

# CUSTOMARY LAND OWNERSHIP AND UNDERDEVELOPMENT IN NORTHERN UGANDA

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**Abstract:** This study investigated customary land ownership and underdevelopment among the Acholi people of northern Uganda. It was conducted in the four Sub-Counties of Nam-Okora, Orom, Omiya-ayima, and Mucwini. The main tools for data collection were key informants' interviews, observation and transect walks. The study population comprised members of parish land tribunals, local council chair persons, peasants and traditional leaders. The research revealed positive relationship between customary land ownership and underdevelopment in that underutilization of resources was encountered, low agricultural practices leading to food insecurity and famine, existence of land conflict and inability to access loans for development. The study recommends embracement of freehold land tenureship in northern Uganda.

**Keywords:** Customary, Land, Acholi, Northern Uganda, Lawala, Freehold.

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## 1. INTRODUCTION

Contemporary discourse on land in Africa is polarized between advocates of tenure reform through state registration of individual titles to land and others who claim that customary or 'communal' tenure is the only check against landlessness among the poor in the African countryside, and that 'pro-poor' land policy should therefore strengthen customary rights to land. Only between 2 and 10 per cent of land in sub-Saharan Africa is held under freehold title (Deininger 2003, 62). Of the remaining 90 per cent, the largest proportion is held under 'communal' or 'customary' tenure. This means access to land in most of sub-Saharan Africa continues to be determined by indigenous systems of land tenure that have evolved over time under local and colonial influences (Cheater 1990; Bruce 1993; Palmer 2003; Benjaminsen and Lund 2002).

Land tenure refers to the manner in which land is owned, occupied, used and disposed of within a community. A properly defined and managed land tenure system is essential to ensure balanced and sustainable development. Until 1975, there were four types of land tenure systems in Uganda; customary, Mailo, freehold, and lease hold. Customary land tenure is the most dominant land tenure in Uganda. This refers to system whereby land is owned and disposed of in accordance with customary regulations. Specific rules of customary tenure vary according to each ethnic groups and regions. Often customary is imposed on other systems like Mailo and freehold. This tenure system also exists on its own as communal land ownership.

The 1998 Land Act of Uganda gives recognition to those who hold land under customary tenure, with the exception of land in Buganda (which is held mainly under, Mailo land) and urban areas where it is held under freehold, or leasehold. Mailo is a system of land ownership held exclusively in Buganda. It emerged from the 1900 agreement where the British colonial government divided land in Buganda into "Mailo" because it was measured in miles, which the Baganda people pronounce "mailo", and crown land. Most land in Uganda is held under customary land system. There are a number of different types of customary tenure in Uganda. In some places it is held communally, in some it belongs to particular clan while in others it is held by individuals. The 1998 land act states that customary land tenure shall be governed by rules generally accepted as binding by a particular community.

There is need to realize the link between land ownership system and development. Though land is vital for national development, land grabbing, unclear acquisition, eviction, and compensation flows continue to be reported in many parts of northern Uganda. Ngombe et al (2006) state that land reform has long been at the heart of effort to promote rural development. It has been argued that customary land tenure in northern Uganda is recipe for under development and thus a major cause of the region's untold level of rural poverty. With the increasing population, land access and ownership rights continue to be compromised despite the presence of mechanism to avert the problem.

According to the poverty status annual report (2012). Land is one of the most important assets; particularly for poor farmers. In the same report, 24.5 percent and 42.9 percent of Uganda's population is absolutely poor and insecure on land. Land is important for agriculture sector, which is the most source of income for Uganda's predominantly rural population. According to the agricultural sector annual report (2011), agriculture contributes up to nearly 20 percent and, accounts for 48 percent of the exports, produces a significant proportion of raw materials for industry and employs 73 percent of the population. Yet communal land ownership curtails the efforts to mechanise agriculture. Farmers in northern Uganda continue to use the hand hoe and farm their land basically for subsistence. Non-mechanized-subsistence agriculture on tiny plots of land cannot promote economic development by any standards. It's on this basis that this research was undertaken to assess the role of customary land ownership on underdevelopment.

