



# Interrogating Large-scale Land Acquisitions and Land Governance in Uganda: Implications for Women's Land Rights<sup>1</sup>

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Uganda Country Report

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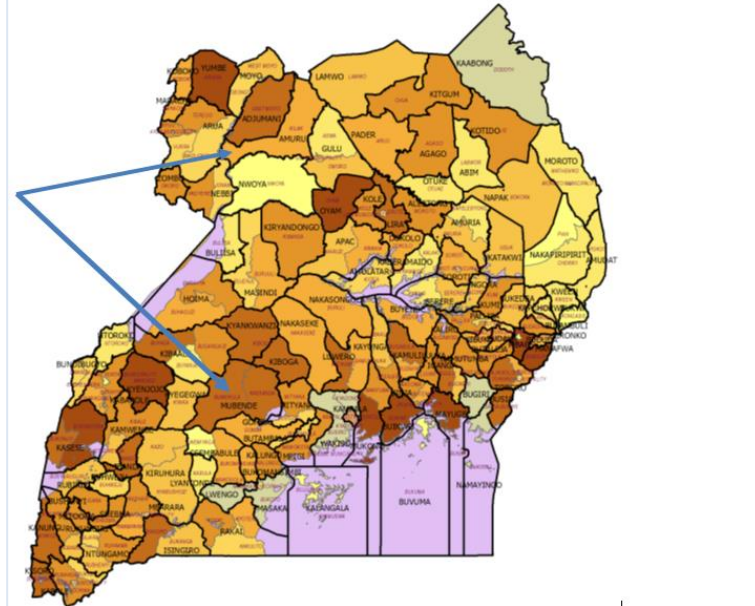
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## **Table of Contents**

1. Introduction .....	5
1.1 Large-scale Land Acquisition in Context .....	8
1.3 Profile of the study sites .....	10
1.4 A Note on the Methodology .....	11
2. Uganda’s Legal Framework for Land Governance and the Gender-blind Spots.....	14
3.0 Crossing the Iron bar: The Case of Kaweri Coffee Plantation, Mubende .....	17
3.1 Overview of acquisition .....	17
3.2 The Actors .....	18
3.3 Effects of the Acquisition .....	21
3.4 Citizens’ Action.....	24
3.5 The Impact .....	25
4.0 Face-to-Face with Power: The case of Amuru Sugar Works .....	26
4.2 Acquisition Process .....	27
4.3 Citizens’ Action.....	31
4.3.1 The Acholi Parliamentary Group’s Advocacy .....	31
4.3.2 Civil Disobedience: The Critical Place of Women’s Agency .....	33
4.4 Impacts and Effects of Acquisition Process .....	36
4.4.1 On the question of Transparency and Legitimacy .....	36
4.4.2 The Impact .....	37
5. Towards a legitimate, accountable and equitable land governance terrain for LSLAs in Uganda: A Synthesis .....	40
5.1 Examining the Roles of different actors.....	41
5.2 The processes of consultation and negotiation were top-down and flawed .....	44
6. EMERGING POLICY QUESTIONS .....	50

7. Conclusion.....	51
References .....	53

Map of Uganda Showing the Two areas under this Study: Districts of Mubende and Amuru



## 1. Introduction

Land is a key asset for the livelihood of the majority of people and is a key ingredient in the constitution of rights, entitlement as well as identity. Land is a key economic resource for agricultural production and accumulation as well as a key signifier in the constitution of social status and citizenship. Equally so, land disputes tend to constitute the largest percentage of conflict at household and community levels. Because of the potentially volatile nature of land, its governance is a critical issue and land issues have been noted as some of those that demand careful management.

Why large-scale land acquisition? Large-scale land acquisition, though not new, has assumed greater significance and attracted renewed attention and debate in the current era. LSLAs have in the last decade or so intensified in quantity, speed and size, particularly in the wake of the 2008 food crisis; and in this, Africa has been the most affected. For example, the World Bank estimates that 70% of the 45 million hectares of land sourced in 2009 was in Africa (Matondi et al, 2011: 3). To appreciate the magnitude of increased interest in African lands, Deininger points out that this amounted to more than twenty years of previous land expansion (2011: 218).

The LSLA phenomenon has bred two sets of literature. One set of literature focuses on the ways in which this phenomenon poses security threats of violence, conflicts and disputes (Joireman, 2011), as both issues of procedural justice, the right to determine whether or not to give up land; and distributive justice in terms of fair compensation for assets lost. Another set of literature, debates the impact of these large scale-land acquisitions on the wellbeing of local communities, and particularly vulnerable groups such as women. In one camp are the optimists such as Von Braun and Meinzen-Dick (2009) as well as Boamah (2011) who note that large-scale agricultural projects could potentially achieve the following: generate job creation both on and off farm; increase infrastructural development, particularly health posts and schools; increase food production and access to improved farming technologies and practices. The camp of pessimists such as De Schutter (2011), Schoeneveld et al. (2011) and White et al. (2012) argue that LSLAs (often in form of land grabs) simply increase the speed at which a market for land develops in southern economies and makes land otherwise held communally and available to peasants no longer accessible to them. This is the livelihood angle that is concerned with the likelihood of displacement of the powerless and the resultant impoverishment of the rural communities.

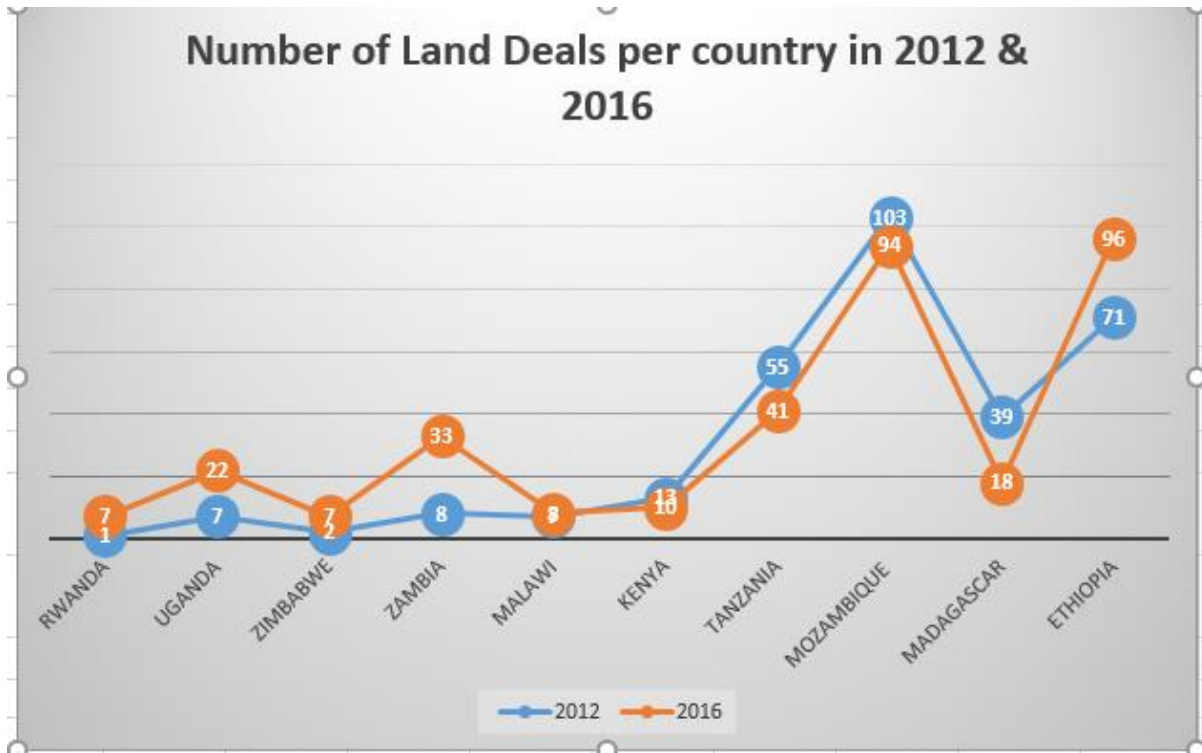
Perhaps the larger question becomes the context under which these acquisitions take place. More often than not, such land deals tend to take place in the context of weak land governance terrains with lack of transparency and unaccountable systems, hence leading to displacement of populations without due consultation and compensation. Indeed, consultation and compensation may raise a separate debate to the effect that, more often, poor people are compelled to participate in consultations where they originally had no intrinsic interest. The consultation may take place within the context of weak legitimacy and accountability as well as with fragile communities to claim their rights in their diverse nature. In this case, consultation and compensation merely form part of the perfunctory array of land grabs. Furthermore, it also all depends on who gets consulted and who is included, which brings in the question of equity, especially in as far as women who have historically not had equal access to land as their male counterparts are concerned. This is especially so as the relative inclusive spaces in traditional systems tend to become undermined by increased individualization and defective incoherent systems of land governance.

Uganda has not been spared by the current global land rush. Over the last two decades or so, there has been a relative land rush by foreign companies as well as national companies and individual accumulators and speculators. Compared to other countries in the region, though, Uganda had not yet experienced extensive LSLA (especially by foreigners) until recently. For some observers, day-to-day grabs of relatively small pieces of land from the poor and the vulnerable would have more social significance in the country than LSLAs. Yet the situation is slowly changing. Compared to its neighbours in the region – Tanzania, Ethiopia and Kenya -- Uganda had the least acreage in terms of LSLAs in 2012; but by 2016 it had surpassed Kenya and was only second to Tanzania (see Table 1 and Figure 1).

**Table 1: Large-scale Land Acquisitions in East and Southern Africa**

Target Country	No. of Deals		Total ha	
	2012*	2016**	2012*	2016**
Rwanda	1	7	3,100	111,130
Uganda	7	22	121,512	153,155
Zimbabwe	2	7	201,171	354,449
Zambia	8	33	273,413	1,163,596
Malawi	7	8	310,147	75,952
Kenya	13	10	633,500	213,387
Tanzania	55	41	1,324,475	504,483
Mozambique	103	94	2,190,473	3,093,785
Madagascar	39	18	3,779,741	757,264
Ethiopia	71	96	4,748,753	2,639,632

Source: \* Land Matrix Portal 2012; \*\* <http://www.landmatrix.org/en/get-the-idea/global-map-investments/> accessed On



August 18, 2016

Hence, the phenomenon of LSLA is on the rise. As seen from the available data, official acquisition rose from 7 involving 121, 512 ha to 22 deals with 153,153 ha in 2016. Hence this is the opportune time to amplify the knowledge on the terrain of LSLA and thereby inform accountable, legitimate and equitable acquisition processes, now and in the periods to come.<sup>2</sup>

This research study sought to interrogate large-scale land acquisitions (LSLA) in sub-Saharan Africa and its implications for women’s land rights. The main research question was how and under what conditions women can be empowered to effectively engage with processes of LSLA to ensure that the legal and policy frameworks foster better accountability and legitimacy in land governance in sub-Saharan Africa. The report is organised in six sections as follows: Section one is the introduction that provides a general definition of large-scale land acquisition and attempts to place the question of women’s land rights in context. It also provides an overview of the research process and a profile of the study sites. Section two is a mapping of Uganda’s legal framework,

<sup>2</sup> During the study process, this stance was often challenged in a sense that it takes acquisition as a default condition which does not seem to leave room for communities to reject acquisition of their land. In effect, the research was seen as condoning land grabs. However, the study sought to create evidence to support a conversation for a more gender-inclusive, accountable and legitimate land governance terrain in the context of increased quest for large-scale acquisition.

highlighting issues of accountability and legitimacy, and specifically looking at the place of women's land rights in the context of LSLAs. Sections three and four present the case studies of Mubende and Amuru respectively. The Mubende case is represented by a woman crossing the iron bar. This, in a sense, represents a concluded deal with people displaced, who, now, have to cross the iron bar on a hitherto public road. The Amuru case is represented by the notion of "face-to-face with power", encapsulating the struggle by the community in general, and women in particular, to resist what they saw as unfair and illegitimate acquisition of their customary land through the use of weapons of the weak, to borrow the term employed by (Scott --). Section five is a synthesis of the key issues, towards an understanding of accountability and legitimacy in land governance and acquisition in Uganda. Sections six and seven present the key policy implications and conclusion respectively.

### 1.1 Large-scale Land Acquisition in Context

What constitutes LSLAs and what is its significance in the current development narrative? LSLAs involve acquisition of huge chunks of land larger than 200 hectares. LSLAs arise in a context of increased demand for land for development projects such as construction of roads, dams, or large-scale plantation agriculture and mineral extraction.

The mention of LSLAs often raises anxiety due to the reality in which it has been synonymous with land grabs, whether in form or substance. Large-scale land acquisition is not necessarily the same as land grabbing, but acquisitions may amount to land grabs if: (i) they involve human rights violations (ii) discriminate against women (iii) do not offer information, and (iv) do not offer an opportunity for informed consent, that is, are not through transparent processes (Oxfam, 2012). Ensuring global food security has been presented as among the key justifications for LSLA in Africa for purposes of Agricultural investment (FAO, 2009). While LSLA is seen as one of the key development alternatives for the country, there is need for a candid debate on the place of the poor and powerless in general and women in particular, who depend on land solely for their livelihood. The specific case of Uganda demonstrates the fact that LSLA is taking place within a context of complex and incomplete land governance. Critical analysis points to very fragile situations that are fueling community tensions and land losses, with dire consequences for women who have the primary responsibility for food production. The inherent cracks adversely affect the poor and, more so, women whose land rights are rather fluid and dependent on multiple factors.

The dominant discourse on LSLAs has been rather around the phenomenon in terms of its repercussions, i.e. largely dwelling on effects after the fact. Hence in as far as women are concerned, the argument has been on the gendered impacts and how women tend to be the worst victims of its effects such as polarization, violent conflicts, loss of livelihoods and undermined food security (Chu, 2011). This discourse is also situated within the overall impetus that takes compensation of the local communities as the overriding measure of LSLA good practice (World Bank, 2010). Yet women should not be conceptualized as subjects of the after effects and only in the terrain of compensation. LSLAs ought to be interrogated right from the impetus through the process to the effects, meaning that investments must of necessity pass the accountability test throughout the process and not merely at compensation stage. This then brings into the question the need to analyse the gender terrain of the acquisition process and specifically looking at



women's agency in acquisition processes and the place of the land governance framework in particular contexts.

At the international level, there have been attempts to establish a normative framework that can guide such phenomena as LSLAs. For example, the Land Tenure Guidelines by the FAO are voluntary benchmarks that seek to promote responsible governance of tenure of land, fisheries and forests, with respect to all forms of tenure: public, private, communal, indigenous, customary, and informal. Their overarching goals are to achieve food security for all and support the progressive realization of the right to adequate food in the context of national food security. Guidelines are also intended to contribute to achieving sustainable livelihoods, social stability, housing security, rural development, environmental protection, and sustainable social and economic development. The voluntary guidelines operate on 10 principles (see Box 1).

