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When rights collide: land grabbing, force and injustice in Uganda

Susan Murphy , Pdraig Carmody and Julius Okawakol

The realisation of rights and enforcement of correlative duties through practice and politics legitimate the use of force against some, to protect and fulfil the rights of others. When a conflict occurs, whose rights and which rights should take priority require clarification. Land grabs represent a conflict not just between use and exchange values but also potentially between different types of rights – such as property rights and the right to the means of subsistence. In such cases, it seems that the dictum ‘between equal rights force decides’ seems to be particularly applicable. This paper explores recent experiences of displaced people in the Karamoja and Teso regions of North Eastern Uganda in order to examine this phenomenon. A socially inclusive and just epistemic perspective requires that we extend our gaze to take account of the local political dynamics and impacts on, and voices of, people who have been displaced and how their basic rights have been affected – ‘putting the last first’. The analysis suggests that the transition to formalised property regimes based on liberal conceptions of ‘rights’ represents a case where the language of rights is usurped to serve the interests of the powerful and privileged rather than challenging social injustice.

Keywords: land grab; national political dynamics; local elites; state building; vulnerability; inequality

1. Introduction

For neoliberals, poverty and food insecurity in rural areas of the developing world are partly a result of poorly defined property rights. According to some, this results in a ‘tragedy of the commons’ (Hardin 1968), as supposedly unrestricted access to land leads to its over-exploitation and underinvestment in it. The justification for formalisation of land ownership and the push towards western-style land management regimes based on systems of legal rights and enforceable correlative duties to areas governed by diverse practices of land stewardship and communal tenure was recently bolstered by de Soto’s (2000) work. This argues that lack of private title to (un)real estate (Panaritis 2007) prevents property being used as collateral for loans, and subsequent investment and improvement. According to a declaration from the Group of 8 (G8) large industrial countries, ‘Inadequate land tenure law has been a fundamental impediment to development and agricultural investment by small- and large-scale producers in many countries’ (G8 2012, 29, quoted in Stein 2014).

Further, prominent scholars, such as Paarlberg (2008), have bemoaned the neglect of agriculture in overseas development assistance in recent decades. However, over the last couple of years the G8 has paid more attention to this sector. In part this is because of the manifold benefits which may flow from agricultural investment. However, this

renewed interest is not innocent of the global land rush (see Borras et al. 2013; Borras et al. 2011; Borras et al. 2010; Cotula 2012; De Schutter 2011a,b; Zoomers 2010). Recently, the G8 countries, in addition to many international non-governmental organisations, have designed and supported the institution of land titling programmes in the developing world. In theory these could provide security of tenure to the poor; however, whether these rights are realised in practice depends on the nature of the state–society formations in which they are emplaced, and through which global dynamics are refracted.

While the existence of effective, locally and ecologically appropriate common property regimes has been amply documented (e.g. Fairhead and Leach 1996), the economic and political force accompanying pressures for commodification of land has often proven overwhelming for affected communities. In the transition to more liberal¹ land management systems, informal property and livelihood rights have come into conflict with the assertion of new ownership rights by other, more powerful state and non-state actors in many instances (see Monsalve 2013; Baglioni and Gibbon 2013). Further, in some countries, such as Uganda,² the enforcement of these legal rights has also been associated with the assertion of state sovereignty and the extension of state control over the full reach of their territory (see Corson 2011; Carmody and Taylor 2016). This assertion of sovereignty justifies the use of violence, if required, to enforce states' rights. Often this violence is further discursively validated by environmental justifications such as protecting forests from 'encroachers' (Nel 2015), or biological diversity (Corson and MacDonald 2012).

In 'modern' liberal democratic settings, sovereignty is generally taken to rest ultimately with the citizens of the state as members of equal standing. While this conception is problematic given the emergent sovereignty of capital globally (Woodley 2015), it is even more so in (post-)colonial 'virtual' democracies (Joseph 1999) which often have the trappings of democracy, but not its substantive content. The area of land management represents a highly contested space where the rights of the state to manage its territory can come into conflict with those of citizens to own, access and use (common) resources to support their livelihoods. In this paper we examine this contested space. Our findings suggest that attempts to implement liberal systems of property rights do not easily translate to contexts defined by plural and diverse land tenure systems, which often coincide, as a result of the colonial legacy, with authoritarian states marked by deeply unequal background conditions (Cousins 2009). In such contexts, the rights of the state can be found to override basic rights of citizens, thereby increasing marginalisation, poverty and insecurity.

Using a blend of evidence- and reason-based arguments, this paper examines recent attempts to transition to a more formalised liberal property regime in the Karamoja and Teso regions of North Eastern Uganda – areas historically resistant to externally forced change and the reach of centralised rule, but where the state has recently expropriated land for economic development and environmental conservation purposes.³ There are three reasons which point to Uganda as an appropriate site of analysis for this investigation. Firstly, under the 1995 constitution, 'ultimate title by the state was removed altogether, and

¹Liberal land tenure systems share least four characteristics – they require (1) the formalisation of ownership in the form of legal private property rights; (2) the commoditisation and monetarisation of land as a tradable entity; and (3) functioning market systems; which are (4) governed by the rule of law. See Cousins (2009, 895) for a wider discussion of the liberal normative model.