## 2. METHODS

There searchers used key informant interviews in which 20 members of different land tribunals, 10 local councils and 30 community members were interviewed. An interview guide was developed and interviews were conducted in mutual interaction with respondents. The informants were selected from the population of Kitgum District. This included the tenants and the parish land tribunal, elderly community members. For this particular research; purposive and stratified sampling methods were used.

Purposive sampling method was applied to the right or desired members of the subject. We preferred purposive sampling because it gave ample opportunity to identify only the relevant people that could give required information to meet the objectives of the study. Stratified sampling was employed by dividing the population in to strata of the selected respondents like the parish land tribunal members, tenants, elders, members of the community in which a sample was drawn from each stratum.

The researcher used a sample size of 90 respondents of different social status, qualifications, and occupations. For the above reason, questionnaires applied to a specific category of respondents and interview for other category. The sample size was chosen looking at the duration for doing the research and the sample size represented the whole population as shown in the summary below.

**Table 1:** Below shows the distribution of respondents

S/NO	Category of respondents	Number of respondents
1	Land tribunal members	30
2	Local councils	20
3	Community members (tenants)	30
4	Clan elders	10
	Total	90

*Source: Field data*

For purposes of analysis, qualitative data was collected using questionnaire and interviews. The information was gathered using each tool and was separated and analyzed through categorization. All the analyzed data were presented orderly according to the objective of the study so as to ensure no mixing of information. The data that contained a little use of quantitative method was tallied and descriptively presented on a summary table and accompanied by a note that was provided below each for easy understanding by the researchers.

Under ethical consideration, information that was gathered from the various respondents was treated with utmost confidentiality; this showed no need for using the data collected for bad intentions. The researchers also gave the

respondent's subsequent details of the researcher's particulars, research topic, objectives and purpose of the study. Therefore, the respondent's full knowledge of their need to participate in the study was explained to them.

### 3. DISCUSSION OF FINDINGS

To Bullard (2009), land is the greatest resource and the correct planning of its use is a vital precondition for the socio-economic and political development of a country. Sixty percent of Uganda's total land area is agricultural land. The creation of proper and equitable land ownership system and the establishment of civic relations in the country are pre conditions for the overall effective development of Uganda's agriculture. This is because transparent and secure private land ownership is the main bases and guarantee of the county's stable development and is fundamental in allowing the development, growth and investment at all levels in the farming sector.

It is also noted that access to land for the rural poor is essential for food security and economic development in developing countries as stated by Rugandya (2007). Most farms in these countries are relatively small, but large scale, high input, export oriented, commercial is also a significant economic sector in many of these countries. However, countries with more egalitarian distribution of land tend to be characterized by higher levels of economic growth, and such distribution tends to have positive social impacts, such as higher literacy rates. In northern Uganda, land has been owned communally right from the time the Acholi settled in. However, in recent years, some changes have started to take place and this is because of the numerous negative effects of communal ownership.

### 4. CHANGES THAT HAVE TAKEN PLACE IN THE TRADITIONAL LAND OWNERSHIP SYSTEM

According to the World Bank (2007), household survey report in six Districts of Northern Uganda revealed an increase in the number of land disputes in most of the districts in Acholi land. Disputes mostly occurred on land that was left behind upon displacement, inherited land and land that was given as gifts. The survey further reported that the most common disputes arise out of illegal occupation or cultivation by unknown persons or unauthorized family members among the early returnees or shifting of boundaries mark as from the original position.

Acholi community used to co-exist peacefully within the family members. Inter clan and inter community cases of land wrangles or disputes in Acholi were rare, if they exist, were not to the magnitude being currently witnessed in most parts of the sub-region.

Mager and Wehramann (2006) reported that most people in Acholi land and some politicians suspected that the government has intentions of grabbing their land and giving it to investors. Some high ranking military officers have already been implicated for land grabbing in the region. As a result many returnees from the camps still live in fear that their eminent domain will be used by the government to grab their land illegally. These fears are worsened by the emergence of groups of Acholi elites and government authorities who were entrusted with legal mandate to address land tenure issues in northern Uganda. These classes of people are commonly seen as state orchestrated land grabbing agents.