**Box 1: Voluntary Guidelines on Responsible Governance of Tenure - FAO**

- i) **Human Dignity:** recognizing the inherent dignity and the equal and inalienable human rights of all individuals
- ii) **Non-Discrimination:** no one should be subject to discrimination under law, policies and practices
- iii) **Equity and Justice:** recognising that equality between individuals may require acknowledging differences between individuals
- iv) **Gender Equality:** ensure the right of women and men to the enjoyment of all human rights
- v) **Holistic and sustainable approach:** recognising that natural resources and their uses are interconnected
- vi) **Consultation and Participation:** engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions and ensuring active, free, effective and meaningful and informed participation of individuals and groups in associated decision-making processes
- vii) **Rule of law:** adopting a rules-based approach through laws that are widely publicised in applicable languages and are consistent with national and international law under applicable regional and international instruments
- viii) **Transparency:** clearly defining and widely publicizing policies, laws and procedures in applicable languages
- ix) **Accountability:** holding public individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of rule of law
- x) **Continuous improvement:** states should improve mechanisms for monitoring and analysis of tenure governance in order to develop evidence-based programmes and secure on-going improvements

The other example is the World Bank's Land Governance Assessment Framework (LGAF). Accordingly, the LGAF is intended to help various stakeholders at benchmarking governance, identifying priority areas for reform and also be used in taking forward focused policy dialogue, built around five indicators: legal and institutional framework, land use planning, management and taxation, management of public land, public provision of land information, dispute resolution and management. The framework would ideally provide information on how governments are faring on the various aspects of land rights protection in the various tenures as protected in the laws. It is believed that using the framework to advocate for reform in the land sector would go a long way in promoting the role of that sector in economic development and as well have positive implications for LSLA in terms of protection of small-scale farmers against the larger foreign investors in the agricultural sector.

However, all these standards are either voluntary or merely performance indicators and not legally binding. These guidelines also seem to assume an accountable and legitimate land governance framework, yet the very challenge is how to make governments play their role especially in terms of fulfilling rights of citizens. Whereas these standards can be used in terms of direct engagement with acquisition processes, the more profound issue should be about interrogating these processes at a broader level that puts the ideology and practice to test in terms of substantive rights of women to the basic means of livelihood.

### 1.3 Profile of the study sites

The study was conducted in Mubende and Amuru districts. The specific cases of acquisition covered were Kaweri Coffee Plantation in Mubende and the then underway Amuru Sugar Works respectively.

#### **Mubende District and the case of Kaweri Coffee Plantation**

Mubende District is located in the Central Uganda. It borders Mityana District in the East, Kiboga and Kyankwanzi in the North, Sembabule and Gomba in the South, Kyegegwa and Kibaale in the West. Mubende District's multi-tribal immigrations over the years explain the increase in population due to expanses of seemingly unoccupied land. The main economic activity is subsistence agriculture. Over 70% of the population depends on subsistence farming as the main source of livelihood, with maize as the main food and cash crop.<sup>3</sup> The other crops in order of ranking are bananas, cassava, beans, sweet potatoes, ground nuts, Irish potatoes and sweet bananas.

Kaweri Coffee Plantation Ltd, established in 2001, is the largest Commercial Coffee Farm (producing robusta coffee) in Madudu sub-county, covering an acreage of 2,512ha (Buwekula Block 99 Plot No. 1), about 20 kilometres from Mubende District headquarters. The company is involved in the production of Robusta coffee. It is owned by the Neumann Kaffee Grupe (NKG), a German company founded in 1922, with its headquarters in Hamburg and having 40 other operating companies promoting coffee in 23 countries worldwide.<sup>4</sup>

This project was conceived in 2000 by government of Uganda to be in line with the national Plan for Modernization of Agriculture (PMA) conceived the same year. Among others, PMA encourages the role of the private sector in the commercialization of agriculture.<sup>5</sup> The project was apparently designed initially as a nucleus coffee farm to support a scheme of outgrowers throughout the district, which would later roll out in other coffee-growing districts countrywide. This perspective seems to have been abandoned along the way.

Kaweri is a case of a long, complex and troubled acquisition process. Accordingly, Uganda Investment Authority purchased land from a private mailo owner and leased it to the foreign company - Neumann Gruppe GmbH (NG). The process of acquisition is said to have started in the year 2000 with the 99-year lease concluded in 2001.

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<sup>3</sup>Ministry of Agriculture and Fisheries 2009- Uganda agriculture census 2008/2009

<sup>4</sup>U:\HOLD\PR\Kaweri\2013-01-30 Facts & Figures NG Und Kaweri - ENG.Docx.

<sup>5</sup>[www.nkg.net/newsroom/nkginuganda](http://www.nkg.net/newsroom/nkginuganda)

## **Amuru District and the case of Amuru Sugar Works**

Amuru District is one of the districts forming the Acholi sub region in northern Uganda. Until 2006, Amuru formed part of the greater Gulu District. The district is bordered by Adjumani to the north; South Sudan and Lamwo District to the northeast; Gulu District to the east, Nwoya District to the south, Nebbi District to the southwest and Arua district to the west. The administrative headquarters of the district are at Amuru, located approximately 60 kilometres by road, northwest of Gulu, which is the largest municipality in the sub-region. The total land area of Amuru is 920,000 ha. Like in other districts in Acholi and Lango sub regions, Amuru suffered the prolonged Lord's Resistance Army (LRA) war for a period of 20 years. As a result of the war, most populations were in internally displaced peoples (IDP) camps. The district is predominantly rural and lacks any tarmac road. The main economic activity is subsistence agriculture, employing 98% of the population. Due to very fertile soils, arable land constitutes 90% of the total land area in the district. However, less than 1% of the land is currently under cultivation due to insecurity caused by the LRA. The main crops grown include: cotton, tobacco, maize, millet, simsim, sorghum, rice, sweet potatoes, cassava, beans, peas, sunflower and ground nuts. Customary land ownership is the predominant type of land tenure and a few cases of leasehold, freehold (churches, schools, hospitals and towns) and private mailo. Land ownership in the Northern region is distributed as follows: 0.01% mailo/freehold, leasehold (8%) and customary (91.9%)<sup>6</sup>.

Amuru Sugar Works is a case study of an impending acquisition that will be implemented in Amuru District, and in particular Lujoro LCI administration area, comprising of 150 sub villages. Discussions with the local leaders and the community show that the project area stretches from Ume River up to the river Nile and mostly in the villages Bana, Akado, Kololo, Lari Alula, and Lakang. The area is predominantly occupied by six major clans: Lamogi, Pagak, Boro, Parabong, and Pabbo. By the time of the study, the Amuru Sugar Works Project was still an impending acquisition. ASW was supposedly a joint venture with government of Uganda shareholding of about 40% and 60% for Madhvani Group of Companies. The process of acquiring land by the Madhvani Group in Amuru began in 2006 but by end of 2015 had not yet been concluded due to community resistance.

## **1.4 A Note on the Methodology**

### **1.4.1 The Research Question**

The main research question was how and under what conditions can women be empowered to effectively engage processes of LSLA to ensure that the legal and policy frameworks foster better accountability and legitimacy in land governance?

Subsequently the research sought to answer the following questions:

- i. What are the various accountability mechanisms that currently govern the actors, instruments and processes involved in LSLAs?

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<sup>6</sup>UBOS, 2010, Abstract on Land Status in Uganda

- ii. To what extent do citizens, men and women view the various actors and processes involved in LSLAs as legitimate?
- iii. How have these processes, instruments and actors enhance the positive/negative impact of LSLAs on women and in what ways do the accountability mechanisms in place respond to the impact of LSLAs on women more specifically?
- iv. What strategies and instruments have been developed and used by women to demand accountability in LSLA transactions?
- v. To what extents can the strategies and instruments developed by women to demand accountability help strengthen their ability and agency to ensure legal, economic and social protection or greater accountability in the process of LSLAs?
- vi. What conditions need to be in place to ensure that public and non-public actors promote strategies/processes that foster gender inclusive laws, policies and practices around LSLAs in a way that supports gender equality outcomes.

### 1.4.2 The Approach

The study principally employed qualitative approaches which included focus group discussions (FGDs), community meetings and key informant interviews. In each of the two districts, the research team started the process with key informant interviews at the district level and went ahead to select the sub counties for in-depth study. Purposive sampling was used to select communities based on the KI interviews as well as on information obtained from a comprehensive literature review on LSLAs in the regional context. The sub counties selected were Madudu in Mubende and Amuru in Amuru. The specific villages visited included Kitemba, Luwunga, Kyota and Kijjunga in Mubende and Akado, Bana, Kololo and Lakang in Amuru.

Interviews and FGDs targeted women and men in the targeted communities, community leaders, CSOs, policy makers; land management bodies; foreign investors in LSLA and youths. Others focus group discussions and dialogues were conducted among men, women/women’s leaders and community leaders. Key informant interviews were held with actors in land institutions as well as key government ministries (see Table 2 for number of respondents in each category).

**Table 2: Total Number of respondents in Categories**

Category	FEMALES	MALES	TOTAL
Key Interviews	9	21	30
Focus Groups	105	136	241
<b>Grand Total</b>			<b>271</b>

### Data collection methods

**Interviews:** In-depth interviews were carried out with a selected number of key state and non-state actors. This included policy makers, government officials in relevant ministries that oversee land transactions, local government officials/chiefs in localities where large-scale land transactions have taken place, religious leaders and civil society actors advocating on land issues. The key respondents were chosen based on their positions at national and district level. Some foreign

investors involved in the LSLA were interviewed, though the response rate was not satisfactory since some declined to be part of the research.

**Focus Group Discussions:** Focus group discussions were held in the villages visited. These were organised as follows:

Amuru Sub county: Two (2) female (only) FGDs in Akado and Bana villages, one (1) FGD male (only) in Kololo, one (1) mixed group (female and male) in Kololo, one (1) FGD with Clan leaders and one (1) FGD with traditional leaders -RwotKwer.

Madudu Sub county: Two (2) FGDs male (only) in Luwunga and Kyota villages, two (2) Mixed FGDs in Kyotaand Kijunga villages, two (2) FGDs female (only) in Kitemba and Luwunga.

A specific orientation of the study was to amplify the voice on LSLAs as part of the research process, in ways that would promote policy dialogue. The project initiated a public dialogue with policy makers, advocacy groups and actors involved in LSLA at the national and local levels on issues of accountability and legitimacy in LSLA. Research briefs, flyers and a video documentary provided avenues for deepening the conversation and narratives regarding women in LSLAs in Uganda. Additionally, a Web blog was created for online discussion and posting of preliminary research findings on the question of LSLA and women in Africa. These discussions and feedback helped to refine the analysis of evidence as well as enhance general community awareness on the issue of LSLAs.

## **Data analysis**

In-depth interviews and focus group discussions were analyzed thematically. During the analysis, the interest was drawn from the processes of large-scale land transactions, the key actors involved in the processes, the place and role of women's agency in these transactions, the extent to which issues of accountability and legitimacy, particularly from the perspective of women, were addressed in the transactions; and the successful responses or otherwise of women to these processes. We were particularly interested in the mechanisms/strategies that women who were successful in ensuring accountable and legitimate land transactions employed.

## **Ethical Considerations**

For both respondents of the focus group discussions the research team conveyed commitment to maintaining confidentiality and professionalism in all stages of the study. The study obtained research clearance and informed local authorities on the intentions of the study. Participants were notified to be free to withdraw from the study at any moment and were not required to respond to questions they felt uncomfortable with.

## **2. Uganda's Legal Framework for Land Governance and the Gender-blind Spots**

The Constitution of the Republic of Uganda provides that land belongs to the people, to the citizens of Uganda, vested in them in accordance with the land tenure systems provided for in Article 237. The recognized land tenure systems are: Mailo, customary, leasehold and freehold.<sup>7</sup> Although Article 26 of the Constitution emphasizes protection from deprivation of property, the protection is not absolute. Compulsory acquisition of property remains an available option for the government, although it must conform to the requirements set out under Article 26 (2):

- (a) the taking of possession or acquisition is necessary for public use or in the interest of defense, public safety, public order, public morality or public health; and
- (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for-
  - (i) prompt payment of fair and adequate compensation, prior to the taking of possession of the property; and
  - (ii) a right of access to a court of law by any person who has an interest or right over the property.

Beyond the constitutional provisions, land governance in Uganda is wrought with inherent gaps. One of the most notable issues about Uganda's land governance is that LSLAs are taking place within a complex and incomplete land governance system that is still under construction (Nakayi, 2015). In addition, one cannot say with certainty that law and policy is always a guiding tool in decision making around land. This is more so where protection of individual rights as provided for in the law does not augur well with what is considered "public interest of, say, promotion of national growth through investment or mining. In other instances, political expedience or efforts at assertion of dominant positions of power lead to by-pass routes of what is legally sanctioned.

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<sup>7</sup> Customary tenure is a form of tenure applicable to a specific area of land...Freehold tenure involves the holding of registered land in perpetuity...Mailo tenure involves holding of land in perpetuity; permits the separation of ownership of land from the ownership of development on land made by a lawful or bona fide occupant.. Leasehold tenure is created through contract or operation of law (Land Act 1998).

The skewed legal and practical terrain within which land rights are determined in Uganda, coupled with a patriarchal society that limits spaces within which women can assert rights to access and ownership of land, leave women's land rights largely on the fringes.

Land, as it were, has remained one of the outstanding political questions, call it unfinished business, in post- independence Uganda. For example, land governance was a key question around which the constitutional review process in the 1990s hinged. The legal and policy initiatives post-1995 are hinged on land tenure reform particularly to provide private individuals with rights to land as opposed to state control. The Constitution of Uganda the Republic of Uganda 1995 reinstates all the tenures as conduits through which the land in Uganda "belongs to the people". This is by virtue of Article 237 (1) and (3) of the Constitution, by which the citizens of Uganda can claim rights to land under the reinstated tenures: mailo, customary, leasehold, and freehold. The trend (at least on paper) indicates a desire to protect the citizens' rights to land against the state. It may also protect peoples' land rights against deprivation by non-citizens. Within the overall conversation of the constitutional review also came some key provisions as far as women's land rights are concerned.

**The women-friendly provisions incorporated in the Land Act, 1998 (as amended) include the following:**

- i)** Section 39 requires the prior written consent of both spouses in transactions involving family holdings/land.
- ii)** Section 28 prohibits decisions affecting customary land that deny women access to ownership, occupation or use of any land, as well as decisions that impose conditions violating constitutional provisions protecting women.
- iii)** The Act requires land management bodies and institutions to have female representation. The Uganda Land Commission must include at least one female among its five members, one-third of the membership of the District Land Boards must be female, and land committees at the parish level must have at least one female among their four members.
- iv)** Under Section 17 (4) (b) at least one-third of the members of the Communal Land Management Association must be female. These Associations are corporate bodies which may be formed under the Land Act by any group of persons on any land for any purpose connected with communal land ownership and management of land.

In practice, however, the 1995 constitution and the attendant Land Act (1998) accentuated the gaps in land governance at best. For example, in relation to mailo land tenure, the reforms have led to complicated land governance scenarios resulting from multiple and overlapping interests in land which are all legally recognized although with varying degrees of hierarchy. Article 237 (3) of the 1995 Constitution recognizes private mailo as one of the land tenure systems which involves the "holding of registered land in perpetuity" (Section 3(4) (a)) and "permits the separation of ownership of land from the ownership of developments on land made by a lawful or bona fide occupant". According to section 29 (1): "*lawful occupant*" means: a person occupying land by virtue of the repealed (i) Busuulu and Envujjo Law of 1928; (ii) Toro Landlord and Tenant Law of 1937; (iii) Ankole Landlord and Tenant Law of 1937; a person who entered the land with the

consent of the registered owner, and includes a purchaser; or a person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title. On the other hand (2) “*Bona fide occupant*” means a person who before the coming into force of the 1995 Constitution had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more, or had been settled on land by the Government or an agent of the Government, which may include a local authority. At once, the 1995 Constitution created a terrain of inherent tensions in granting overlapping claims. These tensions are not new in the land debate but have since the enactment of 1900 Buganda agreement been a subject of contention. In fact, Lunyigo (2012) concludes that the 1900 Agreement was unfortunate because it completely dispossessed the peasants of their rights and instead chiefs who took almost half of the land drew rent and other tribute from the peasants or leased and sold land. These contradictions tend to be accentuated in case of acquisitions of large chunks of land.

