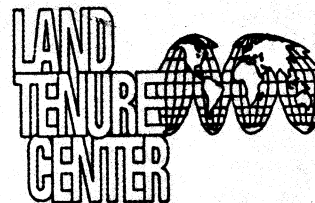




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# **LAND DISPUTES IN UGANDA: AN OVERVIEW OF THE TYPES OF LAND DISPUTES AND THE DISPUTE SETTLEMENT FORA**

by

**John Kigula**

**ACCESS TO LAND AND OTHER NATURAL RESOURCES IN UGANDA:  
RESEARCH AND POLICY DEVELOPMENT PROJECT**

**Research Paper 3**

**Prepared for Makerere Institute of Social Research and the Land Tenure Center**

**March 1993**

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## EXECUTIVE SUMMARY

Land disputes are an impediment to development and social stability, especially since land that is a subject of disputes may be left underdeveloped and may fall out of the land market for quite a long time. Often times, litigation concerning land is protracted, thereby wasting both time and the resources that would have been used for its development. The productivity of land and the social advancement of the people must depend on clear and effective land laws and policies that prevent land disputes.

The justification for this study lies in the premise that disputes provide hard evidence of pressure points in land use, indicating those locales or situations in which competition and conflict over land have become serious. Disputes provide indications of trouble spots in the tenure system, areas in which old rules may have become dysfunctional or new needs call for more elaborate rules. Thus, information on land dispute typologies and the mechanisms of land dispute management are of particular interest to land tenure policy designers.

This study, using six districts of Uganda, examines the nature of land disputes and their causes, as well as noting the frequency of various types of disputes in both the predominantly former *mailo* land areas and the customary public land areas. The types and incidence of land disputes are also considered in relation to pastoral resource ownership and management, game and forest buffer zones management, and the land market relations. It is hoped that findings of this study would compliment and inform the pastoral study, the buffer zones study, and the study on land markets. In what respects, for example, would the types and incidence of particular disputes in the areas immediately around forest reserves affect agroforestry or other conservation policy options?

Further, this study seeks to identify and examine the formal and informal mechanisms of land dispute settlement (judicial, quasi-judicial, administrative, and traditional fora), how they function, and how they relate to each other. Furthermore, it seeks to establish the limitations on the existing land dispute settlement fora and to suggest viable policy options that would improve the system of land dispute management in Uganda.

This report presents findings of a Rapid Rural Appraisal (RRA) which was aimed at establishing a general overview of the nature of land disputes and their causes, as well as the system of land dispute settlement in Uganda. It was also aimed at obtaining general information about the various categories of land occupiers and administrators. This information provided guidance in the design of the more detailed study that followed, especially in terms of what questions to ask, how to ask them, what categories of people to ask, and in which locales.

This RRA has established that the predominant types of land disputes fall within the subject vs. subject and the family member vs. family member categories. These feature most in the two regions of high population pressure on land, viz.: Kabale and Mbale Districts. In both districts there prevails the customary practice of polygamy and allotting land to the wives and children. Accordingly, there is a high degree of fragmentation and subdivision. Boundary disputes are numerous in the high-population-pressure districts, but the intra-familial disputes relating to succession rights and division of land grants seem to be far higher in incidence. There is a notable difference in the incidence of

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land disputes in the two high-population-pressure districts, with the disputes seeming to be more complex and their incidence higher in Kabale than in Mbale.

It has been observed that various colonial government policies of development set in motion their own streams of population movements adding to the impetus which was generated by the migrants themselves and the "push" and "pull" forces of the areas of origin and destination. Individual rural to rural migration is still going on today. Migrations of the Bakiga from Kabale (Kigezi) to the nearby relatively low-populated districts are numerous. This RRA established that there is tension based on land claims between the immigrants from Kabale and the host groups in Kabarole. A number of disputes in Kabarole district are based on the ethnic differences of the immigrants and the host groups. It is feared that the mode of acquiring land by the immigrants without following any rules might result in open hostility between the immigrants and the host groups and may result in tenure insecurity. Viewed in the sense of alleviating disputes in the out-migration areas while at the same time seeking to prevent land disputes and insecurity in the in-migration areas, government involvement in such situations would have to include the monitoring of rural migrations in search of land for settlement, their origins and destinations, the potential of both the in-migration and out-migration areas to support higher densities than the current levels, and the provision of the major physical infrastructure necessary for stabilising migrations. Education of the masses on matters related to land and settlement, as well as changing social attitudes, is a long-term strategy necessary in relieving population pressure on land and alleviating land disputes. For this matter there ought to be established a department of Land Settlement to address migration and settlement issues.

In the *mailo* land region, the incidence of land disputes seems to be moderate in some parts of the region and quite low in others. While further investigations into the factors accounting for this will be made, as of now it seems likely that the moderate population levels and the availability of land, the tenure relations, and the historical land-use factors are some of the major reasons for the relatively low incidence of land disputes in the *mailo* land region. Besides, sociocultural bonds have evolved between the tenant and the *mailo* owner and among the tenants themselves. This feeling of brotherhood and good neighbourliness serves to prevent certain land disputes in this region and has led to solving, by mutual agreement between the parties, those that do emerge. In addition, the existence of early-settled agriculture in the region may also account for the low incidence or absence of land disputes relating to en masse evictions by sellers and/or buyers of land seeking to invoke the provisions of the Land Reform Decree (LRD) of 1975 which disenfranchises the *kibanja* holders. Disputes of this nature have been rampant in the public lands' regions as opposed to the *mailo* land region. It is suggested that the LRD be repealed and replaced by a land tenure law that will guarantee security of tenure for the customary tenants.

With regard to land disputes involving pastoralists, this study has identified isolated cases between herders and cultivators in the areas bordering the rangelands. In such cases, cattle stray and destroy crops. However, in the Ntusi area, the disputes identified primarily involve squatters and lessees on the government-sponsored ranches. The lessees have sought to evict the traditional cattle grazers who had trespassed on the ranches. The squatters resisted eviction and the tension between the lessees and the squatters led the government to intervene and work out measures intended to benefit both parties. A Ranch Restructuring Board (RRB) was established which, among other things, is

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supposed to subdivide the ranches and redistribute the land to the lessees and the squatters. The progress of government policy in this respect will be examined further in a later, detailed study.

Given our methodology, areas where individualisation of the pastoral resources are becoming more common while at the same time communal grazing is still practised, were not visited. In such areas, there is a likelihood of moving cattle in the dry season in search of grass and water in total disregard of boundary demarcations. The conflicts between those who graze on the commons and those that own individual farms have so far not been addressed in the study but will be addressed in the later, more detailed study.

The disputes which involve the government and encroachers on forest reserves have arisen especially due to the breakdown in the law enforcement machinery and the administrative institutions during the last twenty years of political turmoil. Various regimes have come up with different policies, and some of the forest officers entrusted with the protection of the forest reserves have taken advantage of the situation to acquire for themselves large tracts of land in the forest reserves as well to allocate *bibanja* to various individuals in exchange for money. There is virtually no incentive for the forest officers to do their duty given their poor remuneration. Besides, the populations in the villages bordering the forest reserves have had no programmes to induce them to adopt agroforestry systems geared towards maintaining and strengthening buffer zones around the reserves. Government conservation policy remains wanting, not so much in the formulation of new conservation laws but in the practical strategies for turning the various agencies and the broad masses of the people into willing participants in the conservation programme. Of late, the ad hoc nature of government involvement in the protection of forests, characterised by the hasty actions of particular politicians, has led to a serious conflict between the encroachers in Kibale Forest Reserve and the government. Although the encroachers were resettled, the manner in which government solved the conflict violated human rights and ought to be avoided in similar instances.

Findings during this RRA indicate that disputes involving women are common, especially in the high-population-pressure district of Kabale. This RRA was limited in that the actual role of women in land disputes was not particularly focused upon. Do women frequently mobilise informal social networks in support of their land claims, or do they appeal to formal agencies such as the Resistance Council (RC) court or magistrate's court? To what extent are these dispute settlement agencies free of the ingrained ideologies about women which often place women in a disadvantaged position vis-à-vis men and which would, in a land dispute, serve to deny the women remedy? Among other issues, the forthcoming, detailed study seeks to address women in land disputes with a view to establishing the factors which enhance or inhibit women from obtaining remedy in cases of land disputes involving them.

With regard to the system of land dispute settlement, this RRA has established that informal mechanisms of dispute settlement are very rare in the high-population-pressure districts of Kabale and Mbale. In the moderately populated regions, especially the *mailo* land region, the settlement of land disputes of a simple nature (for example, boundary disputes) by mutual agreement between parties is common. The clan heads in the *mailo* land region no longer have the powerful influence they once had as property overseers and arbitrators in cases of land disputes involving family members of a given clan. Some intra-familial land disputes are settled by the clan heads and elders,

but the overwhelming majority of cases are forwarded to the formal agencies of dispute settlement. Even when the clan heads might have already given their ruling in a particular dispute, it is not rare for one of the parties to institute the same matter in a formal court in total disregard of the clan heads' directions. The market-economy influence in the *mailo* land region seems to have rendered the informal mechanisms of land dispute management moribund, such that the new generations of elites and commercially-minded people have no bondage with the clan, nor reverence for it. In Kabale and Mbale, however, it is the high-population-pressure on land that has predominantly rendered the clan system dysfunctional.

This RRA has identified instances of confusion in the formal system of land dispute settlement. The RC court system seems to have similar functions as those of the Magistrate's Courts Grade II. Litigants, in some cases, do not know where exactly to institute land cases. Due to a number of factors, the RC court system is ill-equipped to handle land disputes. Improved land dispute management may require the establishment of specialised Land Adjudication Committees at sub-county level charged with general administration of land matters within a sub-county and vested with limited judicial powers to try the land disputes now being handled by RC courts. It would also require the establishment of a Lands Tribunal at the district level to entertain appeals from the sub-county Land Adjudication Committees as well as to receive land disputes of first instance. Appeals from the district Lands Tribunal would go to the Chief Magistrate's Court.

During this RRA, the following hypotheses were formulated:

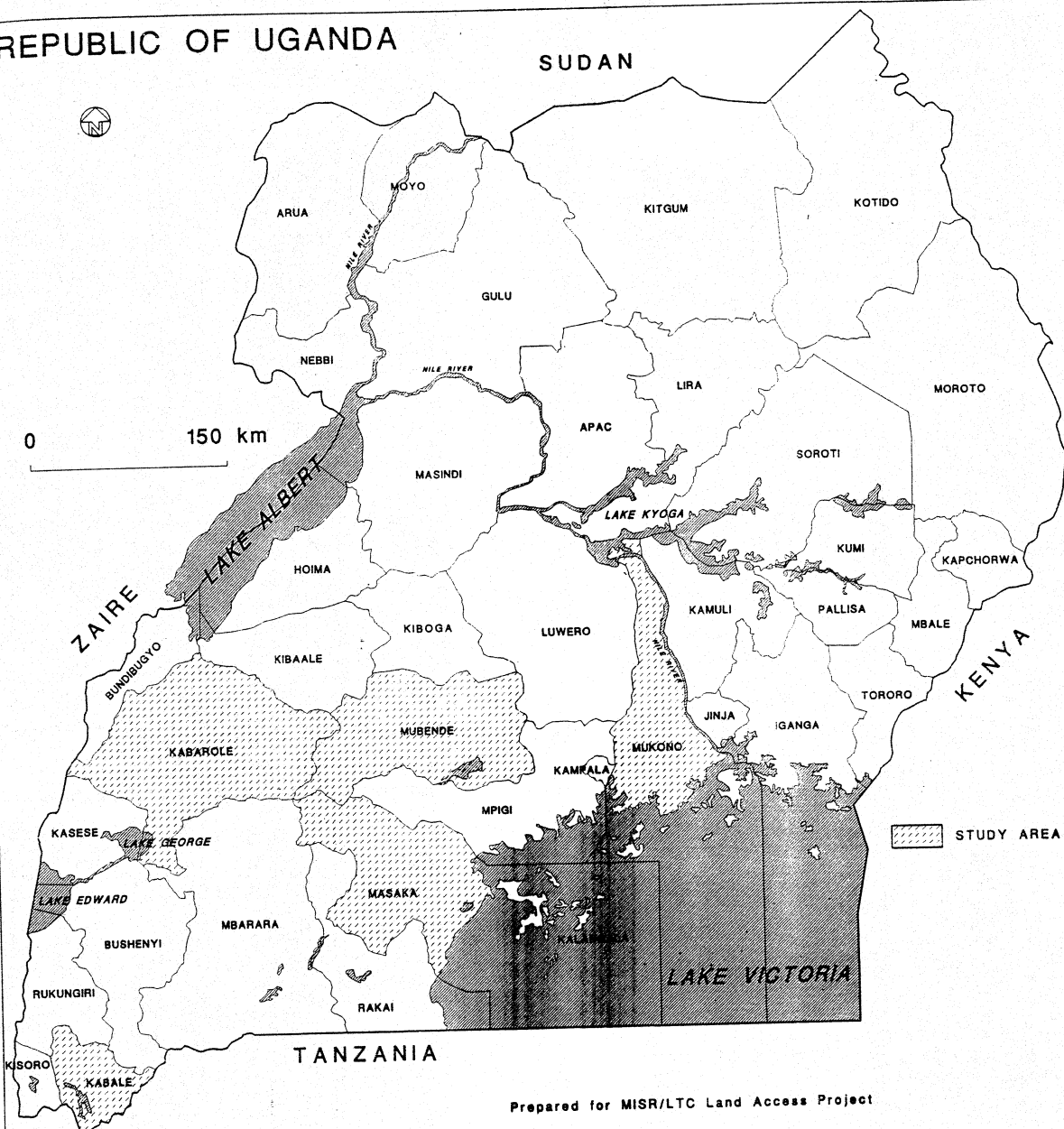
- ◆ The higher the market-economy impacts, the more land is relieved of population pressure, and the less is the incidence and complexity of land disputes.
- ◆ Particular types of land disputes and their incidence directly owe to, and reflect the type of land tenure and the peculiar land-use patterns where they occur.
- ◆ High population pressure on land, taken as a single force, begets a higher incidence of complex land disputes than do high market-economy impacts.
- ◆ The higher the market-economy impacts the more the social control of land and land dispute arbitration shift from the informal/semi-informal institutions (that is, the extended family, the clan, or the grassroots semi-informal courts such as RCs) towards the formal institutions.
- ◆ The higher the population pressure on land, the more the social control of land and land dispute arbitration shift from the informal/semi-informal institutions towards the formal institutions.