²This is not to suggest that Uganda is a liberal state (see Tangri and Mwenda 2013), but rather that the discourse of liberalism is used to enforce processes of privatisation and state territorialisation.

³Teso and Karamoja have different histories, geographies and political economies. For a discussion of Teso see Vincent (1982). On Karamoja see Mamdani, Kasoma and Katende (1992).

landholding under customary tenure was given equal force with freehold, leasehold and *mailo* tenures. [Thus], overnight most Ugandans ceased to be tenants of the state' (Wily 2013, 22). Although the majority of land remains under customary tenure (Martiniello 2015a), the 2013 National Land Policy aims to ensure that 'the country transforms from a peasant society to a modern, industrialised and urbanised society . . . [and] protects the rights of citizens *to own land which should be optimally utilised*' (RoU 2013, iii, emphasis added). Thus, central government is seeking to transform land rights in Uganda.

Secondly, according to influential actors such as the World Bank, the policies undertaken by the Ugandan government over the last two decades represent a good example of actions that create a better climate for investment, economic development and growth (WDR 2005; WB report no. 99,060, 2015). The 2013 policy, in particular, is comprehensive in scope and contains much progressive language. Thus, the case study presents an opportunity to examine the operation of 'legal' expropriation of land within a context where the state authorities have been recognised for making 'important strides in creating a policy framework and devising initiatives geared towards achieving a smart policy framework for land management' (WB 2015, xiv).

Thirdly, the specific regions of Karamoja and Teso are emerging from decades of conflict and violence that have weakened customary traditions and practices leading to disputes over land tenure, access, ownership and control (Rugadya et al. 2010). While Karamoja is primarily a semi-nomadic pastoral region, there are also substantial numbers of subsistence farmers (Nakalembe n.d.), and the fact that it is rich in natural resources has prompted renewed commercial and economic interest by state authorities and private investors.⁴ Thus, there is a range of intersecting factors that drive land disputes in these regions (RoU 2013; WB 2015). As a result of these conditions, tensions and the potential for opportunism and conflict are high.

Following decades of displacement generated by conflict, these regions have some of the worst health, education and development outcomes in the country, with almost 90 percent of the population of Karamoja living in absolute poverty versus roughly 30 percent for the rest of the country (Concern Worldwide 2015). There are many reasons to explain the current state of development in Karamoja, in particular its colonial history when communities were often dispossessed of their best land and then forced to sell livestock to the colonial state at below-market prices to prevent 'overgrazing' on the reduced areas to which they had access (Mamdani 1982). The resultant socially constructed resource scarcity laid the foundations for subsequent conflict and cattle raiding amongst different pastoralist groups in Karamoja, and across the border into neighbouring Teso. These dynamics resulted in substantial displacement, and Karamajong cattle raiding, along with resistance to the new National Resistance Movement (NRM) government, contributed to the rise of the Uganda People's Army (UPA) in Teso in the late 1980s.⁵ The conflict between the Ugandan army and the UPA from the late 1980s through the early 1990s was also a major source of displacement, as was insecurity arising from the Lord's Resistance Army rebellion, which also forced people to leave their ancestral lands.⁶ As they often

⁴See Mamdani (1982) for discussion of the commercial and economic interests and activities in this area during and after colonial rule.

⁵Space prohibits a detailed discussion of these dynamics, but many members of the UPA were members of the military in the previous government.

⁶The nature of displacement varied by context. For example, some people in Katakwi stayed in their villages during the different conflicts, while others returned from internally displaced people camps to cultivate their lands during the day.

settled in clusters, this created pockets of unused rangelands (Little and Mcpeak 2014). However, as noted above, Karamoja has again recently become a focal point for land speculation, and commercial and state interest (Human Rights Watch 2014). Utilising a just epistemic lens, this study engages with the population to learn of the impact on their basic rights during processes of land dispossession.⁷ Their testimonies inform our evaluation of the situated practices of land grabbing in this area and the realisation and prioritisation of particular sets of rights. The lessons of this shift, both nationally and locally, carry important implications for other states attempting to implement similar systems and for the basic rights of peasant and pastoralist communities beyond Uganda.

Beginning with an account of the liberal land–rights conceptual framework, we examine the empirical and normative assumptions that justify and motivate this practice before turning to the experiences and outcomes for local populations displaced by state actors. We find that states engaged in the facilitation of land acquisitions use this process as an opportunity to assert their rights, under the rules of international law, to extend their sovereignty, authority and control across their full territory. What has been termed the ‘global land rush’⁸ presents an opportunity for state building and the assertion of states’ right to establish ‘rule of law’, protected by the rights to non-interference and self-determination. We show how this process has been combined with compulsion, displacement and dispossession, in spite of claims to protect against such outcomes.⁹ In the process of the exercise of state power, local populations are more likely to experience increased vulnerability and marginalisation. In this case, the practice of expropriation of land for ‘public’ purposes and states’ rights increases social and economic inequality, violating many fundamental human rights. As such, this paper seeks to decolonise the language of rights which is being used to silence the collective experiences of marginalised and excluded communities.