With such complicated and intersecting webs of land rights, the women’s case becomes more complicated since they rarely own certified rights to land.<sup>8</sup> The complicated governance conundrums are not more evident elsewhere than in the cases of the rights of /relationship between the registered owners of mailo land and lawful and *bona fide* occupants on their land. Land governance in instances of LSLAs would require identification of persons with genuine claims to land. It is these genuine owners or rights claimants that would be entitled to be consulted, engaged in all processes leading up to LSLAs and also benefit from compensation and other rights or remedies in case of disgruntlement. To borrow from the postulation advanced by Mamdani (1996), this situation at once constructs subjects and citizens. Poor people tend to be the subjects, largely accessing land under the customary tenure or as *bona fide* occupants. While this may raise no problem in day-to-day situations, it becomes an issue of concern in case of LSLAs. And in here also lies the precarious nature of women’s land rights. While many households report husbands and wives as joint owners of the land, women are less likely to be listed on ownership documents, and have fewer rights on big chunks of land. In such cases, women occupy a completely different layer of rights, -making the situation more precarious in the case of large-scale land acquisition. Specifically, women’s land rights seem to be limited to the realm of protection as opposed to respect and fulfilment. For example, while the Land Act requires spousal consent for many land transactions, it does not include an enforcement mechanism for this clause. Furthermore, the Land Act allows for the issuance of certificates of customary ownership (CCOs), as a form of protection for customary rights. In such formalization processes, there is a risk that individualization will favour males as socially recognized family heads.

The sections that follow proceed to present an in-depth analysis of the two cases in terms of the acquisition processes, the actors and the place and role of women’s land rights and agency.

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<sup>8</sup>See, Jackie Asimwe, Making Women’s Land Rights a Reality in Uganda: Advocacy for Co-Ownership by Spouses, *Yale Human Rights and Development Journal*, Vol.4 issue 1 (2001)71-187, at 174; Margaret A. Rugadya, Literature Review: Land and Gender Surveys in Uganda, [http://webcache.googleusercontent.com/search?q=cache:HI1Z\\_OeJhY4J:docs.mak.ac.ug/sites/default/files/Literature,%2520Gender%2520and%2520Land%2520Surveys%2520in%2520Uganda,%25202007.pdf+7%25+ugandan+women+hold+titled+land&cd=1&hl=en&ct=clnk](http://webcache.googleusercontent.com/search?q=cache:HI1Z_OeJhY4J:docs.mak.ac.ug/sites/default/files/Literature,%2520Gender%2520and%2520Land%2520Surveys%2520in%2520Uganda,%25202007.pdf+7%25+ugandan+women+hold+titled+land&cd=1&hl=en&ct=clnk); (accessed November 12, 2014).



### 3.0 Crossing the Iron bar: The Case of Kaweri Coffee Plantation, Mubende

Below: a woman approaching the iron bar of Kaweri across an otherwise public road



#### 3.1 Overview of acquisition

The Kaweri Coffee Plantation Ltd is a subsidiary company of Neumann Kaffee Grupe (NKG) in Germany. It is the largest Commercial Coffee Farm (producing robusta coffee) in Uganda covering acreage of 2,512 ha. It is located in Madudu Sub County about 20kms from Mubende District headquarters. This project is one of the Large Scale Land Acquisition investments conceived to be in line

with the Uganda National Plan for Modernization of Agriculture (PMA) which encourages the role of the private sector in commercialization of agriculture. Accordingly, government purchased land from a private mailo owner and leased it to the investor for a period of 99 years. Its implementation led to the eviction of about 2,041 people from 392 families to give room for the investment project. This case evidently shows that government took an upper hand in the implementation of the project as a seller as well as an evictor of the tenants who had legal claims, without alternatives being created to support their survival and not being compensated for the loss. This could be attributed to government's inability to follow the recommended international guidelines and frameworks for responsive LSLA. On the whole, this case demonstrates government's failure to protect the citizens. According to the recollection, bitter memories were still fresh in the minds of the evicted population – 15 years on. A number of women would break out in tears while narrating the story. The eviction was considered the most brutal of the times. It is reported to have involved shooting, burning of houses (where in some cases the people were forced to pull down own houses), savagery, destruction and looting of crops and animals. They were evicted to the neighbouring forest with no food and shelter (and a number died as a result).

#### ***The story of acquisition of Kaweri Coffee Plantation***

*In 2001, over 400 families (2,041 inhabitants) from their land with the help of armed personnel. The eviction was considered the most brutal of the times. The eviction involved shooting, burning of houses (where in some cases the people were forced to pull down own houses) savagery destruction and looting of crops and animals. They were evicted to the neighboring forest with no food and shelter (and a number died as a result). With the help of FIAN and Action Aid International Uganda, the people sought legal redress in 2002 and even when compensation of 36bn<sup>1</sup> Uganda shillings was awarded, an appeal has blocked this compensation and the case is still on. The people are still in a poor state with women bearing the brunt of social dislocation. Men feel a sense of hopelessness (regarding themselves as pieces of garbage!). Women then bear the burden of not only putting food on the table but also of shouldering the repercussions of social dislocation within the context of almost complete absence of government functionality.*

The evicted people had a clear perspective on government as the land grabber. Accordingly, government, and the army in particular, actively participated in beating, demolition of people's

property, looting, coordinating the activities to ensure that the eviction exercise was concluded. One account of the eviction was as follows:

*I was at home where I used to stay and I heard that the vehicle for the army had arrived. I was standing in my compound and the vehicle full of soldiers came and they asked me, “why are you standing here?” And what are you doing? I asked them where they wanted me to go, they told me to start packing my things. I had a house with iron sheets. They told me to start packing all my property. They said, we want you to even burn your kitchen, I refused they told me if we find you here, we are going to treat you according to the government orders, that moment they walked and reached at my son’s home... demolished his house with a grader and damaged all the iron sheets. It was the soldiers who were doing all those things, they went to my neighbour cut all the banana plantations and took away his chicken so when they came back with their vehicle full of matooke they told me you woman you have not burnt your kitchen?. I told them to leave me and that I was going to burn it. I am very sure it is the government that evicted us”.*

The key argument in this case is that it is not easy for the powerless to cross the “iron bar” because of the powerful nature of the actors. The iron bar is manifested in different aspects: these include the controversies surrounding private *mailo* and tenancy relations whose rights are all legally recognized in the legal framework; government’s involvement in the evictions and yet with the primary role of protecting the citizens; the non-compensation under this compulsory acquisition and the general deprivation of women’s land rights. Even with the support by advocacy organizations where community won a case in court, the ruling has not translated into positive outcomes in terms of compensation.

Below: a section of Kaweeri Plantation



### 3.2 The Actors

The analysis of actors and institutions was to develop a deeper understanding of their roles and responsibilities in the acquisition process. There were three main actors involved in the acquisition process. These included the private *mailo* owner, government and the private foreign company (Kaweeri Coffee Plantation) as outlined hereunder:

**The private *mailo* owner:** The original owner of the land currently occupied by Kaweri Coffee plantation was said to be one Kayiwa. By description, this particular land occupies Block 99 which is private *mailo* type of ownership. It is claimed that this particular piece of land was acquired in 1964. During the dictatorship of

Idi Amin (1971–1979), the owner left the country and returned in the 1990s. Accordingly, during his absence, this land was occupied by the Ugandan military barracks and other settlers who lived as tenants. These tenants remained in possession until 2000 when the land was sold to Uganda Investment Authority (UIA). These tenants had well laid out agricultural production arrangements and settlement patterns which they claim they had enjoyed for over a hundred years.

**Government:** The involvement of government was two pronged; as a seller of the land to the investor through the Uganda investment Authority (UIA) and as a key player in the eviction of the inhabitants of the said land. The UIA is a government body established by the Investment Code Act of 1991 (revised in 2000) responsible for promoting and facilitating investment projects, providing serviced land, and advocating for a competitive business environment. The authority is charged key functions with regard to investment (see Box below):

**Box 2: Functions of the Uganda Investment Authority**

- i) To promote, facilitate, and supervise investments in Uganda;
- ii) To receive all applications for investment licenses for investors intending to establish or set up businesses enterprises in Uganda under this Code and to issue licenses and certificates of incentives in accordance with this Code.
- iii) To secure all licenses, authorizations, approvals, and permits required to enable any approval granted by the authority to have full effect;
- iv) To do all other acts as are required to be done under this Code or are necessary or conducive to the performance of the functions of the authority” (Part II, Section 6).

A respondent from UIA had this to say:

*As UIA we want large scale farmers because people should go away from subsistence to commercial farming. We want to have model farms out there. Most people are more on subsistence farming and there is land out there which is idle, which is not being utilized because most people don't have money to develop it. Some people may have inherited it and they don't know how to use it.*

*As UIA, our role is to promote and facilitate investments because we are going to create jobs, investments bring new technology, and investments are going to bring in money in form of taxes for government. New technology also helps people to be out-growers, if you are a large scale farmer or you have a large scale investment, it will create linkages, it will create market for these small scale out growers, they will be able to learn from them, how things are done and also market for their produce because once you are alone, you will not get market easily but a large scale farmer will. The large scale investor will also benefit from out growers by adding on the quantity they produce from out growers.*

According to the reconstructed story, the UIA purchased 2,512 ha of land on Buwekula Block 99 Plot 1 from the private mailo owner in 2000. After its purchase, negotiations with UIA and NKG began since NKG was interested in this land to establish an agricultural project. The deal was concluded in 2001 with signing of a lease contract for 99 years. According to NKG's Kaweri website, “from the outset Kaweri agreed with the Ugandan government that only so-called clean title land will be considered for leasing (i.e. land that is free from third-party claims).” A due diligence audit was conducted from October to December in the same year to, among other issues/ concerns, ascertain the actual size and whether the land was free from any encumbrances or any other third party claims.

Several arguments were put by UIA officials talked to on the need for the Kaweri Coffee project. One of them was that Uganda has a lot of unutilized land which would be used for transformation

of agriculture from subsistence to commercial farming. Nonetheless, government's ability to create this transformation is severely limited as demonstrated by the accountability and legitimacy deficits demonstrated in the Kaweri acquisition process.

### **The Buyer- NKG**

The buyer seems to have been caught up in a maze of the weak land governance. Accordingly, after identification of a suitable site with the UIA, several other processes were also followed to ascertain the actual size and whether the land was free from any encumbrances. This apparently involved a due diligence audit conducted from October to December 2000 by the lawyers of buyer (the Ugandan government/Ugandan Investment Authority) and seller (Kayiwa) to establish the actual ownership of the land and to ascertain whether there were no third-party claims. With this information available, in August to October 2001 the State-approved Ugandan survey company MAP carried out a survey of the land to pave way for final acquisition. What remains unclear is how the tenants' presence and legal were erased out of these audits and surveys.

### **From the Perspective of the Evicted Population**

As already argued the mailo land tenure regime is characterized by the existence of dual but legitimate claims over the same piece of land. According to the investor, the land in question was legitimately acquired. In fact, the predominant view held by some key informants was that the affected populations had no claims on this particular land since it was private mailo and therefore were illegal occupants. On the other hand, the community continues to reaffirm their position on their tenancy rights as enshrined on the law. For example, their argument is as follows:

*The 1998 Land Act gave us ownership rights as tenants. The claim that tenants had no rights on this land is notorious and people are just not informed about the law. Here we have big problems, you get someone big in authority and yet not informed about the laws and yet the country is ruled under the rule of law. The law on land says the owner of the land charges nominal ground rent on the land which is not set by him or her but district local government and as for Mubende district its 20,000 Uganda shillings so when I sell land to someone for instance I just transfer the ticket to her (Key Informant, Kitemba December 2014).*

*We were on our bibanja, we had spent over 20 years and others different generations –grandfathers, great grandfathers lived on this land and were buried there, (FGD men Luwunga).*

*For us we came and bought land from the people who were living there. We paid our money and we were given agreements. That assured us that the land belonged to us. Only later someone else comes up and said that the land was not yours. How can you know? We had lived on this land for a long time, we had schools, health centres, shops and we also buried our dead relatives on this land (FGD participant Kitemba village).*

*The land belonged to us, we bought it but we never knew it had a land lord. For us we were born on this land, how then do you know who bought first and how did it come. We didn't get a chance to ask who sold to who and who owned the land at the time of evictions. They chased with guns and you would not get a chance of asking (FGD men Luwunga).*

The duality of rights surrounding this type of land ownership system has been a source of conflict between the private mailo owners and the *bona fide* occupants. Similarly, there were conflicting claims about the actual acreage of land occupied by the coffee plantation. Communities reported that Kaweri extended its boundaries into the neighbouring block 103 by 2 square miles.<sup>9</sup> To the affected community this created more landlessness among the people.

*To make matter worse, block 99 has its neighbours block 103(private mailo) which is 4 square miles and they (Kaweri coffee company cut it off by 2 square miles to add to theirs and now the coffee plantation is 11 square miles instead of 9 square miles. This neighbours land was private mailo but because the owners didn't go to school, they took advantage this. As a community, we are again to file another case against Kaweri for extending the boundary to block 103. On this land block 103, an old woman in the names of Anna Nandyose had 50acres of land. I now have all the documents in my hands, I have instructed my counsel Balikudembe as I write to Kaweri coffee that we are starting a case against them for taking land,"( KII Leader of the group).*

A number of migrants from different parts of the country had little knowledge about this land ownership regime. They just came and purchased land without understanding the terms under which they were acquiring it. Others had accordingly stayed on this land for over 20 years and therefore did not anticipate any direct threat to their rights since, legally they assumed protection by the law. As according to the Ministry of Lands and Urban Development (2013) those not protected by the law illegal tenants, trespassers, licensees (people temporarily brought in by the land owners to utilize the land for a specific period of time on given terms and conditions); people renting agricultural land and people renting premises.

### 3.3 Effects of the Acquisition

Section 16.2 of the FAO guidelines (2012) on LSLA requires States to ensure that the planning and process for expropriation are transparent and participatory. Under this understanding, anyone likely to be affected should be identified and properly informed and consulted at all stages. Consultations, consistent with the principles of these Guidelines, should provide information regarding possible alternative approaches to achieve the public purpose, and should have regard to strategies to minimize disruption of livelihoods.

Accountable acquisitions would require that states are sensitive regarding the livelihoods of the people. Julia Behrman, Ruth Meinen-Dick, Agnes Quisumbing (2011) identify about six major steps for any LSLA investment project namely, analysis of the pre-existing situation, consultation, negotiation, contract development, implementation and compensation. Understanding how these processes of LSLA play out and the extent to which the perspectives of local populations are taken into account has important implications for men and women.

IFPRI (2011) argues that acquisition of land should be typically initiated through a process of consultation and negotiation that will ultimately lead to a contract formally enunciating the terms

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<sup>9</sup>The team was not able to access company records to get their views about these claims.

of the deal. In this case, it should show that typical consultation processes should include reference to the existing legal provisions, clarification of the identity of investors, assessing the gender implications of the investment project and information dissemination about the investment to the local populations.