Mabikke (2007), pointed out that the traditional land ownership system in the post Lord's Resistance Army (LRA) conflict in Acholiland is seriously being challenged by other land tenure systems that were not prominent before. Since 1986 major insurgencies engulfed Acholi sub-region, the dominant customary land system that used to govern land system in the pre-conflict period is slowly and carefully being placed by system of land ownership that places individual's rights on land at the expenses of the majority in the community. Thus, a move to individualize what was previously perceived to be communal land is being rampant and acceptable phenomenon.

### 5. WOMEN AND CUSTOMARY LAND RIGHTS

Today, rural women are very vocal about the unfairness they see in the treatment of women, particularly of widows and the divorced. Traditional village leaders regularly stress that people respect the rights of women in particular. This is not reflected in practice; but it is significant because it accepts the points of principle that women have rights. This raises a challenge, if cultural leaders and women themselves don't realize that the protection of women's rights is part of justice, why is the struggle for women's rights always portrayed as a struggle against local culture?

Under patrilineal customary system of land tenure as is in northern Uganda, men have individualized land rights; the women's land rights debate tends to center on the conception that customary systems are discriminatory against women. Most of this strengths resulting from this conception therefore concentrated on the need to do away with custom and apply laws that establish equality of individualized land rights between men and women. This challenge is suggested primarily for customary land tenure which, in Uganda is one of the four co-existing land tenure systems; change the law to mandate equality of land rights through co-ownership between husbands and wives, passing a law that legalizes cohabiting women so that they may have the status of wives; economically empower women to purchase their own land. However to improve and strengthen women's land rights under customary tenure in Uganda, the issue must be carefully framed and analyzed within the social contexts that women live in.

## 6. LAND TENURE SYSTEM AND THEIR IMPACTS ON FOOD SECURITY

Inappropriate land policies constitute a serious constraint on economic and social development. On the other hand, insecure land tenure and dysfunctional land institutions discourage private investments and overall economic growth. On the other hand, skewed land ownership distribution and discrimination according to gender and ethnicity limit economic opportunities for advantaged groups and provide fertile condition for social conflicts which always ends in violence.

Land is vital for poverty reduction; most rural households rely on it for the survival of present and future generations. Unresolved land conflicts or slow progress towards land reforms threaten a household's survival. Appropriate land policies, therefore are crucial to ensure economic survival for decreasing land-related conflicts and putting communities on a steady course of sustainable development.

To formulate appropriate food security and poverty reduction policies, there is need to understand the links between access to land and access to other sources of income and capital and relate to rural poverty and hunger. In most parts of Africa radical land reforms is not needed. Many studies have shown that customary tenure does not necessarily result in inefficient resource allocation. Research in fact shows that indigenous land rights system does not have to be communal or ambiguous and are often secure enough to meet investor's requirements. Furthermore, traditional land tenure is often flexible enough to cope with increasing land scarcity and can permit a gradual autonomous individualization in land matters is often more harmful than beneficial and should be under taken only after careful analysis of the likely impact. Given that land plays an important role in the livelihoods of the majority Africans, food scarcity and poverty reduction cannot be achieved unless issues of access to land, security of tenure and the capacity to use land productivity and in sustainable manure are addressed.

## 7. HOW LAND UNDER CUSTOMARY OWNERSHIP IS MANAGED

Most land in Uganda is held under customary tenure. This is when the owners have no papers of land, but they are still the legal owners of the land. The law of Uganda says that this kind of land must be run according to whatever rules people have always accepted locally. This means that land under customary tenure is still subjected to customary laws, as well as being recognized officially. Many people have not understood how the customary rules are supposed to work. Now that customary ownership of land and customary rules have been recognized by the parliament of Uganda, it this important to understand this.

Some of the confusions about who owns the land under customary tenure are because the ownership and management of land are not organized in the same way as freehold. In customary law, rights and responsibility are not organized the same way. Owning land does not mean the same thing, because the rights and responsibilities are different. This does not mean that people are not the real owners of the land. They do really own their land but 'owning' means something slightly different. Some people have the responsibility for administering land. This is usually the clan elders. However, they also have the right to say who should sell the land. That is because they have the responsibility to protect the land for all the clan. They also have the responsibility to make sure that everyone is given the rights of land, which rights does not exist in freehold system.