# REPUBLIC OF UGANDA

SUDAN



0 150 km



STUDY AREA

Prepared for MISR/LTC Land Access Project

Sources: UNEP 1988, Uganda Data Base: bnd, district and lake coverages

REMOTE SENSING & GIS LAB, INSTITUTE OF ENVIRONMENT & NATURAL RESOURCES  
MAKERERE UNIVERSITY, 1994

RWANDA

TANZANIA



## I. INTRODUCTION

The economy in Uganda greatly depends on **agriculture**, and the land resource forms the major portion of Uganda's foreign exchange earnings. Moreover, land provides a majority of the populace with local-money income, as well as food both for the urban and the rural regions. The productivity of land and the social advancement of the people depends on clear and effective land laws and policies that prevent land disputes.

The prevalence of land disputes is itself **an impediment** to development and social stability because land that is a subject of dispute may be left **undeveloped** and may fall out of the land market for quite a long time. Litigation concerning **such land** is **often** protracted, thereby wasting both the time and resources that would have been used for its development.

In cases of land under customary tenure, peasants' developments have often been destroyed, hence retarding peasant production on the land. In the regions of Kabale and Mbale where population pressures on the land are very high, land disputes have resulted in numerous murders, grievous bodily harm, and insecurity. At the same time, in the regions of low population pressure, such as Kabarole, there is noted mounting tension based on land claims between the host populations and the immigrant groups from high-population-pressure regions. It is feared that in the near future, ethnic cleavages and rivalry based on land claims will result in insecurity and bloody confrontations between the host and the immigrant groups. In the pastoral zones, on the other hand, there is an ever-increasing number of "progressive" ranchers who fence off the hitherto common-access grazing land, cattle tracks, and valley dams, thereby marginalising the traditional cattle grazers and conflicting with them. The traditional cattle grazers, however, wander the pastoral rangelands with huge herds of cattle which seem to be higher than the carrying capacity of the land.

While information on land dispute typologies and the mechanisms of land dispute management would be of particular interest to land tenure policy designers, comprehensive research and documentation on these has been lacking in Uganda. Studies in this respect, especially when policy oriented, are crucial in that disputes provide **hard evidence** of pressure points in land use, indicating those locales or situations in which competition and conflict over land have become serious. Disputes provide indications of trouble spots in the tenure system, areas in which old rules may have become dysfunctional or new needs call for more elaborate rules.

This report presents findings during a Rapid Rural Appraisal (RRA) which was carried out in six sampled districts of the southern half of Uganda. It presents an overview of the nature and causes of land disputes. In addition, the report presents **an examination** of the various institutions involved in land dispute settlement as well as the mechanisms of land dispute management.

The land disputes study attends several related studies: the study on access to pastoral land/resources and pastoral resource ownership and management; the study on buffer zones; and the study on land markets. This study seeks to provide information of policy interest to these other dimensions of study. What, for example, are the likely implications of the herder/farmer or the

lessee/squatter disputes in the pastoral regions? What is the incidence of these disputes and would they be fatal to policy recommendations? What is the nature of disputes in the areas immediately around forest and game reserves? What is the incidence of these disputes and what dimensions do they take? In what respects would the disputes undermine agroforestry or other conservation policy options? For the land markets study, are there relationships between certain categories of land disputes (as well as their intensity) and the performance of the land market? On the other hand, do particular types of land disputes and their incidence directly owe to and reflect given tenure arrangements (for example, *mailo* land tenure versus tenure on customary public land)?

## A. STUDY OBJECTIVES

The objective of the RRA was to establish a general overview of the nature of land disputes and their causes, as well as the nature of the system of land dispute settlement. It was also aimed at obtaining general information about the various categories of land occupiers and administrators. This information would provide guidance in designing the more detailed study that will follow, especially in terms of what questions to ask, how to ask them, what categories of people to ask, and in which locales.

The specific aims of the land disputes study are as follows:

1. to examine the nature of land disputes and their respective causes, as well as noting the frequency of various types of disputes in both the predominantly *mailo* land areas and the customary public land areas;
2. to consider the types and the incidence of land disputes in relation to the patterns of ownership of pastoral resources and their management, buffer zones' occupation and management, and land market relations. This study would inform studies in these various dimensions of the likely limitations or the viability of their respective policy recommendations;
3. to identify and examine the formal and informal mechanisms of land dispute settlement (judicial, quasi-judicial, administrative, and traditional fora), how they function, and how they relate to each other; and,
4. to identify the limitations of the existing land dispute settlement fora and suggest viable policy options in this respect.

## B. RRA METHODOLOGY

Because of their significance in the dispute settlement process, the village and the parish were taken as the level of analysis for this research. In order to investigate variations in dispute frequencies, species, and fora, study areas were selected on the basis of their varying conditions of land tenure, population density, and the general levels of commercialisation of agriculture. It was expected that disputes would be more prevalent in areas characterised by higher land values and greater density of settlement. An earlier RRA conducted by Makerere Institute of Social Research (MISR) indicated little incidence of land disputes in areas of sparse population. Therefore, this rural appraisal concentrated on more densely populated areas (pressure areas) but included some less densely populated areas for thoroughness, to permit comparisons, and to confirm the observations of the earlier RRA. Population densities were obtained from the 1991 Uganda Population and Housing Census and local informants, while land tenure characteristics were provided by the lands' offices in the districts visited.

Six districts in the southern half of Uganda were identified as those from which the study sub-counties would be selected. Three of the districts in this region consist predominantly of former *mailo* land, while the other three consist primarily of customary public land<sup>1</sup> with isolated freeholds. The three predominantly *mailo* districts were Masaka, Mukono, and Mubende, with Masaka and Mukono having a significantly higher population density than Mubende. The three predominantly public land/freehold districts were Kabale, Mbale, and Kabarole, with the first two having higher population pressure on land than Kabarole.

Within each of the six districts chosen, three sub-counties were selected in which to gather information on disputes. As in the selection of districts, sub-counties were selected according to their levels of population density and commercial agricultural activity. From each district (regardless of whether the district was densely or sparsely populated), two more densely populated sub-counties with higher commercial agricultural activity were selected as was one sub-county that was less densely populated and had low commercial agricultural activity. In the predominantly *mailo* districts, all sub-counties selected also contained a high percentage of *mailo* land. The total number of sub-counties in the study was eighteen (three sub-counties from each of the six districts). The collection of information took place at village level in two villages, and at parish level in one parish, all within a chosen sub-county. Information was also gathered at sub-county level and at a broader level which was not necessarily in reference to the study sub-counties.

Information was gathered from a number of sources. Direct sub-county information was obtained through group and individual interviews with Resistance Council (RC) I, II, and III Chairpersons and the executive members available, with village, sub-county, and administrative chiefs, with sub-county Magistrates, and from RC land dispute files (where they were available). At the broader level, information was collected through interviews with district administrators, district executive secretaries concerned with land matters, district formal courts' civil registries, Chief Magistrates, Magistrates grade I and II at the district and county levels, and examination of any records available from these parties. Additionally, the Magistrates Courts' records in Kampala and the High Court were studied. Some Magistrates and Judges were interviewed about the more national-level knowledge of land disputes around Uganda. The Inspector General of Government was also interviewed.

All information obtained was qualitative. The RRA can simply be referred to as a general fact-finding mission. There is no refined pre-coded questionnaire that is strictly followed, although there is a guiding RRA questionnaire. The form of interview at times varied during the rural appraisal, and different categories of persons to interview were included spontaneously, depending on need. In this RRA, sampling was based on the tenure variations, the population, and variations in commercial agricultural activity.

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<sup>1</sup> Land which was not originally allocated under the Land Settlements of 1900, 1903, and 1904. Prior to Independence, it was vested in the British Crown as Crown land; after Independence it came to be known as customary public land. Almost all land outside Buganda is customary public land. Occupation and use rights on such land are governed by the customary rules of a given area.

### C. HISTORICAL ASPECTS OF LAND DISPUTES

Literature regarding land disputes in Uganda is virtually absent. However, A.B. Mukwaya (1953) briefly documented a few types of land disputes in the *mailo* land region of Buganda. Conflict over land in Buganda was not that pronounced for most of the colonial period. The modified freehold tenure (known as *mailo* tenure) that was introduced by the Buganda Agreement of 1900 left most of the land in Buganda in the few hands of the **Kabaka**, the chiefs, and other notables, while the majority of the ordinary peasants became "tenants" on *mailo* land or, in a few cases, tenants on Crown land (now public land). For economic gain and the attainment of social status, it became a practice of the landowners to encourage peasant holders (hereafter referred to as *mailo* tenants) to settle on their land.

As Mukwaya reports, the interests of the landowners and those of the *mailo* tenants were in many respects complementary. Few landowners could develop their estates into farms or plantations. The chief source of revenue from their *mailo* land came from the *mailo* tenants who, on the other hand, found their tenure secure enough for them to live fairly contented lives. Moreover, both the landowners and the *mailo* tenants were limited in the amount of land they could use by the local factors of agriculture, such as the techniques used and the labour available (*ibid.*).

Because of the availability of good land, conflict was not pronounced. There was no shortage of land in most places, and therefore conflicts needed not arise if peasant holders could move to the next village and obtain, on the same terms, land as good as they had in the village they left (*ibid.*, p. 65). Where there was a shortage, especially near towns and in the best coffee areas, certain types of conflict emerged over the boundaries of the holdings, over the allocation of land, over the rights of reversion, and over the occupation of land by the increasing number of landowners.

The number of landowners increased in the later part of the colonial period as individuals came to acquire *mailo* land by purchasing parts of land from the *mailo* grantees for their own farming and development. Most of the litigation over holdings revolved around the question of boundaries. Boundaries were normally not marked by any form of boundary marks or signs. Where land was in short supply, the landowner reduced the size of a holding in order to give land to more tenants, since the *busuulu* or *envujjo* (forms of tax) he/she could get from one tenant was limited by the *Busuulu* and *Envujjo* laws of 1927 and 1928. At the same time, with increased production of cotton and coffee and other cash crops, the tenants themselves sometimes became desirous of increasing their holdings at the expense of their neighbours. About half the disputes over boundaries were between *mailo* tenants with the other half between landowners and tenants.

As long as a *mailo* tenant paid dues, gave reverence, and offered services that were occasionally demanded by the landowner, a tenant enjoyed quiet possession of the *kibanja*.<sup>2</sup> The *mailo* tenant could cultivate perennial crops on the land, bury the dead, and bequeath the *kibanja* to his descendants. The *Busuulu* and *Envujjo* laws protected the customary rights of *mailo* tenants to the

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<sup>2</sup> *Kibanja* (of which *bibanja* is the plural) is a Baganda term for a tenant's landholding. Though it initially related to a tenant's holding on *mailo* land, it is now also popularly used to refer to the customary holdings on public land outside Buganda.

extent that it became rare for courts to grant orders of eviction against tenants who failed to pay *busuulu* or *envujjo*. Any dues in arrears were legally considered civil debts, recoverable in the usual manner. As early as 1950, there was very little conflict about the *busuulu*, for the rates were within the means of every tenant. The rates set at law bore no relation to the prevailing value of the land, the prices of the crops, or even to the rates of the monthly wages to which they were originally related.