Findings show that the processes of acquisition were flawed and did not in any way conform to what has been prescribed as responsive investment for LSLA. While the occupants on this land had legal rights, and therefore consideration of their land rights would be an important stage in the acquisition process, there was no evidence to show that communities actually took part in the consultative process.

Hence the very basic impact of crude and abrupt displacement was loss of livelihood. Women had to bear the brunt of social dislocation. Men felt a sense of hopelessness (regarding themselves as pieces of garbage!). Women then bear the burden of not only putting food on the table but also of shouldering the repercussions of social dislocation within the context of almost complete absence of government functionality. In very specific ways, lack of access to land for cultivation, water and firewood all created a burden for the women. The story of the local population sits rather uncomfortably against the glossy picture painted by the company as demonstrated below:

**Box: On the other side: the story of Kaweri from the perspective of the Investor-**

**Breaking News: Kaweri sponsors neighboring Buwekula county's football team uniform**

Kaweri Coffee Plantation is the only large-scale coffee farm in Uganda, located about 200 km west of the capital, Kampala. The landscape consists of picturesque rolling hills, flanked by two large papyrus swamps, which are typical for this region. There are also several tributaries emerging on the farm that are surrounded by a unique, untouched highland rainforest. The area is home to many genuine wild Robusta trees that are well over 100 years old. Kaweri is, thus, the home of Robusta coffee and today the plantation cultivates direct descendants of these wild trees. Cultivating Robusta as a native crop, in harmony with the highland rainforest, is a distinguishing feature and is one of the reasons for the exceptional quality of this coffee.

**According to Mr. Henry Ngabirano**, the Managing Director of the Ugandan Coffee Development Authority (UCDA), "Kaweri is the first large-scale Robusta plantation in Uganda and is also the first farm that has introduced the Robusta washing process in big volumes, giving the coffee a particularly good quality. We are excited to learn that there are gourmet roast coffee products in Europe, which are purely made of Kaweri coffee, which is excellent news for Ugandan coffee all together".

**Sustainable farming**

In 2001, Neumann KaffeeGruppe decided to invest in a coffee farm in Uganda, with the objective to produce a unique, washed specialty Robusta coffee. Pioneering sustainable coffee farm management, embedded in the local environment, is contributing not only to a positive economic impact in the entire region, but also leads to social and ecological advantages. The Ugandan government at central and regional level, welcomed and supported the project from the beginning and after passing a range of formalities, including an environmental and social impact study, the first cultivation started by the end of 2001.

Kaweri is located on block 99, measuring 2512 ha, which was privately owned and first time measured and established in 1915. The land's border was measured by three independent fully licensed surveyors and all of them confirmed the correctness of today's borders in line with the registered land deed. Since 2001 the land is owned by the Ugandan Government and leased to Kaweri Coffee Plantation Ltd.

People who occupied part of the land prior to the start of the lease, obtained compensation from the previous owners, in line with the land act of Uganda. Written proof of each compensation was given and Kaweri received the land free of encumbrances.

Through an extensive development process, Kaweri developed modern cultivation and processing systems – thereby, establishing a complex agronomic concept as well as an efficient management and working structure, consisting of 99% of Ugandan citizens. Other management members originate from Zimbabwe and Kenya.

### Water - the element of life

While this is equally true worldwide, in the more remote areas of Africa the constant and unhindered access to this essential element is much less implicit. And while fortunately all people living and working on Kaweri have access to good, clean water, some still have to walk some distances to get it. No small wonder then, that inhabitants of the village of Kyota were absolutely thrilled, when Kaweri Coffee Plantation as their next door neighbour had announced some while ago to donate the drilling of a new borehole there.

So, in early October local residents, political leaders and Kaweri management jointly inaugurated the new water supply point. Until that date, Kyota residents - between six and eight hundred people all in all - had to take their water from a mostly polluted surface borehole. Many were suffering from water-borne diseases. Now, with the drastically new and improved situation, various members of the local administration praised and thanked Kaweri for their effort and pledged continued cooperation. Especially Kaweri's continued contribution towards the surrounding communities was mentioned and stressed by all speakers.

The farm has created nearly 200 permanent jobs, including farm-, section- and divisional managers, accountants, group leaders, clerks, drivers and cooks among other. Most of the permanent employees have started with basic knowledge, but through constant training they have developed into skilled professionals in their field of work. The majority of the permanent employees have been with the company for many years, which expresses satisfaction with working and living conditions at Kaweri.

In addition to the permanent employees, the farm provides between 4 – 800 regular daily jobs, primarily in the form of piece or task work in the coffee fields, such as weeding, pruning etc. In this system, the employee is required to fulfill a certain amount of work and is free to work at his/her desired speed. Some employees manage to accomplish more than one or even several tasks per day. During picking seasons, additional 500 – 3,500 pickers come to the farm, the numbers depend on the size of the crop. Picking is piece work and payment is based on picked kilos of cherry.

Source: [www.kaweri.com](http://www.kaweri.com)

### 3.4 Citizens' Action

Studies have shown that peasants do not automatically submit to the pressures of power and exploitation and that new peasant movements were increasingly common in the current times (Springer 2009; Guttal 2008) cited in Alison Elizabeth Schneider (2011). When the evictions took place, the affected community responded by forming a community citizen action group known as Wake up and Fight for Your Rights Madudu Group, under the leadership of one Baleke Peter Kayira, a local resident and a former primary teacher at Kitemba Primary School. In terms of organization, the group was composed of 8 members of the executive and 4 representatives from each of the 4 affected villages and four of whom were women. The group was mandated to keep the community and all other documents from outside and also to ensure that the relocation of the people takes place as promised in the initial meetings with the Resident District Commissioner. They had to ensure that each affected member's land would be ascertained by a surveyor and therefore keep all the records from the outcomes of the exercise. Yet, no detailed valuation of people's land was done by the landlord which would have the basis for compensation. The group then sought help from Action Aid and FIAN.

Overall, their response arose out of the unmet demands, the need to challenge the approaches used by the state and its agents in evicting communities and the non-compensation. What is important to note is that in this case, citizen action emerged after the acquisition. The fact that the community formed a group to fight the injustices created about the project is evidence to show that the leader was aware about the non-transparent transactions.

However, several factors undermined the strength of this citizens' collective action. The main factor was to do with the organizational structure of the group basically modelled around one charismatic leader who could then be specifically targeted so as to demobilize the citizens' effort. The leader of the group asserted that there was use coercive methods which included threats in form of illegal imprisonment, intimidation through telephone threats as well as financial inducements.. It was reported that the leader of the group was arrested and detained in Mubende prison for 157 days after he had been to Germany to launch a report written by FIAN. This type of strategy often intensifies fear and breaks down the level of cohesion among the people.

Furthermore, women's organizing was weak in this whole process of citizen action. Their main pre-occupation was immediate survival of the family since the eviction process did not give them adequate time to survive.

*What could we have done? They came destroying the houses, from one to another, soldiers were all over the place, bulldozers crumbling houses and gardens, they slashed our banana plantations, uprooted our coffee because it wasn't the quality they wanted and you just fight back? There was no way you could even think about that, all we did was to run for our lives. They worked so fast and the next day they put up a coffee plantation (FGD participant).*

Unlike in most LSLA projects in the country which have been characterized by violent resistance, in this particular case, the community in Mubende resorted to the use of legal action. The affected people took the matter to court through the lawyers- Mwesigwa Rukutana and Company advocates. The advancement of the community agenda required financial contributions to cater for transport of the leaders and some aspects of legal fees. At the beginning, these funds were internally generated



from contributions from the affected populations. They were able to raise the 300,000 shillings which the lawyer had demanded to start the case. In September 2001, their legal representative (Mwesigwa Rukutana) was appointed Minister of Finance in charge of Investment and therefore could not continue with the case due conflict of interest. In late September/early October, another lawyer was contacted who after explanations about their conditions was very kind and agreed to offer free legal services (*pro bono*) The community was again charged 300,000 shillings to cater for stationery which they raised internally. However, this was not structured.

*“When we needed money to register our case, the community contributed this money but of course, there were some people who could not afford,”* KII Leader.

With support of Action Aid and FIAN, a case against Attorney General of Uganda (Uganda Investment Authority), Kaweeri Coffee Plantations Limited and Engineer Emmanuel Bukko Kayira (landlord) was filed in 2002 at High Court Nakawa-Kampala Civil Suit Number 179 of 2002 by Baleke Kayira Peter together with Sebwato Patrick, Mugerwa Antonio, Nanjaye Lusi and Kansiime Godfrey. The communities’ claim was that they were customary tenants on the land and accused the above perpetrators of forceful eviction of 401 tenants without compensation. The case dragged on from 2002 and a High Court ruling was given on 28<sup>th</sup> March 2013 in favour of the affected community to be paid UGX 37,085,574,606.3 for special damages, disturbance allowance, general damages and exemplary damages. The decision in this case is atypical since the payments were to be made by the lawyers and not the respondents. The situation can best be explained by the conflict between the sitting judge in this case and the lawyers that were involved in this land acquisition (Nangwala Rezida and Company Advocates).

From August 2013, the case has been pending at the Court of Appeal. At the time of the study, nothing had been paid to the affected communities. The question then remains how effective can legal redress be and indeed the whole legal framework in protecting the rights of the poor and vulnerable populations. Those who wield power remain at the core in determining whose rights will be protected.

### **3.5 The Impact**

Kaweeri Coffee Plantation had an immediate impact to women which was abrupt loss of access to land for crop cultivation. Women were involved in planting crops to meet their family food needs and the surplus would be sold to cater for day-to-day cash needs. Women are now faced with a problem of inadequate food for themselves and their families. While the study did not conduct a survey to ascertain the magnitude of the impact of lack of adequate food by quality and the number of meals eaten, other studies in the same area confirm the community statements. A study by Action Aid (2008) on the impact of the effects of food Security: The Case of NuemannKaffee Group Mubende District confirmed the above community statements. The study findings show that since 2002, food insecurity compromised on the quality of food among the evicted households and a majority of these suffered from malnutrition or were undernourished, especially the children and the elderly. This was attributed to limited land for cultivation as this process of evictions led to reduced acreage from 17.7 acres to 3.9 acres among the affected populations. A number survived on hiring land from the caretakers of the National Forestry Authority, but this was reportedly not very ideal for crops due to the impact of the forest. In a such a dire situation, the plantation would have offered alternative sources of livelihood through providing employment opportunities. However, according to the testimonies, the farm labour policies are very exploitative

Before the evictions, community had access to protected water points which guaranteed access to safe water. However, this was lost. By 2008, the number of people accessing unprotected water sources increased from 26.5% to 61.1% due to the evictions (Action Aid study in 2008). This increased the risk of waterborne and water-related diseases and loss of productive time due to morbidity and distance covered to look for water. According to information provided by the company, water pipes were passed in the two neighbouring villages to supply the people with free fresh drinking water. Yet this water is only supplied once a week and cannot meet the daily water consumption needs. The amount of water a household harvests will also depend on the type of containers they have. The national recommended average water consumption is 20 liters per person per day. Given the housing condition of the evictees it was not possible to harvest large quantities of water at one go.

Furthermore, women have to travel long distances to look for firewood. This consumes women's time and inability to meet household energy needs. In the estate, old coffee plants are cut and remain uncollected. Women complained that they were unable to collect this firewood because they would be charged with trespass. One woman put their dilemma as follows:

*Ideally we should be collecting firewood from the farm. But there is a gate where the farm ends. Okuyisawo akaku migo. bakakugyakontokatekewalia – meaning – one cannot pass even with a small piece of firewood. They beat you up and ask you to leave it at the gate.*

According to Kaweri, biodiversity is being maintained in an exemplary way through protected areas, biological corridors and shade trees. However, this seemed to benefit the estate and not the community. The issue at community level was that there was no access to the estate and women in particular could not access firewood.

Overall, the loss of livelihood means and the associated risks weigh heavily on women. The evicted people immediately had to camp in the nearby forest. The evictions happened in a rainy season thereby exposing the people to untold suffering and health risks. Exposure to hygiene-related diseases increased due to lack of latrines and basic sanitation facilities. Open defecation was common and as a result diseases like cholera and dysentery began to spread. Pneumonia also became common, often claiming the young and elderly. The food insecurity as well as the high disease burden all rested on the women's shoulders. Hence much as the eviction affected communities as collectives, women disproportionately bore the burden of disease as a result of unfair / illegitimate dislocation.

#### **4.0 Face to Face with Power: The case of Amuru Sugar Works**

While the case of Kaweri was of a concluded deal, the Amuru case at the time of the study was at the peak of community resistance to acquisition. The land question in Amuru District was a contentious and highly politicised issue involving all echelons of power starting with the President, a Ministerial Committee, Parliament; judiciary, the cultural institutions, local government and the community itself. The contention was about the legal ownership of the land to be acquired under Large Scale Land Acquisition (LSLA) that was allocated to Amuru Sugar Works one of the Madhvani's Group of Companies (hereinafter referred to as Madhivani as the popular reference). On one hand, the District Land Board (DLB) claimed it was public land having been gazetted in

1959 and degazetted in 1972. On the other hand, the community claimed it was customary land and therefore, accordingly, the people as the lawful owners should have been consulted and compensated before the LSLA.

## 4.2 Acquisition Process

In 2006, the Madhvani group expressed interest to acquire land in Amuru District to the Acholi Parliamentary Group under the leadership of Hon. Okello-Okello, the MP Aswa. On 23<sup>rd</sup> March 2007, a survey team from Madhvani Group met with the LC5 chairperson of Amuru District. At the time of the application and subsequent survey, there was hardly any human settlement because the community was living in Internally Displaced Camps. In 2007, the Madhvani Group made an application to Amuru DLB to acquire 40,000ha about 6 km around the River Nile. Amuru was found ideal for commercial farming because of the guarantee of a steady water supply for irrigation, suitable topography with undulating plains, reliable rainfall; fertile soils and availability of spear type of grass which is easy to clear.<sup>10</sup> On 13<sup>th</sup> July 2007, a delegation comprising of the LC5 Chairperson, Councillors, Technocrats and other members from Amuru had a study tour to Kakira Sugar Works to generate buy-in into the proposed project.

In 2008, the DLB allocated 20,000 ha to the company as a lease. With this investment, government would own 40% of the shares. It was reported by *The Acholi Times*<sup>11</sup> that in July, 2008, Madhvani paid 131 million Uganda shillings to the LC5 of Amuru District, Anthony OmachAtube and other officials to kick-start the survey work. However, this land acquisition was impeded by community resistance claiming the land as customary land but not public land as claimed by government.

A review of the survey report by Madhvani Group of Companies in 2007 showed that no assessment of land ownership patterns or user rights was done. This is because at the time of the assessment, the community was still living in encampment, creating an impression of vacant and idle land. Neither was a gender assessment done to inform the proposed project's impact on women. Madhvani saw no need for conducting direct consultations with the community since they were not the owners of the land. An official from the Madhvani Group expressed the view that: *“There is no need for consulting the community because we do not own the land. We have nothing to do with the people. It is the government who should consult them.”*

When on June 2<sup>nd</sup> 2014 Ministers Amelia Kyambadde for Trade and Industry, Betty Bigombe then Woman MP for Amuru and Minister of State for Water Resources and Daudi Migereko Minister for Lands went to launch the proposed Madhvani Sugar project at Lakang, the community rejected it. All current political and cultural leaders were shocked and upset about the community's resistance because they believed they had the delegated authority to act in the best interest of the community. Thus, the section that follows critiques the nature of the consultations with the community.