Family head usually manages the land on behalf of the family. He is the steward of the land. His rights to manage the land go together with the responsibility to look after the rights of others to use the land and to make sure that the next generation will be able to enjoy the land. Other people in the family also have rights to use the land. That is why it is not

so easy to answer who owns the land? The land really belongs to the family within the clan, but the rights are shared out in a complex way.

The clan has the responsibility of overseeing the administration of all the land. This means making sure that there are heirs appointed at household levels to manage the land and to oversee and authorize any land sale. The clan also owns land which is communally used, such as for hunting and grazing. It is responsible for ensuring proper use of the land that there are no trespasses.

A son become head of the house hold at marriage. He is then allocated land and to manage for the good of the family. He is the steward of that land. His wives, children, and other family members also have the rights to that land, but he is the overall 'manager'. He allocates land to his wife or wives. The head of household can also be a woman e.g. a widow or a woman who had children without marring.

A widow becomes head of the household on the death of her husband. She then has the responsibility to manage the land which had been allocated to her, and to allocate to her male children when they become adults and get married. The elders or the clan would appoint an 'inheritor' to support her and protect her from trespasses. The widow did not pass on her rights to the inheritor, the land passed from her to her children and the inheritor managed by the clan and is dismissed if he abused his office.

In all cases, the heir is the son and in most cases the eldest son who has shown signs of responsibility. (The origin of the mistaken idea that 'women do not own land 'is because the heir is always a man), a son who does not demonstrate responsibility loses his rights as heir in favor of the next eldest son. When the head of the family dies, the clan installs and the heir in the cultural ceremony, the head of the family would have allocated land to different people, but some would have remained for his personal use. The heir is responsible for managing this unallocated land, but not the land which had already been allocated.

## 8. THE RELATIONSHIP BETWEEN CUSTOMARY LAND OWNERSHIP AND UNDERDEVELOPMENT IN NORTHERN UGANDA

We examined the relationship between customary land ownership and underdevelopment in northern Uganda. Using questionnaires and interview, information was obtained from local council officials, land tribunal members, clan elders and community members. The following are results put in a tabular:

**Table 2:** The relationship between customary land ownership and underdevelopment

CUSTOMARY LAND OWNERSHIP AND UNDERDEVELOPMENT	CATEGORY OF RESPONDENTS	FREQUENCY	PERCENTAGE
1.conflicts leading to insecurity	1. land tribunal members 2. clan elders 3. local council 4. community members Total	05 02 04 05 16	18
2. underutilization of mineral resources	1. land tribunal members 2. clan elders 3. local councils 4. community members Total	02 04 01 06 13	14
3. failure to implement government programs	1.land tribunal members 2. clan elders 3. local councils 4. community members Total	08 03 07 04 22	24
4. Poor infrastructural development	1.land tribunal members 2. clan elders	02 03	20



	3. local councils	04	
	4. community members	09	
	Total	18	
5. Low agricultural development	1. land tribunal members	06	23
	2. clan elders	03	
	3. local councils	04	
	4. community members	08	
	Total	21	
Total		90	100

SOURCE: Primary Data

Table 1 above one can now conclude that to some extent, customary land ownership has positive relationship to underdevelopment of Kitgum District as revealed by the percentage drawn from the respondents more especially from the informants: the land tribunal members, local council, and community members. In the study, 24% of the respondents agree that many government programs fail due to customary land ownership, 18% agreed to insecurity due to land related conflicts that disrupts economic activities leading to underdevelopment, 20% respondents accepted with the poor infrastructural development of Kitgum District also attributed to customary land ownership while 23% and 14% of the respondents agreed to the poor agricultural practices and underutilization of the natural resources respectively. Therefore it is right to conclude that customary land ownership leads to underdevelopment in Kitgum District.

The researcher was also able to establish from the respondents in an interview about the relationship between customary land ownership and underdevelopment. According to Adobangon Vincent, a land tribunal member of Nam-Okora Sub-County, that customary land ownership causes underdevelopment in that Kitgum District. This is because the district has many minerals like limestone, gold and lead rocks among others that can be exploited to generate more revenue to the District. Vincent explained that people have now resorted to exploiting such minerals using primitive methods. For me, "I would suggest that those acting as obstacles for investors to come and exploit such minerals should be dealt with". This is simply because one cannot acquire such land from a person without the consent of the community members and this keeps many investors away from carrying out economic activities that would have been a source of employment and in his explanation. He suggests that high unemployment can be attributed to low level of investment just due to customary land ownership.