Outside Buganda, the early years of British Administration witnessed virtually no pressures on land. As J.B. Kabera (1983) reports, by the beginning of this century, the tribal groups of Uganda had established themselves in specific core areas. The people belonging to each core area were unified either by cultural cohesion, by language, or by some social and political bond. When British Administration was established over Uganda at the beginning of this century, the administrators sought to determine the internal administrative boundaries more or less according to tribal locations. This arrangement strengthened the sense of belonging to a core area and played a great role in limiting mass movement and extension of tribal land. Later events during the colonial and post-colonial periods, however, induced large migrations of individuals.

By the 1930s, however, population pressure on land in Kigezi and Bugisu was already a concern for the British Administration. In a bid to ease tension and conflict over land, among other reasons, the colonial government encouraged and sponsored the recruitment of labour in regions such as Kigezi (Kabale District); these labourers would carry out essential services in districts that produced cash crops such as coffee and cotton. As late as 1951 and 1952, recorded movements from Kigezi were 29,000 and 28,000 people respectively (ibid., p. 66). At the same time as these labour recruitments were taking place, the district councils of Kigezi and Ankole together with the officials of the Central Government selected the sparsely populated areas in north Kigezi and south Ankole to receive groups of settlers. Areas for settling Bakiga from Kigezi were also negotiated by the Kigezi District Council with the Toro District Council. The first groups of settlers moved to Toro in 1955. By 1959 Bakiga migration had increased rapidly.

In the last thirty years or so, individual migrations from Kigezi to the nearby districts have continued, having been set in motion by the colonial government policies seeking to alleviate population pressure on the land. This study has noted widespread dismay amongst the host populations in the areas to which the Bakiga from Kigezi have continued to migrate. Such discord does not seem to have existed for most of the colonial period, just as land-based conflicts in the rest of Uganda, where there was little population pressure on land and few of the other factors that lead to competition for limited land, was nearly non-existent.

## II. LAND DISPUTE TYPOLOGIES

This section describes actual types of land disputes. Disputes have been organised according to general disputant relationships. The issues and subject matter of disputes have been found to be peculiar to given categories of disputants (for example, boundary disputes are more common amongst neighbours [subject vs. subject category] than amongst family members, where succession rights are predominant). The various categories of disputants and the peculiar issues under dispute are considered in relation to the type of landholding, who the users of the land are, the population pressure on the land, and other variables, such as levels of commercialisation of agriculture and market-economy impacts. The following are the general disputant categories identified during the RRA: subject vs. subject; family member vs. family member (intra-familial or inter-familial); government vs. encroachers; groups/individual vs. government; and groups vs. groups/individual.

### A. SUBJECT VS. SUBJECT

Disputes between subjects involve neighbours or members of the same land community and are attributable to several land issues: land acquisition (land grant from a neighbour or land loan); arbitrary eviction of a customary tenant/squatter by a landowner or a lessee; or exceeding field and/or residential boundaries.

Our findings show a large number of disputes of this category to be boundary disputes/trespassing amongst neighbours who hold *bibanja* as customary tenants on customary public land. These disputes predominate in the high-population-pressure districts of Kabale and Mbale. Here, because of widespread land fragmentation, boundary disputes are not restricted only to residential neighbours. For example, a person with five plots scattered on five different hills and a distance between plots of over five kilometres might find one of the plots encroached upon by an owner of an adjoining plot who is not necessarily resident there. Or, that same person might find the whole plot taken over by a claimant who is not necessarily a neighbour. Records at the Chief Magistrate's Court in Kabale reveal a large number of land disputes related to exceeding boundaries and/or trespassing.

The land disputes seem to be more complex, and their incidence higher, in Kabale than in Mbale. A number of factors, yet to be examined in detail, seem to account for the differences in the complexity and intensity of land disputes in the two districts. These include the colonial government crop production policies that emphasised coffee production in Bugisu, thereby encouraging settled agriculture at an early stage with maximum output and income on the limited land available. The differences in the geographical factors in the two districts might also be a significant factor. The customary practice of polygamy and allotting land to the wives and children exists in both districts, yet, in Mbale, this seems to be limited while in Kabale it is an unchecked phenomenon. There is also disparity in the levels of land fragmentation and subdivision.

In contrast, in Kabarole District the subject vs. subject land disputes take various forms but do not seem, on the whole, to be numerous. The boundary/trespassing disputes amongst individuals with adjoining land in Kabarole seem to be more limited than in Kabale where these are predominant. In Kabarole, vacant arable land is still available and population pressure on land is virtually absent in most parts of the district. Most young men in the district leave the land to engage in petty trade in

urban areas. Observations and information obtained at the district headquarters suggest that the rural to urban migration of the youth is relatively higher in Kabarole than in the other districts where this RRA was conducted.

The very low level or virtual absence of population pressure on land in Kabarole explains the scanty boundary/trespassing disputes between neighbours here. Cases of this nature are commonly intra-familial, occurring amongst co-heirs. Most responses from RC I Chairpersons in the villages in which the RRA was conducted indicated that on average RC I courts entertain one or two boundary/trespassing disputes in a period of six months. Most household responses indicated that these types of disputes are virtually absent, and a study of court records in Kabarole revealed only a few such disputes.

In addition to the low-population-pressure factor, there seems to be an interplay of other variables which account for the low incidence of disputes in Kabarole. Among these factors is the limited level of commercialisation of agriculture. A dislike of the hoe and the laborious activities of land tilling and tending crops is peculiar to the old generation of the Batooro societies that constitute Kabarole, just as it is peculiar to the young generation that scorns cultivation and migrates instead to towns. Observations in Kabarole's countryside reveal that a large number of Batooro households engage in cultivation of a few food crops for bare subsistence. Thus, in most of Bunyangabo County—Ruimi Sub-county in particular—the more hard working Bakiga immigrants from Kabale and the Bakonjo from Kasese have engaged in highly diversified and commercialised agriculture, while the rest of Kabarole experiences peculiarly low to non-existent levels of commercialisation of agriculture.

Commercialisation of agriculture is known for raising land values as well as begetting competition for arable land, thus fuelling boundary/ownership land disputes. In the absence of generalised commercialisation of agriculture in the district, disputes of this nature remain limited. There seems to be a relatively higher and increasing number of boundary/ownership land disputes in Ruimi Sub-county where commercialised agriculture is more commonly practised than in the rest of Kabarole.

The isolated cases relating to boundary/trespassing in the greater part of Kabarole result from situations where an absentee customary owner of land finds the unattended land taken over by a new claimant. Situations of this nature occur when young men who have left the land to go to town return years later on failing in trade, only to find the land they used to occupy taken over by new claimants. Sometimes, due to availability of alternative land, individuals have migrated within the district to settle on and cultivate more fertile land. At times, for one reason or another, these individuals have later sought to return to their original settlement, but have found it taken over by a new claimant (see Appendix I, Case No. 2). Some disputes between individuals in Kabarole peculiarly arise out of situations where a domineering able-bodied neighbour encroaches upon the land of an ailing or aged individual (see Appendix I, Case No. 3), or where a land borrower dies and the heir refuses to vacate the borrowed land (see Appendix I, Case No. 4).<sup>3</sup> Situations of this kind

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<sup>3</sup> Borrowing land in Kabarole does not seem to reflect land scarcity; rather, it arises out of a desire on the part of certain individuals to cultivate land that might be suitable for particular crops.

might result from the lack of built-in indigenous mechanisms of social protection of a community member's land rights once such member gets ill, temporarily leaves the area, or abandons the land.

A strong clan system in the traditional organisation of the Batooro societies of Kabarole was lacking in the years before British Administration in Uganda. Without a strong clan system, social patronage at grassroots level remained shaky, just as kindred bondages remained infirm and virtually absent in most cases. The political and sociocultural institutions of the Batooro of Kabarole, whatever their strengths or weaknesses, have not evolved intertwined with particular land tenure relations, as has been the case in the *mailo* land region of Buganda. Thus, while in some other parts of Uganda one person's land may not be easily taken over by another, in Kabarole a trespassing neighbour may encroach on the land of a disadvantaged community member without fear of social disapproval and customary sanctions.

Paradoxically, while low population pressure on land may explain the relatively low incidence of subject vs. subject land disputes, it seems to have a bearing on the escalation of disputes between lessees (or the potential lessees) and customary land occupiers. In the low-population-pressure regions, large tracts of arable yet unoccupied land become an attraction to those with money who may nurse ambitions to engage in commercial agriculture or ranching. Still others may wish to acquire and hold on to land as opposed to holding liquid cash, which seems risky in a socioeconomic environment rife with inflation. These are mostly individuals whose wealth comes from education and consequent employment in government or the modern private sector. Commonly, however, these are men and women who have turned their backs on the land and have little serious interest in farming. Moreover, they usually have access to investment opportunities which offer rates of return superior to farming. If they do purchase land, it is often for speculative purposes or for prestige. Their holdings tend to be poorly managed and less productive than smaller farms around them.

During the RRA, information obtained at the district headquarters in Kabarole revealed that a large number of lessees and potential lessees in the district were conflicting with occupiers of customary land. The title holders seek to evict the customary land occupiers under the provisions of section 3 of the Land Reform Decree (LRD) of 1975. Oftentimes, the District Land Committee, which recommends lease applicants, does not visit the area to ascertain whether there are conflicts between the intending lessee and the customary-land occupiers. This is partly due to lack of logistical support for the Committee's movement and partly to bribery on the part of the lease applicants. The result is that a lease is often given for land that is already occupied by the customary holders. Given their socioeconomic status and the ability to use networks of colleagues to move quickly through bureaucratic mazes, the lessees hardly adhere to the provisions of the LRD that require six months' notice prior to eviction of the customary holders and that terms and conditions of eviction from the Public Lands Commission regarding compensation be sought. The en masse evictions of peasants by lessees has often led government to intervene and administratively stop such evictions. In Kabarole, in particular, the prominent case was that of Rev. Christopher Katuramu who sought to evict over twenty customary holders in 1988. The Minister of Lands, the Inspector General of Government, and the District Administrator's office all became involved in stopping the eviction and administratively worked out an arrangement through which the customary

holders were left with some land while the lessee was left with part of what he had originally claimed.

Government protection of the customary land occupiers in situations of eviction by lessees is ad hoc and is not a foolproof guarantee against eviction, especially where the poor peasant customary holders in remote regions may not have ready access to the key government authorities that would prevent their eviction. Thus, to obtain a quick remedy, peasants who are victims of eviction by a lessee have often teamed up and resorted to violent force against such a lessee. People are often discouraged from acquiring leases from fear of the problems they might face in having customary land occupiers evicted. Such problems include violence, the customary holder's refusal to accept the valuation and money offered as compensation on eviction, and the overall expenses of having the land freed of customary holder encumbrances (see Appendix I, Case No. 5).

State paternalism in land through the LRD has not enabled the state to effectively safeguard the interests of the peasant customary holders who constitute about 90% of the total population of Uganda and, upon whom, the state relies for a major portion of its foreign exchange earnings by exporting the peasant-produced cash crops. Some have hypothesised that the policies in the LRD permitting sale and transferability of land, and granting tenure security to the lessees by denying customary tenants any claim in land, are developmental. Land, it is argued, is thereby made an easily negotiable asset, and incentive to buy, register, and develop land free of customary-tenure encumbrances is also thereby given to the progressive farmers (the lessees) and potential developers. Such tenure security also makes it possible for the lessees to confidently acquire bank credit for land development. This boils down to the argument that individuals with land titles are more development-oriented than those without.

While an interplay of a host of variables undermines the progressive farmers' land development potentials, the ownership land disputes between customary holders and lessees or potential lessees do put limitations on land development efforts as well. Future studies may note the incidence and the trends of the customary holder vs. lessees disputes and establish whether, among other variables, these types of conflicts presently stand in the way of development. Depending on the nature or complexity of the land tenure relations and land disputes in the low-population-pressure regions of the north, where the future studies will concentrate, studies shall suggest viable policy options for counteracting dispute-related barriers to land development.