The community described the consultation process as non-participatory and ad-hoc with hardly any substantive engagement with it. It was top-down targeting the cultural leadership in belief that

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<sup>10</sup> Survey Report on Arua, Adjumani and Amuru districts to locate suitable site for new sugar unit, Madhvani Group March 2007.

<sup>11</sup>Monday 15<sup>th</sup> October 2012

they are the custodians of customary lands and out of respect their decision would be adhered to by their subjects. The community recalls that the President held consultative workshops of the cultural leaders in Gulu District and in Amuru at the Reckechi Primary School seeking their support for the project. Further, that the meeting with the President culminated into the cultural leaders agreeing to give the land to Madhvani. The President anticipated that the Paramount Chief would coordinate the other *Rwots* as they continued to consult with their subjects. Rather, the community asserted that they first interfaced with the traditional leaders during the aborted launch of the project in 2014.

It is worth noting that the mere fact of consultation having taken place does not on its own guarantee that the affected community would agree to the investment. A cultural leader affirmed that the Madhvani project would bring development to the region. *“Even now we still have the book detailing the proposed project that we were given by Madhivani showing the investments and how our people would benefit and we thought the project was a good one that would benefit them).”* However, the community was not convinced. Another of the KIs who was part of the study-tour to Kakira Sugar factory in 2007 attested that when they consulted the community they rejected the proposal. The KI had this to say:

*They said that they first wanted to settle then since they had just come from the camps. They suggested that after they had settled, then Madhivani would come and talk to them about the project.*

Furthermore, the scale and magnitude of the proposed project reminded the community of the camp life conditions. The fear of loss of land ignited feelings of further marginalization and impoverishment due to the loss of land as a sense of dignity and a core tenet of their survival as a community.

There is also pessimism that sugar cane growing is not the most viable development. Some community members proposed alternative projects like rice growing, maize, sunflower project to build on what they were already involved in. There was equally a preference for an out-grower type of investments, rather than simply giving up their land.

The lack of compensations by previous large-scale land buyers heightened the community scepticism of being compensated by Madhvani nor government particularly because government claimed the land as its own. Moreover, in one incident when the community resorted to the RDC for mediation with Paula Abel who had acquired land between Plaema and Apala and whose farm was guarded by the military, he advised the community to first vacate the land and thereafter seek compensation.

The community resisted the decision, accusing their leaders of betrayal and conniving with government to “steal” their land. The community scoffed that government had constructed residential houses for the clan leaders as a “bribe.” The political connection with government of the land buyers is detected from the fact that most of the tractors grading the land and the vehicles of these powerful “investors” were government owned. It was also regretted that powerful Acholi, particularly those working in the DLB had betrayed the community instead of protecting their interests. An FGD of women lamented: *“These are Acholi’s who are betraying us.”* The sum effect was the general feeling of betrayal among the community that instead of protecting the community interests, fellow powerful Acholi were conniving to render them landless.

The shunning of the cultural leadership forced government to utilise its own machinery to carry out the consultations. It was reported that the Resident District Commissioner and the local police were supposed to undertake some rudimentary sensitisation of the people on the Madhvani project. Furthermore, the President tasked Betty Bigombe to form a committee which would work with the government on the community sensitisation and harmonising of the government's relationship with the community.

However, the government negotiations faced the same resistance by the community. A traditional leader recalled:

*When we went there for this meeting with Bigombe to consult the community we faced a lot of resistance from them. They did not like our going there. Their reception was bad. They abused and despised us and failed to listen to us because they were already poisoned by the politicians who usually buy alcohol (waragi in sachets). At the end of it all we did not accomplish what had taken us there to consult with them because they actually refused to talk to us.*

Thus there was no concrete community sensitization programmes about the Madhvani Project. Even the RDCs seem not to have been effective for the community remained unclear about the intended benefit to them.

On failure to secure the community consent, the President visited Lakang on 15<sup>th</sup> October 2012. The community was represented by a negotiating team comprised of politicians, cultural and religious leaders. Unfortunately, the community negotiating team had some internal rifts. For example, it was claimed that religious and civil society members were marginalised by the politicians who failed to invite them to the planning discussions. The excluded members duly informed the ALC and the Attorney General of this marginalisation.

Similarly, the traditional leaders claimed that the politicians blocked their participation in the negotiations, claiming that it was too complicated for their understanding.

*None of us has been involved in the negotiations. At first the RDC had invited us (RwotLamogi and Toro) to join the team and he even sent his vehicle to pick us and take us to his office and when we reached there, M.P Nokrach told us to pull out because the language people (politicians) use there is very bad for us to hear! .... Nokrach peacefully told us and so we withdrew from the trip because we did not want loggerheads!*

Many women were discontented with the negotiation process since it had not yielded the intended outcomes of government's acknowledgement that the land belonged to them. They continued to live in uncertainty and fear that they were going to lose their land.

It is noteworthy that the community including women contributed to the internal organising of the negotiations activities. There was no common fund to support any of community activities. Rather fundraising was done as and when the need arose.

*We do not have that fund in existence to help undertake community activities but if the people in negotiating team have to travel, every household contributes on the agreed amount say 10,000 Uganda shillings per household. It is the work of the RwotKwer to move from household to household to collect the money. The system is working well for now.*

The above notwithstanding, both men and women within the community were desirous that the negotiations be done within their vicinity and that the proposed investors should explain their intentions and how the local people would benefit from the proposed investment. The women respondents strongly recommended that the negotiations should be at the local level instead of confining them to a clique of representatives, negotiating with the President. Moreover, having the negotiations in distant places left out the majority of the community from effectively participating or being updated about the process.

Women were very visible in the Amuru land negotiations. Two women councillors from Kololo sub-village and Lakang, (names deliberately withheld) were part of the team that met the President. Men acknowledged that women were not passive accompaniments but were at the forefront of the discussions with the President. *“When we reached the President’s Office, all the men kept quiet. It was one woman who asked the President questions regarding the land”* (FGD). On investigating why these women were selected, it was revealed that they possessed undisputed ability to negotiate for the community without fear, their low level of education notwithstanding. One FGD participant said, *“We looked at the person’s intelligence that one is born with. One of the ladies selected is very intelligent and clever. She can speak confidently. Besides she is committed, trusted and honest in what she does. She has been LCI and a leader even during camp life.”* Another one said, *“She is straight forward and above all she shares with us. Even at family level, she counsels couples wherever there is misunderstandings.”* This level of boldness and clarity of purpose is a resounding indicator of women’s capacity to safeguard their land rights if well empowered. In other words, if women are empowered to effectively participate in the process of LSLAs, they are capable of effectively representing the interests of women and the community at large. Similarly, the government side involved two outstanding women, namely Ministers, Amelia Kyambadde and Betty Bigombe.

The memorandum pronounced itself that the land is community land belonging to the *Lamogi people*. In order to convince the President to “allow” the land to be recognised as customary land, the community made a compelling argument that it would be *easier for the local people to give their land to the investors if it was under customary ownership*. *Thereafter the President invited the community together with Hon. Bigombe and instructed the AG and the community lawyers to expedite the negotiation process.*

The above notwithstanding, the value of the negotiations remains suspect, as if intended to hoodwink the community into endorsing the Madhvani project.

In effect, the Memorandum of Understanding is a political exercise that does not legally change the fact that the land in question is public land. As articulated by Secretary to the District Land Board at the CBR Community Dissemination workshop:

*Many think that with the 1995 Constitution all land belongs to citizens but this is not the case. When the case was taken to court, court upheld that the land in question is public land and until “we receive another ruling from a higher court, the situation remains that it is public land.*

At the same workshop, the District CAO argued that the local people should seek secure leases or else the land would be taken by others under their watch. On the part of clan leaders, it was clear they were uninformed about the intricacies of the case and were eagerly awaiting a political declaration for the AG that the land belongs to them.

The pertinent question that arises is: why then does the MOU oblige the community to withdraw the appeal? Outstandingly, the 2015 Supreme Court decision in *Uganda National Road Authority v Irumba and Advocates for National Resources Governance and Development (ANRGD)* reaffirmed the right to adequate compensation before the voluntary land acquisition by government. Thus it is government to pay the compensation because Madhvani is simply leasing the land in a joint business venture with government. However, if government claims it is public, land why should it compensate the community? Who constitutes the public in what is called public land? is it possible that citizens can indeed hold customary rights over public land if indeed, the gazzement of the said land did not formally terminate the customary claims? The Amuru case demonstrates the fact that for any LSLAs to be legitimate, government will need to confront and address the key political question of people’s customary claims. It is not merely a question of legality.

## **4.3 Citizens’ Action**

### **4.3.1 The Acholi Parliamentary Group Advocacy**

The quest for land and the survival of the Acholi as a people united the Parliamentarians irrespective of their political orientation. The Acholi Parliamentary Group (APG) demanded transparency in the Madhvani project processes. They have convened community meetings at different fora as well as discussed the Amuru land question on the local FM radio station and television. Significantly, the APG placed the Amuru case on the floor of Parliament, profiling it as an urgent national issue rather than an exclusively Northern Uganda issue. Specifically, on 12 November 2008, Hon Michael Ocula of Kilak County brought the attention of Parliament their efforts in addressing the plight of land matters in the Acholi sub-region. Hon Ocula averred thus:

*The people of Amuru District are very worried that unscrupulous persons are moving on to have their land taken in very unscrupulous ways. As I speak now, our people are still living in camps. But you find people going to the District Land Board of Amuru District applying for land at the District Land Board also goes ahead to give away people’s land yet they are still living in camps. The people of Amuru who are in camps are very worried and do not know where to go to seek protection for their land because the very institutions, like government, which are supposed to protect them are the ones imposing themselves on Amuru District land board to give them land (The Hansard November 12, 2008).*

Along similar lines, Hon Oyet criticised the “external trade in the communally owned land of the people of Acholi”. Mr. Oyet referred to a letter by the Prime Minister to the President dated 18 December 2007 in which letter, the Prime Minister was informing the President of the resolutions of the meeting between the *Acholi Parliamentary Group led by Hon. Okello-Okello and Madhvani Group led by Dr Jack Luyombya. The meeting agreed as follows:*

- i. *That before that chunk of land can be acquired in the rural area of Acholi, the people in internally displaced camps and others should first return and be settled to their original homes.*
- ii. *Acholi Parliamentary Group made it clear that they are not opposed to investment, but it should be targeted to human development.*
- iii. *That security in the area should be revamped to accelerating facilitation to community policing.(sic)”*

Of concern was the contested *economic policy*. While on the one hand it was claimed that Madhvani was an investor, the memorandum suggested that both government and Madhvani would jointly look for the money for investment. As such, the contradiction was that the Amuru project was undertaken contrary to the investment policy in which government was to become a shareholder (*Parliamentary Hansard*, 12 November 2008).

From the above, it is apparently it appears that the consultations were done after the decision to allocate the land to Madhvani while the majority of the people were still living in the IDP camps. It was the initiative of the APG that caused the meeting with the Prime Minister that took the decision to defer the allocation of land until the Acholi had decamped.

Despite the agreement, between the Prime Minister in his capacity as the leader of government business and the APG, the latter were shocked that shortly afterwards the Minister for Tourism, Trade and Industry confirmed in writing to the Managing Director Kakira Sugar Works the *“Investment in sugar complex at Amuru.”* At its sittings, the meeting of the Cabinet ministers held from Monday the 21 to Tuesday 29 January 2008, at State House Entebbe which approved the investment proposal for a sugar complex at Amuru on the following ground:

- i. *You will be allocated 20,000 acres for the new sugar estate by the relevant authorities.*
- ii. *Government of Uganda will hold and pay for 40 per cent shares in your set sugar complex at Amuru.*
- iii. *Both the government and you will jointly solicit for finances at international agencies for the project.*
- iv. *The local population will be allocated land by the relevant authorities to become out growers.”*

Mr. Oyet also put it thus:

*“... there is even no money for their sugar factory, “That both government and Madhvani sugar shall solicit for funds. Now, it means that our people are going to lose that land for nothing. We have talked a lot about the issues of land in Amuru District”*



The scepticism of manipulation for political capital notwithstanding, the opposition politicians have raised the level of consciousness about the need to protect land the Amuru land in both a top-down approach that targets the leadership, including the President and Parliament combined with a bottom-up approach at the community level.

It is the frustration due to the lack of results from the above processes that prompted the community to resort to civil disobedience as a last resort, as discussed below.

### **4.3.2 Civil Disobedience: The Critical Place of Women's Agency**

When local negotiations failed to protect their land from being taken away by the investors, the community resorted to civil disobedience. From the onset it is important to clarify that the focus of the community resistance is not women's land rights, but rather a general struggle for community survival. Initially, there was no systematic involvement of women in the community activism. Rather, accordingly women forced entry out of necessity to protect their land not only for their own survival, but also for that of future generations.

Originally, the community violently defended its rights. Women participated by preparing spears, bows, arrows and machetes to attack, blocking access roads whenever there was a planned government activity and throwing stones at government vehicles. The community also ostracised their members in support of the Madhvani project and in some rare cases assaulted them. For example, *"in Omee area, when Oketta was coming to survey his land in 2008, the women especially attacked those who were supporting Oketta and Gen Oketta himself was thoroughly beaten by the women."*

However, such violent resistance proved counter-productive as many youth were arrested for posing a security threat and for economic sabotage, and many were still languishing in prison. Hence government succeeded in sowing disillusionment in the community. Three women in the group in Bana had their husbands in prison and were looking for support to pay the money for the Police bond. In one of the communities in Bana, women mentioned that most men were sleeping in the nearby bushes at night for fear of being arrested.

Hence the adoption of the more peaceful strategies such as singing sad songs, making babies cry to drown the voices of the government officials during consultations. *"Once they find us in such moods then they cannot address us and at times they go back,"* boasted one woman. One of the KIIs had this to say,

*In 2011, When Madhivani, RDC and DPC, came to Lakang, it were the women who blocked the road, they also stripped off their clothes as a curse to show rejection of the proposal hence causing serious resistance until they drove back.*

Again on 7<sup>th</sup> September 2015, the elderly women stripped naked to stop the demarcation of the Amuru and Adjumani borders.<sup>12</sup>

Below: women strip naked at a community meeting

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<sup>12</sup>The Monitor Team: *Daily Monitor*, 8<sup>th</sup> September 2016, *MP Olanya arrested over Amuru Land*, p.1 & 6



Although women's participation at the forefront is visible, they were not formally organised. What currently exists are ad-hoc groupings that spontaneously coalesce together whenever alerted of government impeding consultation to force the community to give away their land. In other words, the protests are sporadic without coherent organized dissent, but are driven by compulsive discontent with the status-quo. The mobilisation has taken varied strategies

including informal discussions at drinking places, markets, churches and any other community gatherings. Equally, the use of mobile phones has widened the scope of independent community mobilization with instant sharing of information.