The research also established from Onyee James a resident of Nam-okora Sub-County Boro-boro village that customary land ownership has also caused low agricultural development of Kitgum District in that the customary as the name suggests is not the case, some people have huge chunk of land while others don't even have an acre. This has totally killed the vigor and health of entrepreneurship since the young generation due to high level of unemployment would want to use such land for agriculture for self-employment and other economic activities to raise capital. "I attribute the low level of agricultural development to the customary land ownership because as I talk now, other food stuffs that can be produced here are being brought from other districts for instance Irish potatoes, matooke, tomatoes and green pepper among others". Onyee requested the government to pursue path for individualization of land that can allow other people practice agriculture without interference because famine is becoming more pronounced simply due to customary land ownership.

Adong Susan Lakicha, 48 years old of Ladwogi village argues that the effects of customary land ownership facing women are the unclear circumstances of land inheritance which she suggested was due to unsuitable land legislation, land administration, land grabbing and invasions. She asserted that in Kitgum, customary practices such as inheritance systems contribute to the inequality of land distribution. "Cultural beliefs have never ceased to sideline women in terms of access to land although several attempts have been made to sensitize communities on the importance of ownership of land by women", Adong explains. Laws on customary inheritance have been a major determining factor to accessing land by women. The Ugandan land legislation has formally recognized the importance of land ownership by women but its implementation in Kitgum District was weak up to now. However, customary law remains silent on the matter. This has had adverse effects on the development of rural areas especially with the advent of HIV/AIDS among women after the LRA war.

According to Otto Lalobo, major effect of customary land ownership has been insecurity in land holding in Kitgum District, he explains that customary ownership a common practice was altered by the LRA insurgence that breed in commercialization of formally communal land; it is insecure, lacks certainty and frustrates rural land markets. This

situation needs the call for land tenure reform that will attempt to replace customary tenure with a modern secure tenure. Land tenure security is often associated with Land titling in which one has the degree to control, use and enjoy the land that are recognized and protected by law and land registration. Secure individual tenure, and a free land market should be promoted and in the near future they will lead to higher levels of agriculture investment and productivity and thus provide a firm basis for national growth and development, Otto explains.

Abalo Opoka lamented that, usually customary land tenure does not allow for exclusive rights on land. “No single person can claim to own land as the whole because land belongs to the community”. Land is deemed as belonging to members of the community for their own use. It is a valuable heritage for the whole community. Communal lands in most of the Acholi region including other parts of the country that have sprung/originated from a concept of ancestral trust committed to the living for their own interest and for the interest of the unborn. This is embedded in a common Acholi culture/dictum which says: “Ngom Kwaro” meaning “our ancestor’s land”. Everybody has a right to such land. “The People holding land are thus doing so in trust for ancestors and for those who are not yet born and also the community as a whole”. Opoka explains.

### 9. CHALLENGES FACING CUSTOMARY LAND OWNERSHIP AMONG THE PEOPLE OF NORTHERN UGANDA

The study sought to establish the challenges facing customary land ownership among the people of northern Uganda. Land tribunal members, clan elders, community members and local council officials were interviewed and the findings were analyzed and presented in table 3 below.

CHALLENGES OF CUSTOMARY LAND OWNERSHIP	CATEGORIES OF RESPONDENTS	FREQUENCY	PERCENTAGES
1. Land grabbing and eviction by some community members	1.land tribunal members	04	28
	2. clan leaders	07	
	3. local councils	06	
	4. community members	08	
	Total	25	
2. Commercialization of land	1.land tribunal members	03	22
	2. clan leaders	07	
	3. Local councils	02	
	4. community members	08	
	Total	20	
3. Poverty and corruption	1.land tribunal members	04	17
	2. clan leaders	01	
	3. local councils	05	
	4. community members	05	
	Total	15	
4. Land conflicts	1.land tribunal members	02	15
	2. clan leaders	03	
	3.local councils	04	
	4. community members	05	
	Total	14	
5. Lack of sensitization of the community members about customary land ownership	1.land tribunal members	07	18
	2. clan leaders	01	
	3. local councils	03	
	4. community members	05	
	Total	16	
Total		90	100