In the moderately populated *mailo* lands of Buganda, Masaka, and Mukono, for example, some boundary disputes exist between neighbours, but the incidence of the disputes does not seem to be as high as in the high-population-pressure regions of Kabale and Mbale. Instances of trespassing, where a *kibanja* borrower or his/her heirs refuse to move upon the expiry of the granted period, were found in the *mailo* lands. The factors which account for few or uncomplicated disputes in the *mailo* lands include the following: moderate population levels, availability of land, the existence of early-settled agriculture, and the attendant land use practices and tenure relations. There has evolved a strong sociocultural bond over time between the tenant and the *mailo* owner and amongst the tenants themselves, such that the feeling of brotherhood and good neighbourliness has served to prevent certain land disputes and has led to solving, by mutual agreement, those that emerge. Even if *mailo* owners sought to evict the tenants under the LRD, the *mailo* owners do not have the

resources to meet the compensation of tenants who occupy the land.<sup>4</sup> Thus land disputes relating to en masse evictions by sellers/buyers of land seeking to invoke the LRD which disenfranchises the *kibanja* holders are only occasional in some parts of the *mailo* lands and virtually absent in most parts of the region. Disputes of this nature, however, seem to be rampant on public land.

On the other hand, commercialisation of agriculture on *mailo* lands seems to have been made possible earlier than in the outlying districts. The fact that the *mailo* lands border the capital city of Uganda, and are endowed with a good network of roads to an increasing number of towns and trading centres in the countryside, helps account for the early commercialisation of agriculture as well as the relatively higher market-economy impacts. Market-economy influence seems to have had a role in reorienting the cultures and the attitudes of the people. While it was customary for the father to give land to all his male children in the colonial period, our interviews show that, although still practised, this is not widespread or emphasised. Even if land is allocated to the sons, the sons have increasingly left their father's homestead and gone to the towns to study, to engage in paid employment, or to pursue a self-employment trade. Some have engaged in commercial agriculture on their father's land, while others have bought land elsewhere. At the same time, the market-economy influence seems to be a factor in limiting the practice of polygamy and the number of children born in the region. Thus, while known for raising land values and feared for begetting conflicts over land, the market-economy influence paradoxically tends to relieve land of population pressure and thereby serves as a factor in limiting subject vs. subject land disputes.

There are, however, a few cases where more economically powerful individuals have taken advantage of the provisions of the LRD to buy and register land occupied by *kibanja* holders in their own names. Sometimes the new buyers who seek to acquire the *mailo* title do not adhere to the provisions of the LRD relating to compensation of *kibanja* holders on *mailo* land (see appendix I, Case 6).

In the *mailo* lands there also exist cases where the new ascendants to *mailo* ownerships have sought to evict the *kibanja* holders that acquired *kibanja* from their parents. Often, these are members of a younger generation that has grown free from the sociocultural bond between *mailo* owners and the *kibanja* holders that led to a kind of symbiotic coexistence. Some of these ascendants to *mailo* have lived and studied abroad and, on return to Uganda, have sought to free their land bequests of *kibanja*-tenant encumbrances and to develop the land. Other ascendants to *mailo* are the elites who have lived in towns most of their lives and, after amassing wealth, have sought to develop their hitherto-tenanted land bequests. Our interviews with the RC I Executive at Busweka village, Kasanda Sub-county, Mityana Sub-district, revealed, for example, that about 70% of land in Mityana Sub-district is *mailo* land. Some disputes arise where an absentee heir seeks to evict a *kibanja* holder who acquired the land by purchase from the deceased father or grandfather of the heir.

Notwithstanding that almost everywhere in the *mailo* land region both the *mailo* owner and the *kibanja* holder know their boundaries, there are situations of domineering wealthy *mailo* owners

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<sup>4</sup> An earlier MISR study, carried out between 1990 and 1991, indicates that well over 60% of each *mailo* owner's land is tenanted.

who keep on marginalising the *kibanja* holders. For example, our interviews with the RC I Executive at Sserinya village, Manyi Sub-county, Mityana Sub-district, revealed that there is a *mailo* owner in the village who keeps marginalising the customary tenants on his land by curtailing the size of the *bibanja*. At times, he takes his cows to graze on the tenants' crops.

The examination of land disputes in the high-population-pressure district of Kabale in relation to those in the *mailo* lands suggests the following hypothesis: high population pressure on land, taken as a single force, begets a higher incidence of complex land disputes than do high market-economy impacts. With high population pressure on land, and falling far short of the market-economy influence existing in the *mailo* districts of Masaka and Mukono, for example, Kabale is rife with complex land disputes. The above hypothesis will be tested in the forthcoming detailed study on land disputes.

The squatter vs. lessee conflicts over land were found in the semi-arid rangeland of part of Mubende, Kabarole, and the western end of Rakai in the Ntusi area. Here, the lands are expansive, with small populations and isolated homesteads. Ranchers have leased and continue to lease large tracts of customary public land in these semi-arid regions. They evict and marginalise the traditional/customary cattle grazers who graze communally and are semi-nomadic. In the majority of cases, the customary cattle grazers were found to be Rwandese immigrants who, having fled the Hutu/Tutsi wars of 1959 and onwards, found sanctuary in the rangelands which are suitable for cattle grazing. The immigrant population has grown over the years, as has their herds. Many local Ugandan citizens also practice customary cattle grazing in the rangelands visited for this study. It was reported by respondents in Ntusi that about two years ago the ranchers fenced off large tracts of land and prevented the traditional herders from gaining access to the hitherto common watering points and boreholes. In retaliation, the customary cattle grazers destroyed fences, cattle dips, and the boreholes and then forced their way to the common watering points.

In Garilaya Sub-county, situated in northwestern Mukono District (bordering the Nile and Lake Kyoga), there are some herder vs. farmer disputes identified. Some owners of the big farms do not maintain fences. Here, cattle trespassing on agricultural land and destroying crops forms the basis of the disputes. The squatter vs. lessee conflicts have not resulted in much litigation by the aggrieved traditional cattle grazers because, for the time being, most of the public land here is still unoccupied, and they can afford to move on to unoccupied areas. An exception to this has been in the Ntusi area, where the squatters resisted evictions from government ranches and destroyed the established facilities such as cattle dips and fences. The herder vs. farmer disputes arising out of the destruction of crops by cattle were found to exist in areas where semi-arid rangeland fades into the relatively wet agricultural areas. These, again, were not very pronounced and featured only as isolated cases. In the rangeland regions, no boundary disputes were reported; understandably, because the lands are expansive lands and the populations small.

## **B. FAMILY MEMBER VS. FAMILY MEMBER**

Land shortage and the ever-rising populations in Kabale and Mbale Districts, attended by the custom of polygamy and allotting land to the numerous children and wives, account for the predominance of the intra-familial nature of land disputes there. Of the districts covered in this study, disputes between family members are most common in Kabale. The incidence of the intra-

familial land disputes seems also to be high in Mbale District. In these two high-population-pressure districts, there appear to be few alternative economic opportunities that would free the land of population pressure.

Kabera (1983, pp. 95-99) recounts the background factors that account for this category of land disputes in Kabale (Kigezi) and Mbale (Bugisu). By the beginning of this century, living amidst powerful neighbouring kingdoms of Rwanda to the south, Ankole to the east, and Mpororo to the north, the Bakiga traditional organisation lacked a structure encompassing the group under a centralised tribal authority. The largest corporate group in the Bakiga society was an extended family composed of the male descendants of a common grandfather who lived together with their wives and children in a joint stockaded compound. A number of such family groups living in the same neighbourhood generally would be related by agnatic descent to a common ancestor and would maintain relationships of peaceful co-residence and cooperation.

Before their incorporation into the wider political structure of Uganda and the establishment of district administration, the Bakiga provided security only for the individual within the area occupied by kinsmen or by families of different clans related through marriage. A large extended family group was necessary for the protection of the lives and property of its members. Hence, the Bakiga stressed the value of a large family. The more wives a man had, the greater was his security as well as his work output, since women performed the bulk of all agricultural activities. Senior men in the Bakiga society have as many as eight to ten wives. In addition, as many children as possible, particularly males, were desired. Failure of a wife to produce a son would not lead to divorce but to the husband marrying another woman. Widows were automatically inherited by one of their deceased husband's brothers or by a son of a senior wife. Girls were married soon after puberty. All these social factors enhanced rapid population growth among the Bakiga. This situation seems to continue unabated.

According to Bakiga custom, land was to some extent a communal entity. However, each householder was entitled to claim any piece of land that he/she was using. A person, therefore, was assumed to own a piece of land if he/she was able to show that he/she was currently developing it or had put it under cultivation earlier and was letting it lie fallow to regain its fertility. It was customary for a father to allot land from his own holding to his sons when they became of age, though he always retained sufficient land for himself. In polygamous families, the course of subdivision and fragmentation was more rapid. Thus, the degree of fragmentation and subdivision increased every generation. When a man married a second, third, or fourth wife, he had to apportion his holding between his wives so that each had her separate piece to cultivate. The first wife usually received a larger portion than the second wife. When the man took a third wife, he allotted to her part of the holdings of the first wife and second wife. When he took a fourth wife, the process was repeated, each of the senior wives losing portions. In polygamous families, the sons who became of age would secure land from their mother's share. In the event of the death of the father or the mother, each son would be entitled to share with his brothers their father's or mother's remaining land. In many cases, each plot was shared by the sons in order to make certain that each son obtained plots of equal fertility. This was viewed as a fair system of equitable inheritance, and the system worked well when the population density was still low. However, plots become more subdivided and more scattered as generations passed. The process of division of land among sons and equitable land

inheritance are, therefore, very crucial in the present day problems of land shortage and out-migration in Kigezi.

As in the case of Bakiga, polygamy was common in Bugisu. On death of a father, his land was divided among his sons. Adult sons usually received their share of the land before their father's death; but if they were not yet adult when their father died, the eldest uncle held the land in trust and divided it on the minors' coming of age. The sons of different wives usually inherited from the plantations and fields that were under their mother's care. Women could not inherit land, except for widows who were unlikely to marry again, or elderly unmarried women who were allowed to live undisturbed on their plantations until death, when the land would be taken over by the true owners or trustees. If there were no sons, the land would pass to the deceased's brother or to nephews if there were no brothers. Many of these customs are still maintained among the Bagisu. A stage has been reached where some landholdings are too small for sharing and the landless have to migrate in order to acquire land of their own.

In the districts of Kabale and Mbale the disputing dyads identified in the course of this study are: brother vs. brother; son vs. mother; son of homestead head vs. family elder(s); married woman vs. affinal kin; married woman vs. co-wife; and woman vs. consanguineal kin (usually brothers). The most frequent causes of disputes are: land inheritance (that is, size or location of land allotment); boundaries of fields or residential sites; and right to oversee land management on a homestead. A good number of intra-familial land disputes in Kabarole also have similar disputing dyads (some intra-familial cases are given in Appendix I; see cases 7 to 22).

### C. ENCROACHERS VS. GOVERNMENT

Under this category of disputes, groups of individuals who over the years have come to settle in the gazetted forest reserves conflict with government over land. The recent government policies to evict all encroachers in the reserved forests have in some cases caused social disorder and loss of lives (for example, the Mpokya incidents in Kibale Forest Reserve). The questions of resettlement of the evicted encroachers become crucial, especially when their numbers are great and government action towards them is ad hoc in nature with little, if any, comprehensive plan. Some of the encroachers interviewed in Kibale Forest, for example, indicated that they settled there on permission from the forest officers.

Interviews were conducted within and around forest reserves in Kabarole and Mubende Districts, and we found that the conspicuous encroachment on Mabira Forest and the other forests around Lake Victoria had come to an end with the successful eviction of the encroachers. The same was the case in Bumbo Sub-county, Mbale, where encroachers had been successfully evicted from the forest reserve. In Kabarole, we conducted interviews at Bigodi trading centre, which borders Kibale Forest. We interviewed the Forest Rangers, the RC I officials, and some of the squatters on the land.

On the periphery of Kibale Forest Reserve, it has been found that a man (X) applied for a lease from the Forest Department through the District Forest Officer, the Regional Forest Officer, and the Chief Forest Officer. He got the lease in 1974. The lease had been granted because the area was grassland; since it was not going to be developed in the future, and since grasslands encourage

encroachment, the land could be given to X. By 1988, X had acquired approximately 120 acres. That year, three ministers of government found discrepancies in the boundaries and ordered the reinstatement of the 1974 boundaries, thereby retaking X's land. X sued the government, insisting that his land had been taken. Since 1989, the case has been continuing, and X still occupies the land. In June 1990, a Uganda Gazette was issued which regazetted X's land. This gazette and cancellation of his lease were shown to X in June, 1991. At the time of interview (late 1991), X still awaited the High Court order concerning his dispute with the government.