**Above:** women demonstrate in front of government officials

There were mixed feelings about the informalities of the protests and the results yielded. On the one hand, the lack of formal structures is deemed detrimental to the consistent pursuit of the land rights, particularly against the backdrop of the President's overt engagement. Given the feebleness of the organised dissent, it was prone to elite capture. For example, any person could marshal a few individuals but claim to be the spokesperson of the Acholi for selfish interest. Both FGD of men and women were very cynical of Hon. Latigo for having written to the President proposing that the disputed land should not be made customary land obviously for personal political capital. The community also believes that hitherto prominent and vocal members were identified and bought off with unidentified sums of money as a way of isolating and silencing them from participating in community resistance. Consequently, while the community citizen action seemed strong at the beginning, it increasingly waned with time. It is sporadic largely triggered by the government officials' visit to the region and importantly left to elderly women who use their only weapon: stripping naked.

One of the women leaders who led the demonstration affirmed that:

*.. stripping naked was our only instrument because we realized that the only weapon we had was to get naked!, we didn't have guns nor the energy for physical violence some say*

*politicians used you- never ! We stripped over our land, when they take it how shall we feed our children? Most of us are widows. The land does not belong to the politicians, it belongs to us.*

Another elderly woman was of the considered opinion: “*In any case with the loss of our land, there is nothing more to lose.*” The community also believed that stripping naked by elderly women in front of government representatives could have led to the transfer of the then RDC for failing to ably represent the interests of the President’s Office. Similarly, Bishop Ochola<sup>13</sup> is on record to have said that the stripping naked was a curse that precipitated the death of the then Minister of Internal Affairs, who had spearheaded the security arm of government in quelling the resistance.

The above raises a critical question whether citizen action can be sustainable in the event of state’s retaliation with force. Indeed, the arrest of the protestors and military watch weakened the community struggle. On the other hand, it is the informality and the fluidity of the resistance that made it difficult for government to clamp it down for it remains faceless, making it quite difficult to arrest the whole community. The local community believes they have sufficient resolve and solidarity based on common heritage to sustain their resistance. The resoluteness in protecting the land is manifested in the statement: “*This is our land and for one to take it away – he/she will first kill us.*”

The resilience of the community civil obedience has also yielded unforeseen results. Following the community protest, Oketta volunteered to surrender the land opposite his farm in order to appease the local community. It is also reported that with the unrelenting community protest one female land owner who had blocked a road through “her” land, was forced to open it up.

Contrary to government’s disdain over the stripping,<sup>14</sup> within the community, apparently the women who stripped naked are celebrated as heroes. The women equally boast of forcing the President to negotiate with the community directly. However, while the Memorandum of Understanding was signed, its implementation is yet to materialise.

Women have congratulated themselves for sustaining the struggle through peaceful civil disobedience and disdain of power, following governments’ violent squashing of the violent community protests. Furthermore, the peaceful and unique strategies by women drew public and international attention because of its “strangeness?” One FGD with women that had this to say,

*In all this, the government has been alerted that this land has owners. It has been successful in that in all we did, the news reached people like Olara Otunu and the American people.*

Significantly, it has had the far-reaching effect of challenging hitherto dominant feminist discourse about women’s helplessness and victimisation under customary land tenure. Why would women defend a land system that marginalised them “to the core”?

What is more profound with the Amuru case-study is that the citizen action is from within with limited evidence of external support. The continued resistance shows that even when there is no

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<sup>13</sup>Bishop Ochola is.....

<sup>14</sup>Sandra Janet Birungi: *Stripping wont protect your land: Minister tells women*; *Daily Monitor* 23<sup>rd</sup> August, 2015 Ahikire said it works.

support, once the community has a common goal, their voice will be loud and their action can stand the test of time. It is 9 years since the proposed project was initiated but the proposal has never been endorsed by the community.

## 4.4 Impacts and Effects of Acquisition Process

### 4.4.1 On the question of Transparency and Legitimacy

The opaqueness of the Amuru Sugar Works transaction can be discerned from the conflicting information about the actual acreage. Madhvani Group of Companies applied for 40,000ha of and in 2008; Cabinet approved 20,000 ha; the Amuru DLB allocated 20,000 ha to the company as a lease. According to the sources at the MGC, the company secured 10,000ha of land but the community insisted it was 40,000ha. Hence the community was apprehensive of being rendered landless which not only would compromise their current livelihoods but also the future of their children.

Likewise, there is lack of clarity about the actual percentage of government shareholding. For example, although Hon. Ocula informed Parliament that government investment was at 30% the letter by the Minister of Trade indicated that it was 40% (*Parliamentary Hansards*, 12 November 2008).

Findings also reveal that some traditional leaders who were invited to attend the President's meeting were not given adequate information on the nature of the issues being discussed. In some situations some cultural leaders were dissuaded from participating on account that the issues to be discussed were too technical to be understood by them.

At the CBR dissemination meeting at Bana held on 22<sup>nd</sup> September 2015, the community and its leadership including the traditional leaders, and the local councils were not aware that the Memorandum of Understanding had been signed between government and the local community, and on their behalf. Rather they only heard of it at the dissemination.

In sum, the political process was neither comprehensive nor the information flow between duty bearers and the rights holders strong. The consultations were contrary to the Section 16.2 of the FAO guidelines on LSLA which require States to ensure that the planning process for expropriation are transparent and participatory in that anyone likely to be affected should be identified, and properly informed and consulted at all stages. Consultations, consistent with the principles of these Guidelines, should provide information regarding possible alternative approaches to achieve the public purpose, and should have regard to strategies to minimize disruption of livelihoods. States should be sensitive where proposed expropriations involve areas of particular cultural, religious or environmental significance, or where the land among others in question are particularly important to the livelihoods of the poor or vulnerable. Without clear stakeholder's engagement, conflicting demands and interests within a community were not harmonized.

## 4.4.2 The Impact

It is worth noting that Amuru District in general is one of the poorest and remotest districts in the country, though with a lot of potential with expanses of land and rich soils. The conflict seemed to have accentuated the stagnated development. A community member lamented: *“Government is pushing us for our decision. ... Government considers this place as a game park, and the people who live here are taken to be like animals.”* At the time of the study, bridges had collapsed and the roads were impassable. The local people also indicated that the average distance from a functioning health centre was 40km.

Below: a bridge washed away by heavy rains in 2014. This was the only access road into Amuru District



In these circumstances there is lack of trust in the capacity of government. Indeed, during a bye election for the Woman MP in November 2014, the dominant narrative in Amuru rotated around land. Among the explanations of why the candidate standing the NRM ticket lost the election was the land question. According to the *Sunday Monitor* of November 23, 2014 it was indicated that the opposition had:

“poisoned” the voters’ minds with propaganda that if they voted the NRM candidate, they would have nobody to defend

their land from being given away to Madhivani for sugar cane growing.

The newspaper analysis continues that land in Amuru:

*...is a contentious issue that touches the hearts and souls of the local community... the local people ad politicians have been accusing the government of trying to grab their land to give it away to investors ... government has not made a satisfactory counter to this theory (the Sunday monitor November 23, 2014).*

### Fear and Anxiety

In some situations, the process of land acquisition was and still continues to be relatively brutal. For example, two people were allegedly killed at night by soldiers. The violent acquisition of land has not only precipitated fear but has also bred extremism on the part of the community.

*For us who have rejected this project to take off, we are now finding it difficult to move freely. We live in fear of being arrested. We cannot even go to Amuru. Besides there is a man who came and grabbed our land and told us that whoever tries to stop him, he will*

*shoot and kill them. ... This man has a gun and soldiers - and even tear gas. ... This has traumatized us a lot (FGD 2013).*

When the research team visited Amuru to provide feedback to the community, this anxiety was very apparent. The community was visibly highly charged. “Every person here is security” said one young man in relation to the situation of land in their area. This anxiety seemed to spur anger in very unexpected ways. Our encounter with these inherent anxieties is indicated in the case below:

#### **Anger and anxiety over land: the case of the community dialogue at Bana, Amuru**

On September 22, 2015, the research team had made contacts with the local chiefs (cultural leaders), district officials and the larger community and arranged to congregate at a place called Bana. All seemed to go well as the team was welcomed to the place. Men looked for chairs while the women organized a mat like tumpline on which to sit. A larger majority of men remained standing as the chairs were not enough. Introductions were made and the aim of the dialogue was introduced as to give feedback to the community on the research that was conducted the previous year by the same research team. One could however sense some uneasiness, anger and tension with each succeeding contributor raising their voice higher than the previous one. . There were many questions? Why particularly Amuru? What are you doing here? Make your purpose clear because the land thieves have used the same local chiefs. Why move with some of the chiefs that have already betrayed the people by siding with the land grabbers. Before long the hitherto organized community dialogue turned into possible battle ground. A number of young men stood up and grabbed tree branches and sticks. Women sensed trouble and stood up to organize their wrappers. Tension now became real but behold- the District Police Commander (DPC) appeared at that very moment, with armed police who quickly stationed themselves for action. Fortunately the situation quickly calmed down. The local chiefs sped off as the research team also followed suit.

#### **Increased Land Grabbing and Speculation**

The realisation that land is not merely a community asset but a commercial asset that could be individually appropriated and sold has heightened the incidents of community landgrabbing. It was observed that youth in particular were grabbing private and public land, particularly that deemed to belong to the DLB to purchase motorcycles (*boda-boda*) and vehicles. A DLB officer noted that a lot of land is being sold informally with “*people buying what they do not know.*”

*If you go there you will find different people from different backgrounds because they came early and grabbed lands waiting for any rich person to buy this land.”*

On the other hand, some have argued that because most of the traditional landmarks were erased during the encampment of the community it is difficult to return to the original home. The hitherto land marks such as natural features including rivers, anthills, specific trees were erased during the civil conflict, making land demarcation more contentious and ambivalent. The lack of certainty over community boundaries has aggravated the land struggles.

The increasing individualization of land is gradually undermining the community collectiveness. The land grabbing has become a struggle for the fittest with land grabbed and sold to whoever comes with money. In fear that the community would lose the land to government and other “investors” has prompted some dubious individuals to grab and sale land particularly that perceived to belong to the DLB. Accordingly, in order to protect their land the community voluntarily decided to allocate land to prominent politicians to mitigate against its being taken over by the government.

The informality of the processes and lack of systematic documentation of these transactions makes it difficult to estimate the amount of land which has been sold and bought. This escalating practice is of growing concern to women because their access to land is primarily through the male custodians. Unfortunately, although both the traditional leaders and community members noted the growing individual land sales were a bad practice, there was no identifiable organized reaction to counter it. Rather, this creeping phenomenon is overshadowed by the Amuru Sugar Works case.

### **Withering Cultural Safeguards for Women**

Although the cultural and community land ownership has been in existence since time immemorial, it is drastically being undermined with individual land titling and ownership. As such, the leases offered by the Amuru District Land Board are given prominence as the most legitimate and developmental oriented land tenure. Consequently, powerful and influential individuals are dispossessing communities of land claiming it as their own for private sale.

The preferential regard for leases at the cost of customary land tenure has inadvertently weakened the traditional land systems. *In the past the clan heads were the ones responsible for keeping land for their people. Currently the land sales are happening secretly.* In addition, the protective nature of community land rights is diminishing as the cultural safeguards to ensure the welfare of all: particularly the most marginalized are being ignored or are withering.

While originally the Acholi praised the cultural leadership for holding the society together during the insurgency, the Amuru case has caused a rift between the cultural leaders and the political leaders as well as the cultural leaders and the community.

At the CBR dissemination meeting, the community almost lynched its cultural leaders. The presence of the chiefs provoked anger from the people, as encapsulated by the following reflection of the CBR Community dialogue on 22<sup>nd</sup> September 2014.

*Make your purpose clear because the land thieves have used the same local chiefs. Why move with some of the chiefs that have already betrayed the people by siding with the land*

*grabbers. Before long the hitherto organized community dialogue turned into possible battle ground. A number of young men stood up and grabbed tree branches and sticks. Women sensed trouble and stood up to organize their wrappers. Tension now became real but behold - the District Police Commander (DPC) appeared at that very moment, with armed police who quickly stationed themselves for action. Fortunately the situation quickly calmed down. The local chiefs sped off as the research team also followed suit.*

Evidently, there is general animosity towards the traditional leaders by the community especially the male participants. It was charged that

*If you hear about Madhvani this company has used government as its shield through the Head of State who used the District Land Board to connive with clan leaders to take our land! And Madhvani is coming, usually the clan leader comes ahead of them! Today we want the clan leaders to tell us exactly where they belonged on which side? ... You hear them saying I have land in Bana am selling!! And yet they are supposed to protect the land! What a shame?*

*We as a clan leaders, we are no longer consulted. Our structure has been weakened. We have been left helpless” (FGD) clan leaders.*

*Before, people lived together in harmony and we cultivated freely but now land has been commercialized and people are self-centered and they no longer respect the Rwots.*

*We really do not know what will happen to the generations that are being born if they will still have what they call land!*

The traditional leadership attributed the withering of their cultural power to the a power contestation with the parliamentarians.

*The politicians hijacked the process and started to stage manage them ignoring the powers of the Rwots and eventually the Rwots became powerless. The politicians told the community that Rwot Acana is selling their lands behind their backs. So when we came to meet the community everything had been distorted and people could not listen to us.”*

*We elected MP to do their work in Parliament but not to come here and start disorganizing us! For land matters here, the powers are with the rwots (cultural heads) and not elected leaders. We are appealing to these politicians to stop their selfish interest and stick to legislation in Parliament. ... These children we elected are the cause of all the woes we see now. It hurts and I talk with pain.”*

## **5. Towards a legitimate, accountable and equitable land governance terrain for LSLAs in Uganda: A Synthesis**



## 5.1 Examining the Roles of different actors

### The Duty Bearers

The key duty bearers in both sites were government and departments like the Uganda Investment Authority and structures - the District Land Board (DLB) and the sub county Area Land Committees.

**The District Land Boards (DLBs):** Article 240 of the Uganda Constitution and Section 56 of the 1998 Land Act established the DLB as a key structure for land management in each district. Article 241 and Article 59 of the above legal instruments delineates functions of DLB as to (a) hold and allocate land in the district which is not owned by any person or authority; (b) facilitate the registration and transfer of interests in land; and (c) deal with all other matters connected with land in the district in accordance with laws made by Parliament. cause surveys, plans, maps, drawings and estimates to be made by or through its officers or agents; compile and maintain a list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other thing that may be prescribed; review every year the list of rates of compensation referred to in paragraph (e) of this subsection; and deal with any matter which is incidental or connected to the other functions referred to in this subsection.

The DLB structure was functional in both districts but the nature of interface with land matters and in particular LSLA varied considerably due to the nature of landholding system. In Amuru the Madhvani group of companies consulted the DLB because the land in question was public land which by law is under the management of this structure.

On the other hand, the Kaweeri coffee plantation project was acquired under the private mailo land ownership tenure system. Under this tenure, individuals have the right to sell their property as long as they agree on the terms and conditions. While the law empowers the DLB to allocate public land and sets out regulations in terms of delineating the processes, management of transactions involving private land do not fall in their domain. They have no means to safeguard the interests of local communities even when they are affected negatively by these acquisitions. Findings revealed that the role of the DLB in the Mubende case was minimal as the property was in the hands of private mailo ownership. The transactions took place between the buyer and seller once the terms and conditions had been agreed upon. In the case of the Kaweeri coffee plantation, the Sub County Land Board was just informed that the investment project was going to be implemented in the selected area. Even when the conflict ensued in both case studies, the DLB role remained invisible which clearly shows that the DLB is not an arbitration entity but simply oversees the allocation of public land. Even the Sub County Area Land Committees responsible for assisting the board in an advisory capacity on matters relating to land, including ascertaining rights in land were not consulted.