Source: field data

The table above shows the results of the effect of customary land ownership in northern Uganda. The majority of respondents (28%) accepted that land grabbing and eviction were caused by customary ownership, (22%) confirmed that it contributed to commercialization of land, (17%) agreed with the lack of sensitization more especially the land tribunal members about customary ownership while (15%) confirmed the escalation of conflicts that are caused by the customary tenure system of ownership.

Also in an interview with Ouma Quinto, it emerged that the LRA civil war and resultant rise of Internally Displaced Persons (IDPS) posed a major challenge on land distribution and re-distribution. The insurgency altered the ownership system as well as boundaries of formally communally owned land that led to a situation in which often competing land claims existing between IDPS who relocated to the land during the conflict, and others who had owned land in the pre-war period. This has resulted in to many killings between the communities.

Another challenge to customary land ownership is constituted by land grabbing. This process used to exist much earlier but it intensified during the last twenty years of the insurgency. The big areas of fertile land, which had once been the territory of the pastoralists and their herds were grabbed by the new wealthy class of land owners.

Mzee Gabriel explains that land grabbing has fueled land conflicts such as those in Boro-boro and those occurring all over Acholiland, highlighting increasing tensions between customary and private land rights. These conflicts have been sharpened by the process of economic reform, including the liberalization of land markets, which has seen wealthy Ugandans and foreign investors buying up land previously held under customary tenancy by the rural poor.

Aloyo Teresa a land tribunal member of Nam-Okoro Sub-County asserts by stating that: "It is common knowledge that any investor invests first to serve his interests before serving your interest". In fact, what we are experiencing is a situation where investors are using cheap labor and our land, first and foremost to maximize profits which are later repatriated. Majority investors would rather grow flowers, sugar cane than food for the starving Ugandans. If the major intention is to develop, why then should they invest in areas where there is existing development, why not invade bare land? Aloyo asked.

Mego Veronica added that in the recent years, several additional deals between multinational corporations of foreign investments and the Ugandan government have been agreed on, even now, most land in Kitgum is still owned by "custom" which means people have no documents to prove that they owned the land and the government is exploiting this opportunity to grab our land for their selfish interest, Veronica explains.

Another effect of customary according to Oryema Roo is that land in Acholiland is bedeviled with the multiple sale of parcels of land by different parties claiming ownership of the same piece of land. The rich use the compulsory acquisition powers by government agencies to acquire various tracts of land for which they pay cheaply. This has caused many people to contest in the courts of law the sale of their land by certain family members or even unknown persons. This arises because of customary land ownership where anybody can claim land rights. There currently about 66,000 land disputes before the court resulting from the inability of traditional and customary authorities to identify the extent of the land boundaries.

## 10. CONCLUSION

The findings of the study established that, there exists positive relationship between customary land ownership and underdevelopment in northern Uganda. This is because it has caused underutilization of resources, low development of agriculture as this has also posed several effects like denial of ownership of land by women. Of recent, there has been insecurity due to land conflict arising from the tendency of land individualization contrary to the exiting traditional system of communal land ownership. This research also revealed that customary ownership of land is faced with several challenges for instance poverty and corruption by public servants on matters of land that makes it difficult to develop land. Likewise there have been cases of commercialization of land, land grabbing by the elite class and multiple sale of the same piece of land.

In conclusion, this study demonstrates how the ownership of land can bring about sustainable development. Our emphasis was placed on agricultural development leaving out construction, tourism and pastoralism. It is difficult for the people of northern Uganda to commercialise agriculture under customary ownership. First, the people cannot use their land as collateral to secure bank loans to invest in agriculture and second, they cannot not have long term plans because the land has many owners enjoying equal rights but with different interests. Due to this, agriculture remains basically subsistence



and with nothing left for sale year in, year out, the farmers in northern Uganda are doomed to poverty and underdevelopment.

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