The above case has further complications in that there were customary tenants on X's land. While some were ready to move from the land, others insisted that X would have to compensate them when the cancellation of his lease is enforced and they have to go. This is because X had obtained money from the tenants in exchange for *bibanja* on the land.

In Mpocha Forest Reserve, which is part of Kibale Forest Reserve, there has been extensive encroachment resulting from the Forest Department's policy, since about 1974, of giving away grasslands. Sub-county headquarters were built in Mpocha Forest Reserve in the 1970s, thereby giving backing to the people who wished to settle. At the time we visited the Forest Reserve (late 1991), there were confusions over an eviction policy. The Forest Department wanted to evict the so-called encroachers, while the government was reserved about the matter, because government, after all, had encouraged people to settle in the reserve by establishing administrative centres and expressly or implicitly permitting schools to be built in the area.

In a turn of events, the government ordered the eviction of people that had settled in the Forest Reserve without allocating suitable land for resettling these evicted "encroachers"; nor did the government articulate clearly the procedures to be followed in the eviction exercise. The eviction was carried out ruthlessly, and some people died.

In Mubende District, many Rwandese immigrants were found on the periphery of Lubona Forest Reserve. The forest is not thick but quite open, with trees far apart. The cattlekeeping Rwandese graze their livestock on the grass within the forest. The government does not have a decisive policy to preserve forests, and the permission to camp near such a forest reserve, granted to the Rwandese, is one example of the absence of a conservation plan. In this area, there is no strategy for the management of forest either for production of wood or for rearing animals.

#### D. GROUPS VS. INDIVIDUAL/GROUPS

Significant group vs. individual/groups conflicts over land were identified in Kabarole District. Since the 1950s, a large number of Bakiga from Kabale and Bafumbira from Kisoro have continued to migrate to Kabarole. The immigrants are basically cultivators and not herders. The immigrants have acquired relatively large tracts of land for cultivation, especially in Ruimi Sub-county and are moving from the high-population-pressure regions to the low-population-pressure region of Kabarole. Because most of the land is public, the immigrants "buy" land from the chiefs in the sense that they give money in return for permission to use the land. Others, it is said, come by way of visiting an already settled immigrant, and they gradually acquire land by claiming and using an extension of the existing land of the immigrant host. It was reported to the study team that in most cases there is trespass on the local resident's land, and there are often double claims.

There is an ever-increasing animosity amongst the local residents of Kabarole against these immigrants. The immigrants are reported to be more hard-working than the local residents, and they have better incomes from the sale of a wide variety of food crops including cabbages, tomatoes, Irish potatoes, maize, beans, and matooke. The tensions between the host and the immigrant groups are likely to become complex in the future, especially when the immigrants increasingly seek to acquire key administrative/political positions in the district.



### III. THE DISPUTE SETTLEMENT FORA

In general there are two systems of land dispute settlement. A formal dispute settlement forum, whereby disputes are settled by formal courts such as the Magistrates' Courts, and an informal one, whereby disputants have their cases decided by village elders or clan heads. However, the RC court system, established by the Resistance Committees (Judicial Powers) Statute of 1988 and given judicial powers to entertain a range of matters including disputes relating to customary tenure holdings, features, in practice, as a semi-informal dispute settlement forum, although technically it is regarded as a formal one.

At the lowest level of the formal courts are Magistrates Grade II with the same jurisdiction as the RC courts. These Magistrates are usually stationed at county and sub-county levels. Decisions of these Magistrates can be appealed to the Chief Magistrate. There are, however, Magistrates Grade I who have a wider jurisdiction but are also under the control of the Chief Magistrate. There is usually a Chief Magistrate for each district. Above these are the Judges of the High Court. Although the High Court is in Kampala, resident Judges are posted upcountry in given regions to ease work. Hence there are resident Judges in areas such as Kabarole, Mbarara, Jinja, and Mbale.

Different grades of Magistrates have different qualifications and experience. Grade II Magistrates do not have any graduate legal training. However, some of them were able to obtain a Diploma in Law from the Uganda Law Development Centre. Grade I Magistrates must be holders of a Bachelor of Laws Degree, with a post-graduate Diploma in Legal Practice in most cases. This is also the case with the Chief Magistrates and Judges, except that these two categories are normally appointed to this grade of adjudicators by virtue of proven knowledge and a wide and relatively long experience in adjudication.

An appeal of a decision by the village RC I court would go to the parish RC II court; further appeals would go to the RC III court at the sub-county level. From RC III courts appeals go to the Chief Magistrates' Courts and, from that court, an appeal would go to the High Court. Although we have not come across land disputes appealed from the High Court to the Supreme Court, formally the Supreme Court is the last adjudication forum and at the top of the court pyramid. A case can originate in the Grade II or Grade I Magistrates' Courts. The Chief Magistrate's Court and the High Court can entertain a case in the first instance, and these courts on appeal have the power to order a retrial by the lower court or require that a case being tried in a lower court be transferred to and tried by the Chief Magistrate's Court or the High Court. There are few cases where land disputes have originated from Chief Magistrates' Courts because the disputes are between customary tenants or *bibanja* holders and not between registered proprietors of land. Most of the cases between customary tenants are handled by RC courts and magistrates. The RC courts at each of the three aforementioned levels are constituted by nine members. The quorum needed to constitute a court is five. Where a quorum is not realised, a member from the same Resistance Council is co-opted.

The District Administrator's (DA) office entertains contestable matters in order to give administrative solutions. The office's District Executive Secretary (DES), who is also secretary to the District Land Committee, is the person concerned with the land issues that come to DA's office.

The DA's office normally intervenes where there is an injustice to an individual or group of individuals and there is need for a quick administrative solution, such as where customary tenants are being ruthlessly evicted without adequate notice or compensation by a lessee or *mailo* owner.

The Registrars of Title possess statutory powers to entertain land disputes. In the districts visited during the RRA, none of the registrars had received common land disputes for adjudication. Serious land disputes which had been received by some of the registrars were referred to the courts.

In a like manner to that of the DA's office, the Inspector General of Government (IGG) intervenes to put right injustices in connection with land disputes. Neither the DA nor the IGG have judicial powers and have often had to refer the cases brought before them to the courts as a last resort.

An informal system of dispute settlement exists in all the districts visited in this RRA, but it is not very active. Some of the intra-familial land disputes, especially in the central region of Buganda, are settled by the clan head; however, the role of the clan head is diminishing as the courts have increasingly taken over the resolution of land disputes among family members. This might be because the new generations who are parties to the disputes are participants in an ever-advancing market economy in which tribal custom and communalism become dysfunctional; these parties do not seem to acknowledge the traditional powers of the clan head. This situation suggests the following hypothesis: the higher the market-economy impacts, the more the social control of land and land dispute arbitration shift from the informal/semi-informal institutions (that is, the extended family, the clan or the grassroots semi-informal courts such as RCs) towards the formal institutions. The more detailed land disputes study shall seek to test this hypothesis.

Our findings show that a large volume of land disputes are being handled by the RC court system. In all the districts visited during the study, it was found that some litigants nevertheless institute their suits in the Grade I Magistrate's Court in the first instance, thereby skipping the RC courts. This was found to be widespread in Kabale district. In almost all such cases, the Magistrate or Chief Magistrate's Court has referred the case back to the RC courts in the locality where the matter arose.

Unlike in the *mailo* land region of Buganda, Kabale lacked overarching traditional structures of land dispute settlement. This would partly explain the overwhelming disregard of the RC courts when it comes to instituting land-related cases, though these courts seem to be popular elsewhere in the country. But for population pressure on land, the semi-informal grassroots RC courts would have been key players in land dispute arbitration in Kabale despite the lack of traditional structures of dispute settlement.

The situation is a little different in Kabarole where, as in Kabale, the traditional mechanisms of land dispute settlement were never predominant. In Kabarole, although some cases had been improperly instituted in the Chief Magistrate's Court in the first instance and had been referred back to the skipped RC courts, the incidence of such improperly instituted cases was not as high as in Kabale. This suggests, most probably, that lack of overarching traditional structures of land dispute arbitration is to some extent a factor in limiting litigants' resort to the less formal courts, but that population pressure on land is an overriding factor in limiting litigants' resort to the less formal

courts. This suggests a hypothesis: the higher the population pressure on land, the more the social control of land and land dispute arbitration shift from the informal/semi-informal institutions towards the formal institutions. The more detailed land disputes study shall seek to test this hypothesis.

#### **A. THE MODUS OPERANDI OF THE DISPUTE SETTLEMENT FOR**

In the formal courts a plaint (statement of the issues and facts which give rise to the suit) is made and, on payment of the court fees, is lodged with the relevant court. The defendant is notified and summoned to file a statement of defence. A hearing date is set, and the parties attend the hearing. Witnesses for either party are also summoned by the court to attend. Because formal court procedures are quite involved and complicated, most of the litigants hire lawyers. Legal representation exists in all formal courts except the RC court; litigants in the RC courts are barred by statute from being represented by a lawyer.

Most of the RC courts I, II, and III were found to sit regularly; at least once a week. Those that were not very regular would sit once a fortnight. Complaints can simply be lodged orally or in writing. These courts are supposed to keep records of the case and judgement. It was found that, although some of the RC courts record the facts and issues relating to the case and judgement, the manner of recording is not systematic, and it is often rather difficult to ascertain what the issues of a case might have been.

On instituting a case, there is a court fee (referred to as *ebitebe* in some parts of Kabarole and Mubende, and as *empaabi* in the Buganda region) of: shillings 500/= at RC I level; 1,000/= at RC II level, and 2,000/= at RC III level. This money is meant to meet the costs of the stationery used by the court. After a party is informed of the hearing, he/she comes with his/her witnesses; if a party or witness refuses to attend an RC court, he/she is compelled to do so by the court, which sends the Defence Secretary of the Resistance Committee to force the party to attend or to arrest the party and bring him/her before the court.

Proceedings in the RC courts are normally conducted in the local languages, and it takes one to two weeks to decide a case. Our findings show that the overwhelming majority of the people in all the districts visited have confidence in the RC court system. In the areas with moderate and low populations—where the population pressure on the land is still low—RC I and II courts receive two or three cases a month. In the sparsely populated cattle grazing areas with expansive lands, there was at most one case in any six-month period. In the densely populated regions of Kabale and Mbale, a village RC I court receives, on average, over seven land disputes a month. As of today, RC courts can only award monetary damages up to shillings 5,000/=. Any award higher than that has to be approved by the Chief Magistrate. In addition (or as an alternative), RC courts can order the restitution of land.

With regard to the administrative mechanisms of dispute settlement, it has been established in this study that the office of the District Administrator has been of great assistance to landowners and tenants, especially in situations that call for quick injunctions to restrain an aggressive party from unduly dispossessing or marginalising other parties. The quick and active intervention of the DAs' offices (as, for example, in the case mentioned earlier of Rev. Katuramu vs. about twenty customary

holders in Kabarole District) has often served to reinforce and uphold natural justice in opposition to the provisions of the LRD which overwhelmingly disenfranchise the majority of the populace (the customary tenants) in favour of the so-called progressive farmers who, in most cases, simply develop small portions of large tracts of land. Because litigation in the courts is often protracted, the quick administrative intervention has served to forestall injury and damage, and timely intervention has often served to preserve peace and stability in the localities.

The office of the IGG has not been found as effective in providing administrative solutions to land disputes. Most probably this is due to the limited mandate of the IGG, lack of decentralisation (viz.: representation of the IGG's office at district level), inadequate finances, and inadequate manpower.

The informal systems of land dispute settlement have been reported as existing in all the districts visited in this study. In the central region of Buganda, the informal mechanisms of land dispute settlement mainly feature in matters of succession rights amongst the members of the extended family. The clan head or authorised executive members of the clan have often resolved succession disputes prior to or just after the celebration of the second funeral rights of a clan member. As already indicated, clan authority is diminishing, and it is now possible to find intra-familial land disputes relating to succession rights being instituted in the formal courts without recourse to or in disregard of the clan head's ruling. In the districts of Masaka, Mukono, Mubende, and Kabarole, quite a few boundary disputes are being settled with the intervention and indulgence of the village elders. While in most of the districts visited, the authority of the clan, clan head, or elders as a dispute settlement institution still lingered, in Kabale district litigants did not resort to this moribund forum. This, as already indicated, might be explained by the high population pressure on land that has led family members and neighbours to treat each other as total strangers to such an extent that even murders occur.