The structure responsible for mediation of conflict is the Land Tribunals established under Article 242 (1) of the Uganda Constitution. According to Section (2), the jurisdiction of a land tribunal shall include (a) the determination of disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the Uganda Land Commission or other authority with responsibility relating to land; and (b) the determination of any disputes relating to the amount of compensation to be paid for land acquired. (3) The chairperson of a land tribunal is appointed on

the advice of the Judicial Service Commission. However, this structure never took off due to lack of funding.

**Non-Governmental Organisations (NGOs):** Section 6.4 of the FAO Non-governmental organizations (NGOs) can play an advocacy role throughout the process -- in particular educate people about their rights, advocate on their behalf, and teach them negotiation skills to argue for equitable compensation. NGOs can assist people to organize themselves to contest the purpose of the acquisition; to fight for transparency and due process during the procedures; or to request higher compensation standards. They can be advocates for the vulnerable, including women, within the affected population and help them to protect their rights. NGOs can play the role of a watchdog, monitoring the acquiring agency's actions to ensure that it is following the legally-prescribed processes in a transparent and equitable manner.

In Mubende, two NGOs were instrumental in the fight for the protection of the evicted communities' rights. These were Action Aid and FIAN (**Food First Information and Action Network. Action Aid (AA)** is a non-partisan, non-religious organization that has been working in Uganda since 1982 to end poverty and injustice. It is among the leading anti-poverty agencies working directly with over one million poor and excluded people in 50 districts of Uganda. The organization focuses on tackling the root causes of the injustice of poverty rather than just meeting people's immediate needs. The organization is primarily concerned with defending and raising awareness of human rights, be they economic, social, cultural, civil or political (AA website). AA came into the limelight in the Kitemba issue immediately they were evicted in 2001. They came in to provide emergency support in form of beddings, food and other utensils. After this, they have become instrumental in supporting the local group to pursue the case against government and the investor from the beginning when the case was filed in 2002 up to the present. The forms of support provided by AA were funding and logistics for witnesses to attend the court hearings in Kampala.

FIAN is an international human rights organization that advocates and campaigns for the realization of the right to food. It was founded in Germany in 1986. FIAN consists of national sections and individual members in over 50 countries around the world. FIAN is a not-for-profit organization without any religious or political affiliation and has consultative status to the United Nations.

The main role of FIAN was document the nature of human rights violations resulting from the investment and tried to bring it to the attention of the international community. In 2002, FIAN called on the Ugandan government to tackle the exploitative labour conditions on the plantation. But neither the Ugandan government nor the *Neumann KaffeeGruppe* reacted to these emergency actions. FIAN Germany also addressed several letters directly to the *Neumann KaffeeGruppe*, but these were not answered as well. In February 2003 the local group in Cologne took up the work on this case. After the background to the case had been researched in more detail, co-author Gertrud Falk travelled to Uganda in August to get a clearer picture of the situation on the ground. This voyage confirmed among other things that the IDPs continued to live in very bad conditions as described in the study commissioned by Action Aid Uganda.

In the case of Amuru, findings indicate that the role of NGOs in Amuru did not come out vividly. Rather there was more use of covert methods to support the community cause. The NGOs mentioned acted in a silent manner and promoted the peaceful resistance concept. Accordingly, the aim was to empower communities with alternative transformational educational experiences useful for cultivating holistic peace and justice throughout Uganda. Solidarity Uganda directs most of its energy toward Strategic Non-violence trainings, facilitated by staff, volunteers, and consultant trainers from partner organizations in East Africa. These trainings apparently equipped communities to achieve their own self-identified goals through discussion-based pedagogies. Exposure to creative nonviolent tools and methods are emphasized, and participants create and implement their own action plans.

Furthermore, in Amuru there was a pressure group known as *Wrong Government*, basically a local pressure group comprising of the youths. Wrong Government was formed as a subversive response to the label of people of Amuru as less of humans – as animals. One of the participants had this to say:

*The main reason was to protect the land from being grabbed by investors. “As animals as they call us, we sacrificed our lives, ready to be killed. So we do our work by placing road blocks wherever we hear that they are coming.” To some extent it has been successful in stopping Amuru Local government from taking over our land because every time they come here we block the roads and so they have no access to the land and that’s why we are still here.*

Furthermore, the organization known as Human Rights Focus facilitated lawyers. The community also report injustices happening in the communities. Other structures communities report injustices to were the RwotKwer, LCs and the area MPs and Acholi Parliamentarian Group. Opposition politicians from Amuru as well as the wider Acholi sub region were actively involved in debates concerning LSLA. Their main concerns have been demand for transparency in the allocation of land for the proposed sugar project and expressed fear about loss of land and associated negative impacts. They apparently convened community meetings at different fora and discussed the Amuru land question on the local FM radio stations, debates on television. Their activities relatively raised the level of consciousness about the need to protect land at community level, though some viewed it as an opportunity by the politicians to gain political capital and mobilise votes.

**The Media:** *Acholi Times*, *New Vision*, the *Daily Monitor*, *The Independent*, local FM stations, the local TV stations have been instrumental in creating awareness and providing information to the public and affected communities on the current land acquisition in Amuru. Their updates have been on the actors, processes, community reactions and outcomes of the ongoing processes among others. Their contribution to the ongoing debate about the Amuru Land question is enormous. One probable outcome of the media activities is the increased international interest in the Amuru land question.

The synthesis attempts to draw out the key questions that should form the basis of a conversation on land governance in Uganda particularly in the context of LSLAs. It highlights the key concerns and proceeds to suggest recommendations and policy implications.

## **5.2 The process of consultation and negotiations were top-down and flawed**

In both cases, communities were not adequately involved and consulted. In Amuru, the process of consultations began with the Acholi Parliamentary Group in 2006 where the investment proposal was made. A few cultural leaders were also consulted in a workshop setting in Gulu District. This meeting was attended by the President and they agreed to give land to Madhvani. Since this institution wields power, they were to act as gatekeepers in sensitizing the local populations about the proposed sugarcane project. Similarly, there was a meeting with LC5 chairperson of Amuru District by Madhvani Group survey team in 2007. In July 2007, a delegation comprising of the LC5 Chairperson, Councillors, Technocrats and other members from Amuru had a study tour to Kakira Sugar Works to generate buy-in into the proposed project.

While attempts to consult the different stakeholders were made by the Madhvani Group, the place of the rights holders and in particular women remained lacking. Evidently, the consultations appeared to have focused on the leadership cluster namely, Members of Parliament for the Acholi Parliamentary Group, Local Council representatives, and technocrats from Amuru district and the District Land Board as the allocation agency. With such consultative process, Government and LC representatives may think in terms of the economic contribution of the project and this brings us to the question of whether leaders represented the interests of the community and had a shared vision about the project. They thought that the community would accept their proposals when presented. All leaders, whether political or cultural were shocked and unhappy about the community residents. In their perception, they had the delegated authority to act in the best interest of the community. For example, traditional leaders talked to expressed support for the Madhvani Project while the community felt that they were traitors who had connived with government and Madhvani to take away their land. Findings also show that some traditional leaders who were invited were not given adequate information on the nature of the issues being discussed. In some situations some cultural leaders were dissuaded from participating because the issues were considered too technical for their understanding.

However, the inability to harmonize community needs and aspirations led to unexpected incidents. For this group, loss of land is a question of life and death since their survival depends on this resource. On June 2nd 2014, when the Project was being launched by Ministers of Trade and Industry and Lands and Urban Housing and the Woman MP of Amuru, the community rejected the proposal and labelled the ministers as brokers of Madhvani Group of Companies. Community wondered why the Madhvanis were not contacting them directly instead of using the government machinery. Community FGDs reported that during the meeting with government officials, it was the first time they were seeing the traditional leaders as their community representatives.

This is also an indication the consultative process was not systematic and information flow mechanisms between duty bearers who were meant to propagate information about this project to the rights holders were weak. The way these consultations were conducted remains contrary to the Section 16.2 of the FAO guidelines on LSLA which require States to ensure that the planning and process for expropriation are transparent and participatory in that anyone likely to be affected should be identified, and properly informed and consulted at all stages. Consultations, consistent with the principles of these Guidelines, should provide information regarding possible alternative approaches to achieve the public purpose, and should have regard to strategies to minimize disruption of livelihoods. States should be sensitive where proposed expropriations involve areas

of particular cultural, religious or environmental significance, or where the land, fisheries and forests in question are particularly important to the livelihoods of the poor or vulnerable. Without clear stakeholder engagement, conflicting demands and interests within a community were not harmonized. According to Madhvani, there was no need for conducting direct consultations with the community since they were not the owners of the land. *“There is no need for consulting the community because we do not own the land. We have nothing to do with the people. It is the government who should consult them.”* The outcomes of this defective consultative process bred a number of controversies, negative reactions due to community discontentment and mistrust among the intended project beneficiaries..

In the case of Kaweeri Coffee Plantation in Mubende there were no consultations at all and yet the occupants of this land had legal rights as bona fide occupants which delineate procedures on how they should be handled in case of evictions. There was no detailed programme to disseminate information to the community about the proposed project. The Land Amendment Act 2010 section (32A 2 and 3) provides for adequate notice of evictions not being less than 6 months and only when a court order has been issued by Magistrate Grade I or a Chief Magistrate. The process began with a community meeting on 18<sup>th</sup> June spearheaded by the Deputy RDC Mubende together Greg Stroug and Platter German officials from the company. In this meeting, the residents were told about the upcoming investment and as such they were required to vacate the land by 31<sup>st</sup> August 2001. Unfortunately, evictions took place from 17<sup>th</sup>-24<sup>th</sup> August 2001. Even when the President of Republic of Uganda the Project launched the project in August 2001, the community complained that they were not given an opportunity to air out their concerns to the President.

### **Citizens’ action as a response to unmet demands of the affected Populations**

Citizens’ resistance was a common characteristic of the implementation of these LSLA projects in both case studies. However, the nature of strategies, organization and the stage at which it emanated varied by location. One crosscutting feature of this action was the use of legal action in both case studies. In Amuru, citizen action formed in the pre-acquisition process and often vibrant with women being at the forefront. Initially, some of the strategies were violent but when these proved ineffective they resorted to using peaceful resistance strategies. The outcomes of this have been delayed implementation of the project and recollecting and designing new strategies by the government officials.

Amuru brings up another dimension of high visibility of citizens action but with no stable and enduring groupings. While there was strong evidence of community resistance against the proposed sugarcane project and women’s participation being at the forefront, there were no formal groupings/ structures that would consistently advance the rights of women. What was prevalent were ad hoc groupings that were formed as a reaction to the threat of loss of their land. The community, and in particular women, just acted and were not very organized to advocate for their rights. Although this structure could be strengthened to advocate for protection of women land rights, they are prone to subjugating women’s rights over those of the communities. Although informal groups in citizen action could be seen to be effective because of the inability to trace ring leaders, there is a danger that their rights could fall through the cracks. In the specific case of women, they stripped naked and instigated their children to cry in front of government officials but did not seem to clearly articulate their entitlements beyond the general community engagement. In other words, women’s land right were struggled for as part and parcel of

community rights. The lack of clear articulation of women's land rights may weaken their voice in long-term negotiation.

### **The dilemma of customary tenure in the context of LSLA**

Customary tenure is lawful under the Constitution Article 237 (3) (a) and the Land Act section 3 (1) (a) through (h). The key characteristics of customary tenure as described in the Land Act section 3 include: it applies to a specific group of people; applies rules accepted as authoritative to those people; regulated according to customary rules; allows for communal ownership, family ownership, institutional ownership and individual ownership of land in perpetuity; applies customary rules that do not inhibit the enjoyment to rights for women, children and persons with disability. Informal land governance through customary ethos (tenure) is most predominant in Uganda. Customary tenure accounts for between 75-80% of the land in Uganda and only 15-20% of land is formally registered. These statistics indirectly show that there are higher chances of having LSLA on customary land than on other kinds of land of a leasehold, freehold or mailo tenure nature.

Recognition and allocation of rights to land under customary tenure is not uniform across the country; rights are instead allocated and sanctioned or recognized following the customs of a given community. Although these differ from community to community, and at times clan to clan and further from sub-clan to sub land and even family to family, there are some cross-cutting modes and allocation/acquisition of rights to customary land. In a number of communities, people acquire rights to customary land through: purchase, inheritance, borrowing/renting land, and gift *inter-vivos*.

A scan of literature indicates that in practice, customary tenure has not been valued; and is considered antithetical to development (Ossome, 2008). It has been argued that the more informal a country's tenure system, the less the possibilities to produce capital for growth and development. Yet, there are some studies that also show that indigenous tenure systems such as the customary will not always be adversarial to agricultural advancement; they may benefit the farmers. In the current situation, customary land rights holders face the greatest threat of dispossession and unfair deals in the case of LSLAs and women seem to be the worst victims of this marginalisation.

### **Poor People in the Face of Power: Crossing the Iron Bar**

Poor people's land rights are largely unprotected. They depend on the whims of the powerful. The structure responsible for mediation of conflict is the Land Tribunals established under Article 243 (1) of the Uganda Constitution, but this structure was never operationalized on account of lack of funding. Accordingly the jurisdiction of a land tribunal should have included (a) the determination of disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the Uganda Land Commission or other authority with responsibility relating to land; and (b) the determination of any disputes relating to the amount of compensation to be paid for land acquired. The absence of tribunals leaves a very big lacunae in land governance as people resort to what has been termed 'forum shopping'. In the case of small scale disputes people choose adjudication by clans, local council courts, formal magistrate courts or religious institutions depending on the

circumstances. In the case of large scale displacement the choices are more limited and this puts communities at great risk. The lacuna at the local government level therefore is inimical to accountable and equitable land acquisition.

## **6.2 When do women's land rights begin to be eroded in LSLA?**

Uganda has been hailed for having comprehensive legal framework in terms of having specific provisions protecting women rights and the type of rights. Section VI of the 1995 Constitution provides for gender balance and fair representation of marginalized groups on all constitutional and other bodies. Article 32 (1) provides for affirmative action in favour of groups that may be marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them. Article 180 Section 2b) reserves one-third of the membership of each local government council for women; (2c) any law enacted by virtue of this article shall provide for affirmative action for all marginalized groups. The Local Government 1997 (Cap 243) section 16(3) requires that at least one of the offices of the secretaries of the District Executive Committees be held by a female. Section 47 reserves one-third of the executive members at parish and village level for women. Section 48 (4) of The Land Act 1998 requires at least one of the five members on the Uganda Land Commission shall be a women; Section 58 (3) requires one- third of the minimum five members of the District Land Board to be women and Section 66 requires that least to have one woman. Section 17 4b) states that elected officers of the communal land associations shall not be more than nine nor less than three persons of whom not less than one-third shall be women. Women's land rights have been recognized in the Land Act (Cap 227) and Land acquisition Act (Cap 226), spousal consent is a requirement on all matters relating to land from which the family derives sustenance.

Analysis shows that women's land rights begin to be eroded right from main law on governance with the national constitution down to operational level. Key gaps include lack of binding actions to compel adherence to policy and outright silence on gender and women's issues in the pre-acquisition, acquisition and post-acquisition processes. For example, the National Gender Policy 2007 mandates the Ministry of Gender, Labour and Social Development to spearhead and coordinate gender responsive development, and in particular ensuring improvement in the status of women, the public and private have the responsibility to finance the gender mainstreaming; provide technical support on gender mainstreaming to sectors, institutions, local governments, civil society organizations and the private sector; set standards, develop gender guidelines, disseminate and monitor their operationalization.

