give people greater security of ownership and will also enable people to invest in their land, by using the titles as security for loans.

Elsewhere it is questioned whether this process will really help people protect land rights or whether, in the current environment, it will only contribute to greater loss of rights and social conflict³. In part, the policy is based upon the mistaken belief that land with title is more secure than land held under customary tenure. In fact, customary land is quite secure and legal ownership is guaranteed, and titling in certain conditions may make things worse.

There are two principal dangers in the process. First, the law of customary tenure is that land is held in trust, usually by a family head, for the benefit of the family members. He has the responsibility to look after their

² *Utilising Uganda’s Land Resources for Sustainable Development*. Land Sector Strategic Plan, 2001 - 2011. Government of Uganda

³ Titling customary land. Policy Discussion Paper 2 - LEMU

land rights and to allocate land fairly to all. The land is not all his personal property, though in everyday speech, the land would be said to 'belong' to him. If land is titled in the name of a family head, all other people and households who had rights to parts of that land suddenly lose them. A very careful process of social investigation is necessary to make sure that all rights to the land are agreed and then recorded on the title (as encumbrances, which remain even if the land is sold). Such a careful process cannot take place within an accelerated programme of systematic demarcation, since it must follow its own timetable. Without it, the process of titling will serve to erode land rights, not protect them.

The second danger is that titled land is no longer administered locally by people's own social systems. Disputes cannot be heard amicably by clan elders, but must go to courts. Apart from the financial price that may be necessary, there is a huge social cost for people who take their disputes with neighbours outside the community for settlement through an adversarial legal process. Even non-conflictual matters become difficult. When someone dies, ownership can only be transferred through obtaining letters of administration from a court, and then going to the land registry. This is a difficult, costly and foreign process for most, and one with many dangers of fraud, for people who cannot afford lawyers or who do not understand English. Experience from Masaka District has shown that land ownership quickly runs into difficulties where it is taken out of a 'living' system. Land transactions become paralysed, and not facilitated, when most titles are in the names of persons already deceased. Titling works well where there is an efficient system of land administration and where people understand well what is involved by registering their ownership in land. Establishing this is one of the Government's main priorities. We believe that pushing systematic demarcation before an efficient land administration system is in place is a serious mistake.

Is there a special case for protecting land rights through systematic demarcation in the case of Northern Uganda? We believe that the return process is the most difficult time to attempt such a programme. In a climate of mistrust and fear, and at a time when people are trying to re-establish their customary claims to land, encouraging individuals to

take land administration out of the social system is dangerous, both for society and for individuals. If people see individuals trying to set themselves above the community and to take family land for themselves, social unrest will be inevitable. The dangers of people losing land rights is particularly high in the first years, as they slowly try to re-establish old claims to land and to negotiate afresh the boundaries to land and the nature of overlapping and competing rights. This process must be allowed to happen calmly and in peace, with support given to people's own ways of solving their conflicts. Once this has happened and everyone feels secure, the recording of land rights and the processing of titles, either in the names of communal land associations, families or households, can evolve.

The positive side is that the objective of improving security of tenure can be secured in less controversial ways. The need is to establish clear, publicly recognised land ownership and boundaries, and back these up with a system that can enforce those rights. Currently, only the customary system can offer this protection, but it will need support to do so. This can be achieved by bringing it into harmony with the State system, ensuring that its rules follow the Constitution, and in return giving its decisions the full backing of the State judicial system – as the 1998 Land Act had envisioned. This customary system can be used to publicly demarcate boundaries through the use of specific tree species. This will achieve the same security as from surveying, but will keep the land under its current tenure system, and so will not alter existing land rights.

Recognising land rights

The ministry's proposal to use the Land Fund to compensate the land owners of land where IDP camps were established is welcome. As the Ministry states, there is the potential to create conflict if this is badly handled. Payment even of a small ex gratia sum (i.e. without legally accepting any liability) will be worth much as a sign that the Government recognises land rights and the burdens which were placed on land owners by the unfortunate situation of displacement. The political goodwill which will be won will be greatest if this is offered promptly and not in response to legal claims by the landowners. It is also important that mixed messages are

not sent out on recognising land ownership. There is a residual idea that much land in Northern Uganda is vacant, and hence available either for investors or for establishing collective mechanised farms, to be held on leaseholds. The Government does not own much land for these purposes (outside gazetted areas), and the remaining land is held privately. Outside investment and collective farms can be established on such land, but negotiations should take place with the landowners directly, and not with the Government.

Strengthening land administration

We agree with the Ministry that this is a top priority in the land sector, and that much work is needed to strengthen the LC2 and Sub-County courts and to reinvigorate the District Land Tribunals. It is also encouraging to note the priority given to support the customary land administration system, within which most land transactions occur and most disputes are solved. In particular, we welcome the stress on the need to establish area land committees, to establish the role of recorders at sub-county level and to fill the role of District Registrar. Without these in place, it is impossible for people to protect their land by obtaining certificates of customary ownership, or by establishing communal land associations.

We would stress the need for these State systems to work together with the customary institutions. This would include the need to record all land transactions, not only those on registered (titled) land; and to use existing structures and customary office holders in establishing area land committees in order to prevent conflictual systems developing.

Those left behind

It is likely that some IDPs will remain in camps even after an initial mass exodus. Landowners will understandably be eager to see their land returned to their full control, and for all IDPs to leave.

It is likely that most of those left behind will not need to stay long. It is important therefore for the Government, at national and District level, to mediate a process whereby landowners' rights are respected, but those unable to leave immediately are not thrown into destitution. Communities – clans and families – should accept responsibility for their elderly and infirm members, whilst at the same time receiving enough support so that they can effectively take up their responsibilities. Since the phased return of the elderly may take around a year, after this time a full review of the problems of those left behind will be needed.

Recommendations

- Return is the birth of people's living social system and not just physical movement. It can only happen if people return to their own land in their own ways. Any attempt to accelerate a transformation of how people live can only begin after people are secure in their return.
- Support to the modernisation of agriculture is vital, but should be supported on people's own land, in particular through the return to the traditional cash cropping through re-oxenisation of farming systems.
- Support to customary legal structures for solving land disputes is urgent. Customary institutions need to work together with State structures.
- Boundary disputes can be reduced by marking boundaries officially, but within people's own social system, through planting of specific trees.
- Clans can be supported to record all rights to land under their jurisdiction, for future registration.
- Support to local land administration is urgently needed. Land committees should be set up, using the current customary structures as much as possible, in order to reduce boundary conflicts and to permit certificates of customary ownership to be issued. The roles of registrar (for supporting communal land associations) and recorder need establishing.



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*For more information on land issues in Uganda, please visit www.land-in-Uganda.org
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