## **B. A REVIEW OF THE APPROPRIATENESS AND LIMITATIONS OF THE DISPUTE SETTLEMENT FORA**

A number of positive aspects and tendencies in the system of land dispute management do exist in Uganda. These, however, are bedevilled by a host of variables that pose such limitations on the dispute settlement fora that the structure and mechanisms of dispute management are eventually ineffective and retrogressive. At the grassroots, as already pointed out, the informal mechanisms of dispute settlement are moribund. The semi-informal and formal systems of dispute settlement—the RC courts and Magistrates' Courts respectively—are the predominant institutions that have come to handle the overwhelming majority of almost all types of land disputes. The RC courts have a number of advantages. Firstly, they are near the masses and easily accessible. They are also inexpensive in that the parties to a suit may not have to incur prohibitive expenses toward the institution of a case: transportation fares to the court, hiring a lawyer, etc. The RC courts deal with matters expeditiously: in most cases instantaneously or within one or two weeks. These courts are not hampered by technical procedures, and they often are able to use the local languages. Given that the RC courts are situated within the vicinities of the litigants and the lands that are disputed, they are better equipped with background knowledge about such litigants and locales than any other forum kilometres away. This is an advantage that would, in the absence of other inhibitive variables, enable the RC courts to reach impartial decisions expeditiously.

Yet, with all these advantages, the RC courts are attended by a host of inhibitive factors. It was found that most of the committee members who sit to constitute a court were not clear on the limits of their jurisdiction. It is not rare to find an RC court seeking to entertain a dispute regarding titled land even though the dispute is outside its jurisdiction. Most of the RC courts visited did not keep proper records of proceedings and judgements. Hence, when a litigant appeals to the Chief Magistrate's Court and the Chief Magistrate calls for the proceedings or judgement of the RC court, the relevant information is not always available. This leaves many cases pending for quite a long time, sometimes for over two years.

On the other hand, there is widespread ignorance of court procedures, such as how to procure information from witnesses and how to identify key issues that would form the basis of a judgement. There is also evidence that the committee members are sometimes ignorant of the prevailing land tenure law. Prejudiced as they are, the rights of a state-lessee vs. a tenant as spelled out in the LRD are not clearly understood by members of a large number of Resistance Committees and, therefore, the RC courts.

The lack of incentives for committee members has demoralised a large number of the RCs. Some RC members who had been elected due to their wisdom, social influence, and administrative abilities have gradually given up attending to the numerous matters referred to them and have instead concentrated on their income-generating activities. For example, this was found to be the case in Ihanga, Kabale District. Lack of due rewards for the exacting work performed by committee members is one of the factors that have fanned widespread corruption amongst the members. The key members and chairpersons on the RC courts have increasingly exhorted bribes from parties to a suit, and these recipients of bribes subvert justice by confusing the financially weak party and taking sides with the bribing party. At the time of this RRA, only the committee members at RC III level received the remuneration of shillings 3,000/= per month. It was reported that this money takes two to three months or longer before members actually receive it. Taking into account the prevailing cost of living and the time it takes to obtain the money, the amount of money given to the RC III members hardly serves as an incentive for them to be committed to their duties. Also, the payment of RC III members discriminates against the lower levels of RCs in that the latter receive no remuneration. There is discord among the lower levels of RCs about this, especially since it is these lower RCs that handle the bulk of the disputes and other matters that come before them at the village and parish levels.

Loss of morale amongst members of most committees is also evidenced by inattendance of RC meetings or court sessions. About half the RC chairpersons interviewed decried the low levels of attendance, pointing out that in most cases they have had to co-opt other members of a Resistance Council to form a quorum and constitute a court. It was established in this study that certain members of the RC court, influential by virtue of their social and economic status, do affect the decisions of the court, especially when they are interested parties in a dispute.

The Magistrates' Courts Grade II have advantages in common with the RC courts in that they are also accessible by the local people, especially since they rotate within the district at the county and sub-county levels. However, Magistrates Grade II were found to have acquired elementary

knowledge of the law through long-term service and training at the Uganda Law Development Centre.

One of the major problems identified in this study is that there is duplication of the jurisdictional powers of the RC courts and the Magistrates' Courts Grade II. The litigants in the countryside are confused over where to institute their cases in the first instance. Some institute their cases in the Magistrate's Court Grade II, others in the RC court, and some (as is often the case in Kabale and Kabarole Districts) institute their cases in both courts. There seems also to exist a conflict between arbitrators in each court: each ill-advising litigants and expressing negative attitudes towards the other court.

Much as they have the capacity to dispense with cases at their level of jurisdiction, the Magistrates' Courts Grade II conduct proceedings in a technical manner: using English, interpreters, and more or less adhering to the letter of the Civil Procedure Rules of the Laws of Uganda. This, added to the fact that there is legal representation by Advocates in these courts, serves to delay the settlement of disputes. Advocates were found to be constantly pleading for adjournments of hearings for one reason or another. In many cases, they simply would not attend court on the hearing date, especially when involved in cases in other courts.

Just as the RC court members lack incentives, the Magistrates Grade II are very poorly remunerated. While they are supposed to move around the district to the sub-county and county administrative centres to hold court sessions, the Magistrates do not have means of transport, such as a bicycle or motorcycle purchased for them by government. As a result, there is alleged widespread corruption among these magistrates with a large number of them subverting justice.

The Magistrates' Courts Grade I and the Chief Magistrates' Courts, normally situated at the district headquarters, handle a large number of cases in addition to land disputes. The cases instituted in these two grades of courts normally involve titled land and are, in the case of the Chief Magistrates' Courts, of the pecuniary value of shillings 5,000,000/=. The majority of the land dispute cases before the two grades of courts came on appeal from the Magistrates Courts Grade II and the RC III courts.

This study found that the available Magistrates in each of the districts visited were too few to handle all the cases effectively. Few of the Magistrates are able to visit the *locus in quo* because of the limitations in manpower. With the exception of some Chief Magistrates who were allocated Land Rovers, most Magistrates do not have means of transport. On the other hand, excessive delays exist due to technical procedures and referrals back to lower courts. It is expensive for ordinary people to have their disputes solved in these Magistrates' Courts because of the exorbitant fees for hiring a lawyer and the long distances which the parties to a suit and the witnesses must travel to reach the courts. As earlier noted in respect of the Magistrates' Courts Grade II, the advocates often seek adjournment of cases in these two grades of courts as well, thereby delaying the disposal of cases.

The Magistrates Grade I and the Chief Magistrates are also poorly remunerated. Detailed examination of the Magistrates' indulgence in corruption is beyond the ambit of this study;

however, it is alleged that some Magistrates and Chief Magistrates engage in corrupt conduct and delay or subvert justice.

The High Court, on the other hand, can exercise its powers of review and revision to ensure that all courts below it perform their functions satisfactorily and ensure that justice is done. Yet, there are limitations on the High Court as a dispute settlement forum or as a watchdog institution that oversees the activities of the lower courts; one limitation is the lack of High Court Judges in most districts. There is need for increasing the number of judges and posting them up-country. While it is quite expensive for the ordinary person to litigate in the Magistrates' Courts, it is even more expensive to do so in the High Court. In the regions where there are no resident judges, it requires parties to travel long distances to the High Court in Kampala. Moreover, the technical procedures and the involvement of advocates, whose peculiar demands for adjournments often delay cases, are obstacles for parties using this forum for settling disputes.

At this stage of the study, it is impossible to provide authoritative conclusions on the appropriateness of the dispute settlement fora or to prescribe viable options to alleviate the limitations on them. While this awaits a more detailed study that will substantiate or refute some of the RRA findings reported here, some observations and broad suggestions can be made regarding which likely policy options would be available. It is suggested that there be established Land Adjudication Committees at the sub-county level. These should be concerned primarily with the administration of land matters within a respective sub-county. At the same time, these committees should be vested with limited judicial powers to settle land disputes currently being handled by RC courts I to III. The RC court system should be divested of land dispute settlement powers. Members of a Land Adjudication Committee would be more enlightened personalities, specialising in one aspect of social conflict: land issues. These members would be easy to train and, with time, should be able to effectively handle land disputes without causing the confusion and the delays presently being experienced. It is suggested further that a Lands Adjudication Tribunal be established at the district level throughout Uganda. This would have the same advantages as enumerated above and would entertain land disputes on appeal from the sub-county Land Adjudication Committees. As well, cases of first instance will be lodged with the District Lands Adjudication Tribunal outright. Appeals from the District Lands Adjudication Tribunals should go to the Chief Magistrate's Courts. Mechanisms for providing adequate incentives to the committees and tribunals should be worked out, with the main source of funding being the district itself supplemented by contributions from the central government. Mechanisms supervising these institutions of land dispute settlement should be worked out as well.



#### IV. CONCLUSIONS

The predominant types of land disputes identified in this RRA fall within the subject vs. subject and family member vs. family member categories. These feature most in the regions of high population pressure on land, that is, Kabale and Mbale Districts. However, the disputes seem to be more complex, and their incidence higher, in Kabale District. In the *mailo* land region of Buganda, the land disputes are not as intensive and complex as those in Kabale. This is the case even though the *mailo* land region surrounds the capital city, has numerous well-spread sizeable towns, a good road network, and therefore high market-economy impacts which are known for raising land values and fuelling land disputes. This suggests the hypothesis that high population pressure on land, taken as a single force, begets a higher incidence of complex land disputes than do high market-economy impacts.

This study has noted that in the *mailo* land region the incidence of the subject vs. subject land disputes seems to range from moderate to low. Generally, the disputes that occur in the region are of a simple nature as compared to those in customary public land areas. The factors which account for this situation seem to be the moderate population levels and the availability of land, the tenure relations, and the historical land-use factors. The strong sociocultural bond that has evolved between the tenant and the *mailo* owner and among the tenants themselves has a bearing on the trend taken by land disputes in the *mailo* land region. Our examination of the land disputes in the *mailo* land region and the customary public land areas suggest the following hypothesis: the particular types of land disputes and their incidence are directly related to and reflective of the type of land tenure and the peculiar land-use patterns where they occur. Our further study of land disputes will test this hypothesis.

On the other hand, unlike in most customary public lands, market-economy influence in the *mailo* land region, even if in infancy, seems to have had a role in reorienting the cultures and attitudes of the local people. While it was customary for the father to give land to all his male children in the early colonial period, this presently is not as widespread and emphasised as it used to be. The sons have increasingly left their father's homestead and gone to the towns to work. Most sons now buy land of their own. The existence of alternative economic avenues has served to relieve land of population pressure. The subject vs. subject land disputes between neighbours, and competition and conflict over land by family members (intra-familial land disputes), do not therefore take on complex dimensions, and they are quite limited. This suggests a paradoxical hypothesis: the higher the market-economy impacts, the more land is relieved of population pressure and land disputes are less frequent and less complex. The more detailed land disputes study that will follow shall seek to test the above hypothesis.

It has been observed that various colonial government policies of development set in motion their own streams of population movements, adding to the impetus which was generated by the migrants themselves and the "push" and "pull" forces of the areas of origin and destination. Individual rural to rural migrations are still going on today. The apparent success of the colonial government policies geared towards alleviating population pressure on land in Kigezi indicates that the state authority must have a role to play in migration which results in the search for land for settlement. The rate at which the land resource is being claimed by immigrants ought to be of concern to

government. Viewed in the sense of alleviating disputes in the out-migration areas while at the same time seeking to prevent land disputes and insecurity in in-migration areas, government involvement would have to include the monitoring of rural migrations in search of land for settlement, their origins and destinations, the potential of both the in-migration and out-migration areas to support higher densities than the current levels, and the provision of the major physical infrastructure necessary for stabilising migrations. Educating the masses on matters related to land and settlement as well as changing social attitudes is a long-term strategy necessary in relieving population pressure on land and alleviating land disputes not only in the high-population-pressure regions but also in the moderately populated areas. In respect of the land settlement and migration issues this study has observed so far, it is recommended that government establish a Department of Land Settlement in each district, as well as a Ministry of Lands and Surveys headquarters. Such a department would specifically address these matters.

The disputes which involve government and encroachers on forest reserves have arisen due to a number of reasons including the breakdown in the law-enforcing machineries and the administrative institutions in the last twenty years of political turmoil. Unless there is a deliberate and consistent effort on the part of the state authority to conserve forests through a multi-faceted approach, tension and conflict between government and the encroaching individuals might remain a perpetual problem. This is critical when the fertile, virgin lands of the forests are a great attraction to the land-poor searching for land and to those whose poor methods of farming have led to soil mining and infertility in the villages neighbouring the forests.

Various regimes have come up with different policies, and the forest officers entrusted with the protection of the forest reserves have taken advantage of the situation to acquire for themselves large tracts of land in the forest reserves as well as to allocate *bibanja* in the reserves to various individuals in exchange for money. It may not be enough simply to instruct a forest officer to enforce the forest conservation laws when his salary comes once every three months, and he is poorly remunerated. It seems likely that such officers will subvert policy and permit illegal charcoal-burning and timber exploitation in order to earn a more reasonable income.