The private sector actors are required to, among others, ensure that corporate policies and practices incorporate gender equality principles; collaborate with MGLSD and other appropriate institutions on matters of gender mainstreaming; broaden corporate social responsibility initiatives and interventions that promote gender equality and Institute and implement Affirmative Action measures. The actualization of the stated roles by the Ministry seemed not to have been effected as companies involved in LSLA as well as the UIA had no established relationship with the ministry in implementation of their activities. Some companies were not aware of the National Gender Policy and the Land Act as key documents that have clauses on gender mainstreaming. With this glaring knowledge gap, it will be difficult to incorporate gender in LSLA.

In addition, women's land rights get to be eroded due to lack of explicit guidelines on incorporation of gender in all processes of acquisition in the law and policy relating to LSLA. For example, The Uganda Investment Code Act 1991 Section 12) which clearly defines the process of acquiring land has no provision for addressing women's land rights. The assumption that gender issues will be incorporated in development programming will remain in theory. The issue of women's land rights was seen as the responsibility of the state since them as investors are only concerned with meeting the government requirements for investment. Apart from the limited knowledge about the gender requirements, investors seemed disengaged from the whole issue of women's land rights in all processes. Some investors indicated that it is the responsibility of the state not them. Where compensation is done, a household is taken as a homogenous unit to benefit from compensation targets heads of households who are normally men. All these practices are not in line with FAO 2010 guidelines and the (Nairobi Action Plan 2011 commitments to governments to promote assessments of land-based large-scale investments, including gender differentiated and poverty impacts to support of evidence-based advocacy and establishment of a monitoring and reporting mechanism for tracking these investments to ensure that these ventures are beneficial to national economic development and local communities including women.

In the case of Kaweeri Coffee Plantation the immediate impact to women was loss of access to land for crop cultivation. Women were involved in planting crops to meet their family food needs and the surplus would be sold to get money since they were subsistence farmers. Women are now encountered with a problem of inadequate food for themselves and their families. While the study did not conduct a survey to ascertain the magnitude of the impact of lack of adequate food on the quality and the number of meals eaten, other studies in the same area confirm the community statements. A study by Action Aid (2008) on the impact of the effects of food Security: The Case of NuemannKaffee Group Mubende District confirmed the above community statements. The study findings show that since 2002, food insecurity compromised on the quality of food among the evicted households and a majority of these suffered from malnutrition or undernourished especially among the children and the elderly. This was attributed to limited land for cultivation as this process of evictions led to reduced acreage from 17.7 acres to 3.9 acres among the affected populations. Other causes of food insecurity were the high cost of food and yet had no income, survival on hiring land from the caretakers of National Forestry Authority but was reportedly not sustainable because forests had grown and not ideal for crops but also had restrictions in terms of time frame and the nature of crops to plant. Seasonal crops are the most preferred since they do not grantee ones permanent rights.

There was a crosscutting finding among all respondents that LSLA would negatively impact on women's land rights. It is highly probable that the drastic shift from collective to increasing individualization of land will deprive women of their land rights. It is noteworthy that traditionally also men did not have exclusive ownership right to land or powers to sell it. Thus women's rights were better protected under the customary tenure, for at least they were guaranteed access to land and survival. The visibility of women in the land resistance, to the extent of stripping naked is testimony of the importance of land to women. Currently, women's livelihoods such as farming, firewood and medicinal plants entirely depend on land. Loss of access to land will unquestionably lead to general deprivation of livelihood limited food for their families and incomes from agriculture will be lost. Aside from loss of farmland, women lose the water, hunting and medicinal plants and even firewood.



## **The Paradox: Are Women's land rights better protected in the customary land ownership regimes?**

In dominant feminist literature, there are positions that take customary tenure as inimical to women's land rights. The Amuru case may demonstrate contradictory evidence. Customary land ownership which is a predominant land tenure system in the northern region accounts about 80% of land ownership (Ministry of Lands 2006). The 1998 Land Act PART II on land holding section 3 defines Customary tenure as a form of tenure applicable to a specific area of land and a specific description or class of persons; governed by rules generally accepted as binding and authoritative by the class of persons to which it applies; applicable to any persons acquiring land in that area in (d) (e) accordance with those rules; characterized by local customary regulation; applying local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land; providing for communal ownership and use of land; in which parcels of land may be recognized as subdivisions belonging to a person, a family or a traditional institution; and which is owned in perpetuity.

Under the Acholi traditional land management system, land is owned by the Clan (bigger and sub-clans). Land is seen as a collective asset and no clan or men as individuals would be allowed to sell land. This land is passed on from generation to generation and within this system women acquire land rights through marriage, by way of gift and inheritance. Each family is allocated a portion of land which has specified boundaries. Women are only allowed to use the land for cultivation of crops and access common property resources like grazing, hunting, water, wild fruits, mushrooms and medicines etc. on designated community land as long as they are part of that community. Although customary arrangement has been indicted for limiting women's land rights in terms of ownership and control, women had guaranteed access and use rights which enabled them survive with their families. One key informant had this to say:

*In Acholi, the issue of ownership by men and women is generally misleading. There is no individual who owns land, we have the clan which is the sovereign authority and sets rules which must be followed by everybody.*

Also the most worrying aspect of the land system is the diminishing authority of the traditional leaders who were custodians in terms of setting rules and regulations governing the land due to increased individualization. In the new wave of LSLA, the issue of collective rights as a general pattern for land management has drastically been undermined with individual rights taking prominence in the current land regime in Amuru District. The diminishing collective rights as it is emerging has led to increased individual land sales which have negative implications for women's land rights and general livelihood of communities. Land is increasingly being taken away by several individuals comprising elites, rich men and women (locally known as Alonyo), prominent politicians and government officials who have acquired large pieces of land. These acquire land through making applications either legally through the DLB or informally by purchasing land directly from individuals in occupation of the land. Such individuals are quietly selling land voluntarily without anybody coercing them and without the sanctioning of the clan that is traditionally the custodian of land in Acholi. These transactions were fueled by land-brokers from Gulu town who link the community and the potential buyers. According to an FGD with traditional leaders, about seven (7) powerful individuals were reported to have purchased huge pieces of land in the proposed Project area and none of them had consulted them. Neither had they

sought the approval of the DLB. Such growing trend was mainly attributed to the speculation that once the negotiations would be complete they would receive bigger compensation from the project.

While it is difficult to estimate the amount of land which has been bought due to lack of systematic documentation about these transactions, this practice is getting out of control and is of worrying concern to most stakeholders. Unfortunately, although both the traditional leaders and community members acknowledged that the growing individual land sales were a bad practice and mainly dominated by young people or migrants from other areas. With this increasing trend, there is strong indication that women will become landless if alternative lands are not provided. Men have got the opportunity to sell land and use the proceeds for their personal gain. Most of the men were reported to have purchased motorcycles, vehicles, and married additional wives and engaged in alcoholism all practices that undermine women's ability to fend for families. Women portrayed a picture of hopelessness as a result of men selling the land. It was however indicated that the first person to voluntarily sell land in Kololo, was a woman. According to community reports, she did this because of poverty. It was reported that when she lost her husband she sold 500 acres of land at 12 million Uganda shillings. She bought a motorcycle which at the time of the survey was not functional. She was reportedly landless and her life was very miserable and was surviving on providing casual labour. Accordingly, the person who purchased the land also fenced it off and blocked the access road which the community previously used. This is an example of loss of land rights even when women and men sell land voluntarily.

Women's land rights touch on issues of inclusion and exclusion, it includes access-use of land (husband/relative, hired, borrowed), sell land/mortgage, Inherit, Purchase, Joint tilting of land and transfer and withdrawal (Jennifer Brown, Sujata Das Chowdhury, 2002). Findings show that the perception on women's land rights was similar in all the sites visited and among the different respondents. The conceptual understanding of women's land rights was delimited to use rights and the user rights were only realized at household level.

## **6. EMERGING POLICY QUESTIONS**

### **i) Legality vs Legitimacy**

There is need to distinguish between legality and legitimacy and for government to ensure that rights of the poor are promoted and respected. Not everything that is legal is legitimate. As according to the people in Amuru that claim customary rights, they pursue the social justice argument and argue that, "*gazettement or not, this is our land, period*". Even in the case of Mailo land the people perceive land as a social right core to their identity enjoyed since time immemorial. It is one thing to make a process legal, it is quite another to make it legitimate. There is therefore need for a concrete policy dialogue on land governance to guide future acquisition processes, especially, given the inherent gaps with regard to the dilemma of overlapping claims. Policy clarity on land is therefore paramount to abate damage on the livelihoods of the communities as well eliminate friction in the land acquisition processes. Legal and policy reform is urgently crucial and participation of local communities in their diversity should be mandatory.

### **ii) Revise the Compensation Policy and resettlement policies**

The Uganda Investment Authority should adopt guidelines and approaches that regulate LSLA to ensure protection of the tenure systems and putting into consideration women's land rights in

investment. Compensation plans need to be clearly handled and adequately done for the benefit of the affected communities. Hence there is need to revise the compensation policy. Compensation should, as a matter of legitimacy, make people lead better lives.

**iii) Mechanisms for gender inclusive and systematic participation of communities**

Participation of local communities in their diversity is crucial. As seen from the Amuru case, the involvement of the local people was incoherent thus bringing about conflict, In Mubende the people testify to the effect that they were not consulted but rather lectured to. Participation and consultation must as of necessity move beyond perfunctory inclusion when acquisition processes have been determined but rather should be substantive where communities have a real say in terms of the models of investment. On the part of women, inclusive participation will require systematic documentation of the dynamic at the local level in order to take care of their concrete needs. Participation should be structured in the entire spectrum of pre, during and post - acquisition processes.

**iv) On Women's land rights**

The question of women's land rights has not been well articulated beyond the Consent clause in the case of disposal of family land. LSLAs tend to further complicate the terrain of women's right to land when displacements, evictions or even compensation are based on collectives. In the face of LSLAs, there is need to rearticulate women's land rights so that they are substantively structured in the negotiation and compensation processes. The question of marriage needs to be addressed. It is important to note that the majority of people are living under undocumented unions and this hurts women more in cases of acquisition and compensation. Women's position in relation to land also raises a red flag current policy direction of registering customary land which ostensibly enables rights holders to obtain certificates of Customary Ownership. While CCOs may sound developmental along the market logic, the dangers embedded in this policy is that it may erase even the minimal rights of access that women have enjoyed under customary tenure, by concentrating collective rights under individual certificates. The re-articulation of women's land rights in concrete terms and especially with regard to LSLAs is indispensable.

**v) Re-establish and revitalize Local Council courts**

In addition to the policy conversation, government should revitalize and strengthen the local council courts to provide the basic adjudication for local people. The lacuna in justice seeking at the local level accentuates the confusion around land rights.

## **7. Conclusion**

The current trends on LSLAs, mostly in sub-Saharan Africa, illuminate the fragile nature of rights and governance systems characterized by disregard of the legal and institutional frameworks as well as impunity by those who wield power. In cognizance of the gender impact of LSLAs, governments ought to be committed to promote assessments of land-based large-scale investments, including gender differentiated and poverty impact to support evidence-based advocacy and the

establishment of a monitoring and reporting mechanism for tracking the benefits of these investments to women as recommended by the Nairobi Action Plan of 2011.

The argument for LSLA is that Uganda has abundant unutilized land dominated by peasant agriculture which cannot bring transformation. Notwithstanding, the current controversy revolves around the increasing and uncontrolled levels of dispossession of land rights not only among the tenants but other categories of people are recognized by the law and the method in which these land acquisitions are being handled both by the state and non-state actors.

According to the officials from the Ministry of Justice and Constitutional Affairs, the solution lies in sensitizing the people. However, will sensitization address the inherent gaps and the anger surrounding the issue of land? The solution seems to be a more politically committed process that first and foremost addresses the historical injustices, while creating incentives for people to embrace inclusive development projects through legitimate and accountable models. Good models include joint investments, gender-fair outgrower schemes and transparent valuations.

## References

Chu, Jessica (2011) 'Gender and Land Grabbing in Sub-Saharan Africa: Women's Land Rights and Customary Land Tenure, *Development* 54 (1), 35-39.

Deininger, Klaus (2011) 'Challenges Posed by the New Wave of Farmland Investment', *Journal of Peasant Studies* 38 (2):217–247.

Food and Agriculture Organization of the United Nations (FAO) (2009) How to Feed the World in 2050.

[http://www.fao.org/fileadmin/templates/wsfs/docs/expert\\_paper/How\\_to\\_Feed\\_the\\_World\\_in\\_2050.pdf](http://www.fao.org/fileadmin/templates/wsfs/docs/expert_paper/How_to_Feed_the_World_in_2050.pdf)

FAO. (Accessed November 18, 2014).

FAO (2012) Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>, endorsed in May 2012, (accessed November 18, 2014).

Oxfam (2012) Our Land Our Lives: Time out on the global land Rush, Oxfam Briefing Paper, Available at [http://www.oxfam.org/sites/www.oxfam.org/files/bn-land-lives-freeze-041012-en\\_1.pdf](http://www.oxfam.org/sites/www.oxfam.org/files/bn-land-lives-freeze-041012-en_1.pdf), (accessed November 18, 2014).

Matondi, Prosper, B., Havnevik, Kjell and AtakilteBeyene. 2011. 'Introduction: Biofuels, Land Grabbing and Food Security in Africa', in Matondi, Prosper. B., Havnevik, Kjell and AtakilteBeyene, eds. *Biofuels, Land Grabbing and Food Security in Africa*. Uppsala: Nordic Africa Institute, pp. 1- 19.

Ossome L. (2014) Can the Law Secure women's rights to land in Africa: Revisiting tensions between culture and land commercialisation, *Feminist Economics* <http://dx.doi.org/10.108/13545701.2013.876506>.

Schoneveld, G. C., L. A. German, and E. Nutakor (2011) Land-based investments for rural development? A grounded analysis of the local impacts of biofuel feedstock plantations in Ghana. *Ecology and Society* 16 (4): 10.

Von Braun, Joachim and Ruth Meinzen-Dick (2009) 'Land grabbing' by foreign investors in developing countries: Risks and opportunities. Policy Brief 13. April 2009. Washington DC: International Food Policy Research Institute.

White, Ben., Borras, Saturnino M. Jr., Hall, Ruth., Scoones, Ian and Wendy Wolford (2012) 'The New Enclosures: Critical Perspectives on Corporate Land Deals', *Journal of Peasant Studies*, 39 (3-4): 619-647.

Republic of Uganda (RoU) (1995) *The Constitution of the Republic of Uganda*.

RoU (1998) *The Land Act*

Tripp, A.M. (2004) Women's Movements, Customary Law and Land Rights in Africa: The case of Uganda, *Africa Studies Review*, <http://www.africa.upl.edu/asq/v7/v7i4a1.htm> , accessed on September 23, 2016.

Whitehead, A. & Tsikata, D. (2003) 'Policy Discourses on Women's Land Rights in Sub-Saharan Africa: The Implications of the Re-turn to the Customary', *Journal of Agrarian Change*, 3 (1 &2) 67-112.

World Bank (2010) 'Rising Global Interest in Farmland: Can it yield Sustainable benefits?' Washington DC: The World Bank.