Likewise, inducement of the populations in villages bordering the forest reserves to adopt agroforestry systems as a strategy for maintaining and strengthening buffer zones around the reserves might be futile unless the people are made aware of the many benefits provided by the trees. They also need to be assured that they will receive the benefits from the trees they plant and from those in the forest reserves themselves by their sustainable exploitation of the resources. There is a need for a firm government conservation policy to replace the present ad hoc nature of government involvement in forest conservation, characterised by the hasty individual ideas of particular politicians. While the forest conservation laws might need minor amendments and updating, it might be a useful policy to encourage flexibility by approving certain bylaws in the districts, geared towards forest conservation. Peculiar circumstances may call for particular rules and policies which may partly deviate from the general forest conservation laws and policies in the rest of the country.

At this stage of the study, only a few forest reserves and villages bordering forests have been visited. The intention is to gather more information on land and tree tenure in a wider range of areas within and outside forest reserves and to examine the types of land disputes and their intensity.

This study has identified a few isolated land dispute cases between the herders and the cultivators in the areas bordering the range lands. The most recent conflict was centred on government-sponsored commercial ranching schemes in Western Uganda. The government responded by appointing a nine-person commission of inquiry to look into the formation of the ranches and their management with a view to effecting reforms and improving efficiency in existing and future ranches. In its report, the Commission of Inquiry into Government Ranching Schemes recommends continuing to develop some of the ranches on the same pattern as they were and splitting some to accommodate squatters. The squatters include the indigenous displaced landless pastoralists. Although the government could not endorse all that was contained in the report, it established a Ranch Restructuring Board to scale down the ranches to 3, 2, and 1 square kilometres, while at the same time identifying and resettling the squatters. The board was also charged with providing a long-term policy regarding the management and development of pastoral resources in Uganda (General Notice No. 182 of 1990). It is hoped that the overall functions of the board will go a long way to solving the existing lessee vs. squatter conflicts and to preventing future disputes in the pastoral zones. This study seeks to further monitor developments in this area in order to identify the likely limitations on the suggested policies.

There are areas where individualisation of pastoral resources is increasingly taking place to the detriment of the traditional cattle keepers who previously enjoyed open access to the resources now being fenced off by the "progressive ranchers". In such areas there is a likelihood of seasonal movement of cattle in search of grass and water in total disregard of boundary demarcations. The conflicts between those who graze on the commons and those that own individual farms have not been addressed in this study but will be addressed in the more detailed study that will follow.

Information obtained in the course of this RRA suggests that a large number of en masse evictions take place, especially in the customary public land regions. A certain class of people whose wealth comes from education and consequent employment in government or the modern private sector, often seeks to invoke the sale and eviction provisions of the LRD in a bid to acquire large tracts of land and to evict large numbers of customary tenants. This class of people has privileged access to credit, insider knowledge of opportunities, and the ability to use networks of colleagues to move quickly through bureaucratic mazes. Since these men and women usually have access to investment opportunities which offer rates of return superior to farming, they turn their back on the land and have little serious interest in farming. If they do purchase land, it is often for speculative purposes or for prestige. Some members of this class of people use the land as collateral for non-farming loans. There are, of course, exceptions.

When scores of peasant tenants are being evicted en masse, government, contrary to the LRD, has intervened to preserve peasant tenancies. Such intervention, however, has been ad hoc. Political interventions of this kind feature as an uncertain mechanism, in which the general populace can hardly place its confidence, for thwarting en masse evictions and conflict over land between the minority rich and the majority poor. For the hitherto landless elites and businessmen, land is a

security to fall back to for mortgaging, sale, etc. amidst the uncertain political and economic environment in which speculative commerce predominates, and, therefore, it increasingly will be purchased or grabbed in large acreages in the rural regions by this class of people. In most cases, this is at the expense of the broad masses of people and national development. The land tenure reform process already underway is, in the view of this study, a welcome exercise that should end in the repeal of the controversial LRD and afford customary tenants on public land security of tenure. In the face of a free land market, to alleviate land disputes arising out of new acquisitions of large tracts of land in settled areas, it would be advisable for the new tenure law to reinstate the repealed provisions of the Public Lands Act (1969) which required consent of the customary tenant on public land prior to being evicted by anyone seeking to acquire a superior title to the land he/she tenanted.

Findings during this RRA indicate that disputes involving women are common, especially in the high-population-pressure district of Kabale. This RRA had the limitation that women's actual role in land disputes was not particularly focused upon. Do women frequently mobilise the informal social networks in support of their land claims, or do they appeal to semi-informal and formal agencies such as the RC court or Magistrate's Court? To what extent are these dispute settlement agencies free of the ingrained ideologies about women which often place women in a disadvantaged position vis-à-vis men, and which would, in case of a land dispute, serve to deny the woman remedy? If there are any progressive trends indicating women's appreciation of their plight and attempts to assert and claim their proprietary rights in land, what are the factors accounting for such a development? Among other issues, the forthcoming detailed land disputes study seeks to address women in land disputes with a view to establishing the factors which enhance or inhibit women from obtaining remedy in case of land disputes involving them.

During this RRA it was observed that there is overwhelming disregard of the semi-informal RC courts when it comes to instituting land-related cases in the first instance in the high-population-pressure district of Kabale. Most cases which were improperly instituted in the Chief Magistrate's Court in the first instance had been referred back to the RC I court of the respective area where the dispute arose. The reasons for skipping the less formal courts by litigants is not attributable to ignorance of the proper hierarchy of the court system. It is to a certain extent attributable to the lack of overarching traditional structures of dispute settlement, and, more significantly, to the high population pressure on land in Kabale. This suggests the following hypothesis: the higher the population pressure on land, the more the social control of land and land dispute arbitration shift from the informal/semi-informal institutions (that is, the extended family, the clan or the grassroots semi-informal courts such as RCs) towards the formal institutions.

On the other hand, it has been observed that, although the informal mechanisms of land dispute arbitration still exist in all the districts visited in this RRA, they are not all that active. In the *mailo* land region of Buganda, for example, the role of the clan head in overseeing property and arbitrating land disputes has drastically diminished in value. The new generations who are parties to the disputes are participants in an ever-advancing market economy in which tribal custom and communalism become dysfunctional; these parties do not seem to acknowledge the traditional powers of the clan head. This suggests the following hypothesis: the higher the market-economy impacts, the more the social control of land and land dispute arbitration shift from the informal/semi-informal institutions towards the formal institutions.

Lastly, this study has identified numerous instances of confusion in the RC court system as one of the agencies of land dispute management. The RC court system seems to have similar functions as those of Magistrate's Courts grade II. Litigants, in some cases, do not know where exactly to institute land cases. This RRA has established that the RC court system is ill-equipped to handle land disputes. While the ultimate goal would be to reduce the incidence of land disputes, it is also worthwhile for government to promote a policy which focuses upon improved land dispute management. For that matter, it is suggested that specialised Land Adjudication Committees be established at sub-county level, charged with general administration of land matters within a sub-county and vested with limited judicial powers to try the land disputes now being handled by RC courts. It is also suggested that a Lands Adjudication Tribunal be established at district level to entertain appeals from the sub-county Land Adjudication Committees, as well as receive some land disputes. The forthcoming detailed study will seek to examine further the factors that are likely to enhance or pose limitations on the proposed tribunal system.

In order that the broad masses of the people become willing participants in the programmes geared towards reducing the incidence of land disputes and improving land disputes management, there is need for awareness programmes through which the relevant parties will be educated on the modalities and values of the set plans.



## APPENDIX 1

### A SAMPLING OF THE LAND DISPUTE CASES

**Case 1: Land borrower dies, and the heir resists re-entry by a claiming lender**

(Source: Chief Magistrate's Court Records, Fort Portal, C/S MFP 70/86)

X alleges that he lent *kibanja* to mother of Y and not to Y. Mother died, X seeks to recover his land which now is in utter neglect. Court did not find anything worth calling development on the *locus in quo*. Court rules in favour of X.

**Case 2: Absentee customary tenant finds new tenant on customary public land**

(Source: Chief Magistrate's Court Records, Fort Portal, C/S MFP 38/86)

X is an absentee customary tenant for a long time. Chief/elders gave his land to Y. On X's return there is a dispute between old and new tenant. Case undecided; awaiting lower RC Court records and judgement before Magistrate's Court can give ruling.

**Case 3: Trespassing/boundary dispute**

(Source: Chief Magistrate's Court Records, Fort Portal, C/S MFP 24/86)

X aged 60 years. Y encroaches on her land. Y had earlier trespassed on X's land and court had decided in favour of X. Y trespassed again, hoping that since old woman (X) was about to die, Y would retain the land. The principle of *Res Judicata* applied, and court decided in favour of X.

**Case 4: Land borrower dies and family sells borrowed land**

(Source: Chief Magistrate's Court Records, Fort Portal, S/C MFP 4/86)

X lends land; borrower dies and deceased's family sells the land to Y. X sues Y for trespass and encroachment. X had been living far away from the sold *kibanja*. No ruling on record.

**Case 5: Landowner sells land and compensates tenants; one tenant refuses compensation**

(Source: Chief Magistrate's Court, Kabarole, C/A - 1990)

X is holder of land title where Y is a tenant. X sold his land and called in a government valuer to value the property of Y and other tenants on the land. The others received their monetary compensation, but Y refused on grounds that it was not adequate. Valuation had been carried out in 1984, and the statutory notice to quit the land was given. Y refused to leave although X had gone through proper procedures to have him evicted. Since currency value changes, fresh assessment of Y's property was ordered in 1990. The Commissioner of Lands wrote to the District Administrator and the District Land Committee to find a suitable piece of public land where Y can resettle. After six years, with two years in court, no remedy to the situation had been found.

**Case 6: Eviction of customary tenant on *mailo* land**  
(Source: Chief Magistrate's Court, Masaka, C/A 39/87)

X is registered proprietor of land on former *mailo*. Y trespassed on the land and erected a temporary house. It transpired that, earlier, Y was a tenant on the land and had purchased the *kibanja*. The *mailo* title was subsequently sold to X. Y had to be evicted without compensation. Judgement delivered by Magistrate Grade II. Now on appeal in Chief Magistrate's Court.

**Case 7: Father-in-law seeks to evict daughter-in-law on death of his son**  
(Source: Chief Magistrate Court Records, Fort Portal, C/S MFP 69/86)

X is daughter-in-law of Y. Y's son died leaving his wife, X, in the *kibanja*. Y chased X from the *kibanja* saying that X should go back to her relatives because X "owned no land, house, or property of the deceased". During the life of son, the son was incapacitated and lame. X cultivated the land, had bought iron sheets, and had put up a permanent house. Court decided in favour of X.

**Case 8: Unmarried women vs. brothers (general case)**  
(Source: Interview, District Administrator, Kabale)

Women who have not married and stay on their fathers' land conflict with brothers who do not allow them to inherit portions of the land. If such women plant or build, the brothers destroy the crops and house. This results in suits.

**Case 9: Women who separate from husband, leaving children behind and, on the death of the husband, return, giving rise to land disputes (general case)**  
(Source: Interview, District Administrator, Kabale)

A husband dies. His wife, who had separated from him and left behind the children, returns. There are disputes between the "returnee" and present wife/wives or between her and the male step-children of the deceased.

**Case 10: Step-mothers and step-children disputing over land (general case)**  
(Source: Interview, Chief Magistrate, Kabale)

There are many boundary disputes, especially amongst customary tenants. Most of these tenants have got polygamous families. Each child takes over the land the mother was cultivating. There are complications because, upon marriage, the father-in-law gives the daughter-in-law land as a gift in marriage, welcoming her into the family. In such a case, a woman who has produced only daughters will have her land contested and taken by the sons of the other wives. At times, if they are adjoining plots of land, the sons will exceed the boundaries and encroach on the step-mother's land.

**Case 11: Scarcity of land and failure of the man to make proper/adequate allocations of land to the wives and the children (general case)**  
(Source: Interview, Chief Magistrate, Kabale)

There are numerous instances where a husband wants to give a second or third wife some land from the holding of the first wife. A man may have three wives and fifteen children. The division of land

amongst the children and the wives becomes quite difficult for the man. A number of disputes arise between and amongst the wives, between and amongst the wives and the children, and between the father and the children. In some cases, sons have killed fathers over land.

**Case 12: Deceased man's family denying land to widow**

(Source: Chief Magistrate's Court Records, Kabale, C/S No. MKA 27/91)

X is suing Y for taking eight strips of land in different locations. Y is the wife of X's uncle. The uncle is dead. X has his own land elsewhere in Kabale. The land under dispute belongs to a brother of the deceased who is disabled. X claims that the land was put under his care by agreement. Judgement pending.

**Case 13: Co-wives disputing over land on death of husband**

(Source: Chief Magistrate's Court Records, Kabale, C/A, MKA No. 30/91)

Co-wives disputing over the share of land which their late husband left to them. Judgement pending.

**Case 14: Brothers disputing over share of land bequeathed to them**

(Source: Chief Magistrate's Court Records, Kabale, C/S MKA No.20(A)/91)

The three are brothers, X, Y, and Z. X wanted to erect a house on land left to them by their father. Y and Z cut down X's fence and threatened to cut him with a panga if he built the house. Judgement pending.

**Case 15: Brothers disputing over land**

(Source: Chief Magistrate's Court Records, Kabale, C/A MKA No. 36/91)

Brothers disputing over ownership of land left to them by deceased father. The elder brother, upon receipt of his share of land, sold it and migrated to another area. He later came back and is grabbing and selling off the land of his younger brothers. Judgement pending.

**Case 16: On separation, husband gives land jointly acquired with first wife to the other wives**

(Source: Chief Magistrate's Court Records, Kabale, C/A No. 8/90 origin C/S. RC III Bubare Sub-county)

X has eight wives. Y was the first and eldest wife. During their stay together, they acquired three different pieces of land. X sent away Y, giving the land acquired to the seven other wives. Y sued to possess part of the land. Chief Magistrate's Court decided that eldest wife (Y) be given some land.

**Case 17: Cousins evicting and denying their niece land on death of all the parents**

(Source: Chief Magistrate's Court Records, Kabale, C/A MKA No.7/90)

X and Y are first cousins (their fathers were brothers). Z, a woman, was the only offspring of her father (now deceased, and one of the aforesaid brothers). Y wanted to take over all the land of Z's deceased father. Case pending.

**Case 18: Son evicting father from his land**

(Source: Chief Magistrate's Court Records, Kabale, C/A, MKA No.15/90 origin, Muko, RC III Court)

The father gave the son land. The son is now chasing away the father; he does not give the father assistance by way of clothing or food. The father is free to change his mind. Chief Magistrate's Court rules that the father is free to use the land undisturbed, despite the fact that he had given it to a physically able young man who now cannot cater for him.

**Case 19: Brother sells off his sister's share of land on death of their father**

(Source: Chief Magistrate's Court Records, Mubende, C/S MME No. 36/91)

X's father died leaving two pieces of land. X, a woman, was given one piece by the clan leaders. Her brother took another piece. The brother sold the piece belonging to X to Y. X sues Y. Case referred back to RCs I, II, and III, but the courts failed to finalise the matter. Case pending in Chief Magistrate's Court.

**Case 20: Succession rights (general case)**

(Source: Interview, RC III, Buyobo Sub-county, Budadiri county)

There are a number of inheritance rights disputes, especially in cases of intestacy. Most people here are essentially polygamous. Because of the high population, distribution of land between and amongst children and wives becomes extremely hard. Some would-be beneficiaries of land become disenfranchised. There arise intra-familial land disputes. The disputes become more complicated where fathers unfairly allocate land, favouring the children of one wife against the others.

**Note:** The study of court records in the Chief Magistrate's Court, Mbale revealed a large number of cases relating to intra-familial land disputes with about 3/4 of the cases having similar issues as those reported above.

**Case 21: Father re-allocates piece of land and gives it to second wife instead of son**

(Source: Chief Magistrate's Court Records, Kabale)

X is son of Y. X claims that Y had given him a piece of land when he married, as is Bakiga custom. X had been using the land in dispute from 1981 to 1989. X states that he was given the land in dispute by both his mother and father and that the father now wanted to give the land to his second wife. Chief Magistrate confirmed RC III ruling and dismissed the appeal, giving the land to the father.

**Case 22: On death of his brother, the uncle seeks to sell the land and house occupied by his niece (a student minor)**

(Source: Chief Magistrate's Court Records, Kabale)

X dies leaving a wife and ten-year-old daughter. The wife returns to her own father's place. She leaves the school-going daughter in the house of the deceased father. Y, a brother-in-law of the woman, seeks to sell the land and house where the daughter was staying. RC III rules that he can't sell the land, for it belongs to the child who should be looked after in the house on that land. It would be for the child to sell if she wished, after the age of eighteen.

## APPENDIX 2

### THE WORKSHOP VIEWS

The following are views aired during the workshop on "Land Disputes in Uganda: An Overview of the Types of Land Disputes and the Dispute Settlement Fora," which was held on 10 March 1993 at the Uganda International Conference Centre:

#### Mr. Charles Twinomukunzi, Managing Director/Consultant, Incafex:

- ◆ Literature relating to government ranches prior to their establishment should be read. The issue of government ranches should be addressed in more detail; this issue has been taken lightly in this report.
- ◆ There are many fora involved in the settling of land disputes: RC Courts, Magistrate's Courts Grade I and II, Chief Magistrate's Courts, the D.A.'s office, the IGG, and Registrars of Titles. We might be adding to the problem by establishing lands Adjudication Committees and Tribunals, as suggested in this report.
- ◆ How will the Tribunal at Gombolola (sub-county) level know the real problem in village A? This is the area where RCs would be better agencies.
- ◆ The report identifies problems very well but does not give us solutions.
- ◆ The report refers to lands adjudication committees, but it does not give which kinds of people should constitute the committees.
- ◆ If in Uganda there are already difficulties in having to pay the people involved in dispute settlement, why then suggest the increase of these people by establishing more Adjudication Committees? What should be done is to give better remuneration to the already available people involved in dispute settlement.

#### Honourable member of the National Resistance Council (NRC), Bokora county, Moroto:

- ◆ This study does not cover the whole country. Karamoja, for example, has not experienced many land disputes between individuals. The conflicts here are between the people and government: all good land is reserved for animals, as Game Reserves. People have started killing game in order to get land where they can settle.
- ◆ In Karamoja there are communal grazing areas; disputes are not that pronounced except when there is lack of water. There is arable land, such as in Namalu area, where people are now concentrating. There are some disputes here which are minor; people here are not yet introduced to land titles.

- ◆ The matter should be pushed to government so that it degazettes some areas in Karamoja in order to give people opportunity to cultivate.
- ◆ There are land disputes between the Iteso and Karimojong in relation to land between the Teso corridor and Karamoja.
- ◆ There should be a study in Karamoja that will come up with advice to government on how these conflicts can be resolved.

**Honourable David Pulkol, Deputy Minister of Education, NRC member, Moroto, Chairman, Ranch Restructuring Board:**

- ◆ There exist incapable systems in government for solving land disputes; we tend to cling to institutions which no longer work; even some of the rules are archaic.
- ◆ The study team should examine the changing character of disputes and the institutions of dispute settlement (that is, their evolution).
- ◆ The state encroached on the land of the traditional pastoralists. The pastoralists know who owns land; the society here has mechanisms to regulate land use. Government demarcated this pastoral land without due consideration to the traditional owners. The study should focus on tracing the history of the local institutions. Is it proper simply to replace the traditional pastoralists with formal institutions, or should we get a hybrid combining both institutions?
- ◆ There is need to address the issue of refugees in the ranching areas: who is a refugee, and who is not a refugee?
- ◆ There is a refugee policy, that refugees in camps should not keep more than two cows. The refugees have big herds of cattle, and have had to go to the game or forest reserves to herd their cattle there.
- ◆ In the pastoral areas, there were partnerships among three or more people in relation to ownership of land. On the death of a partner, there are conflicts. Presently, the Ranch Restructuring Board (RRB) meets difficulties in reallocating land previously held under partnerships. There is always tension where one partner quietly obtains title to the land without the knowledge of his/her fellow partners, yet these other partners continue to graze on the land thinking that they all own the land.
- ◆ Consider inheritance laws in relation to land fragmentation.
- ◆ People are coming up with land titles in the pastoral areas without the knowledge of the "squatters"; land adjacent to common watering dams has all been fenced off and titled, with no track left for the traditional herders to take cattle for watering. The RRB is trying to make passage corridors for cattle; the question however is whether the corridors will be maintained.

- ♦ This report lightly addresses the serious evil of corruption in the courts.
- ♦ Consider evictions, the clarity of our laws, and the general awareness of the people: to what extent are these a source of land disputes?
- ♦ The laws should be made in consideration of the traditional practices and rules. Recommendations to government should not lose sight of this.

**Honourable Kisamba-Mugerwa, Minister of State, Office of the President, NRC member, Bamunanika County, Senior Research Fellow, MISR:**

- ♦ Change the methodology and come up with specific recommendations.
- ♦ The disputes are specifically located; it is possible to have zones studied according to certain farming systems, for example, the pastoral systems.
- ♦ One can exhaust a theme by studying disputes of a key region, for example, Kabale and not Mbale, for these areas have similar types of disputes.
- ♦ Categorise national parks, game reserves, and forest reserves. Have about five locations and case studies. Categorise the nature or type of farming systems within a zone.
- ♦ The report quickly gives examples to explain what is happening in Kibale Forest Reserve without having analysed the “pull” and “push” forces; there should not have been a reference to the “violation of human rights” during the Kibale evictions. If the study had properly analysed the facts and circumstances surrounding the eviction, it should have come up with a different result. Do more homework and establish at what stage does government evict, and what machinery is used to evict.
- ♦ Visit refugee camps and examine pastoral resource ownership and management amongst the refugees and the neighbouring nationals. What types of conflicts exist, and what land use patterns exist in areas like Nakivale Refugee Camp or Orukinga Valley?
- ♦ Government’s attitude is that pastoralism is not a useful economic activity; yet pastoralism is a useful economic activity that may even protect the environment. Government established refugee camps and military barracks in pastoral zones—should this be the policy?
- ♦ In some cases the cultivators have encroached on pastoral land, under what circumstances should this be permitted or prevented, and how?
- ♦ Categorise disputes in the pastoral areas: the cultivators, the state military barracks and the reserves all encroach on the pastoral areas.

**Mr. John Mubiru, Commissioner for Agriculture, Ministry of Agriculture and Animal Industry:**

- ♦ RCs should be considered in light of the possibilities of evolving hybrid systems of dispute management, that is, marrying the formal and the informal dispute settlement mechanisms.

**Mr. Delius Asiimwe, Research Fellow, MISR:**

- ♦ The study should have addressed common access property regimes vis-à-vis individualisation of landownership.
- ♦ When referring to the informal and formal courts, be clear as to what is informal and what is formal. For example, the head of a *Manyata* might constitute a more formal arbitration forum in Karamoja than the ordinary state courts.
- ♦ The study should be more scientific; there should be an attempt to measure variables and make certain comparisons in order to establish a basis for preference of a given system of dispute settlement against another system.

**Mr. Batungi, Head, Department of Surveys, Faculty of Technology, Makerere University:**

- ♦ To alleviate land disputes, the methods of survey should be changed so that they become quick and simple, just as the colonial government used to do while giving out *mailo* estates. The quick and simple methods would encourage the acquisition of land ownerships and this is likely to reduce conflicts between the customary land occupiers and the few well-to-do who are always grabbing land. The simple and general methods of survey should be encouraged for the purposes of obtaining a title, then later accurate surveys could be carried out.

**Dr. E. Nabuguzi, Research Fellow, MISR:**

- ♦ Intensify research in the informal mechanisms of land dispute management. These would show us the gaps in policy; they would show us the patterns of local resource management. If we are to adopt policy options that are responsive to local situations, the study ought to begin with a focus on the informal area/practices and work upwards.

**Dr. Mark Marquardt, Senior Researcher, MISR:**

- ♦ Specify the respective original jurisdiction for the various types of disputes.

**Mr. P. Bakashabaruhanga, Permanent Secretary, Ministry of Lands, Housing and Urban Development:**

- ♦ If customs deny land to women, why not respect those customs? The study should investigate to what extent it would be possible to change the ingrained customs and beliefs.

- ♦ The disputes caused by administrators, for example, District Land Committee members, should be addressed in more detail.

**Muluri Mukasa, NRC member, Nakasongola county:**

- ♦ There should be a reasonable limit in the hierarchy of appeal.
- ♦ It is necessary for us to identify a proper structure through which disputes should be settled.
- ♦ Although the most respected courts are the Magistrate's Courts, if matters were to be taken to the Magistrate's Court straight away, certain local factors may not be taken into account.
- ♦ There are conflicts where communal property resources are being fenced off by a few rich individuals. The elderly owners of the common access areas might have given an easement to some categories of people, but the succeeding heirs may withdraw such an easement, thereby causing land disputes.



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