2. Conceptualising the land–rights nexus

Much attention in the literature has focused on the transnational actors, global drivers and international dimensions of the land-grab phenomenon (Margulis et al. 2013; Sassen 2013). Understanding the global dynamics that inform this phenomenon is critically important (Borras and Franco 2012). As Borras et al (2013, 163) note, ‘because of the international dimension of land grabbing, there has been increasing pressure for specifically global governance instruments to tackle the issue’. Such instruments include the ‘Principles of Responsible Agricultural Investment that Respect Rights, Livelihoods, and Resources’ produced by international intergovernmental agencies (the Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural Development (IFAD),

⁷In this sense, we are drawing upon the work of Fricker (2007) on epistemic injustice which refers to a wrong that is inflicted on a person or group in their capacity as a knower either through a devaluation of their testimonies or exclusion from the knowledge formation process.

⁸The former United Nations Special Rapporteur on the right to food, De Schutter (2011a, 504), broadly defined the phenomenon as ‘a global enclosure movement in which large areas of arable land change hands through deals often negotiated between host governments and foreign investors with little or no participation from the local communities who depend on access to those lands for their livelihoods’.

⁹The Republic of Uganda National Land Policy (RoU 2013, iii) explicitly states that it has been developed through a process of ‘comprehensive stakeholder consultation’ and thus reflects the view of ‘all Ugandans’.

the United Nations Conference on Trade and Development (UNCTAD) and the World Bank Group).

While crucially important, this global gaze can deflect attention from the fact that the practice of land acquisition and management of land tenure is exercised and facilitated locally (Cotula 2014, 14; Cotula et al. 2014). In order for land to become available, state actors must identify suitable land and, if ‘necessary’, clear the land of current occupants (see for example, Wolford et al. 2013). In this sense, the contemporary practice of land grabbing is often a ‘glocal’ rather than a global phenomenon, thus prompting the need for governance principles and instruments at the national or local level.

Further, this glocal development presents a unique opportunity for states to engage in practices of state building and territorialisation, extending their reach to areas previously beyond their control, for a variety of internationally accepted reasons. Thus, the current global trend incentivises and justifies large- and small-scale land acquisitions by locally grounded actors. However, within this practice, the rights of some are realised, to the detriment of others. Changes in land use or ownership represent cauldrons where different social forces compete to attain and retain use and exchange rights.¹⁰ In this sense, the over-riding and effective extinction of certain people’s rights draws upon internationally endorsed liberal theories of state building, private ownership and individualised rights for justification. However, such methodologically individualist and nationalist approaches do not easily or immediately transfer to African contexts marked by a plurality of socially differentiated and situated rights, blended forms of land tenure, and customary and communal relationships and rights, reproduced through social structures that rest on a complex blend of history, lineage, ethnicity and familial identities (Martiniello 2015b). The following section explains how contemporary liberal theoretical conceptualisations of land and rights, when operationalised without consideration of background conditions, can justify harmful outcomes for, and indeed produce, marginalised and excluded populations.

2.1. Justification for the practice

There is a range of empirical and normative assumptions that underpin the contemporary international discourse on land. When viewed together, these assumptions suggest that the imposition of formalised land rights represents both a ‘*smart*’ and *efficient* solution and also the *right* form of social organisation.¹¹

2.2. Empirical assumptions undergirding the hegemonic land regime

Firstly, from an empirical perspective, there is an assumption that there is an abundance of unused and underutilised or marginal land that can be made available to meet the growing needs of the global population (World Bank 2011, xxxix). However, this is a contested assumption (Borras et al. 2013). Rather, this is oftentimes land that is utilised by multiple

¹⁰See Borras and Franco (2013) for a broader discussion of the variations in responses to land grabs.

¹¹The donor-driven decentralisation programme of the 1990s also rested on underlying liberal assumptions concerning the proper role of the state. However, evidence suggests this programme was used by the state to tighten its authority over land resources in areas previously beyond its control (see Lewis 2014).

small-scale subsistence farming, and agro-pastoralist and nomadic, communities whose relationship with the land extends beyond its economic or monetised value.¹² The Tirana Declaration (2011) signed by 45 countries in regions where land-grabs are most widely practiced, including Uganda, clearly indicates that these regions are experiencing significant and intensified natural resource competition, and that land resources are becoming increasingly scarce due to a variety of factors including population growth, climate change and migration, amongst others. According to the state (RoU 2013, iv), ‘Uganda is faced with disparities in ownership, access to and control of land by vulnerable groups; displacement, land grabbing and landlessness resulting from high population growth and increasing demand on land for investment especially communal lands which are neither demarcated nor titled’.¹³ Our research offers further evidence that it is not the case that there are vast tracks of unutilised land awaiting development in Africa.

Secondly, it is assumed that the introduction of liberal land management practices based on individualised formal ownership and delineated private property rights is correlated with economic growth and, by extension, poverty alleviation and greater food security (see for example, de Soto 2000; World Bank 2011; World Development Report 2005; RoU 2013, iii–iv). According to the World Development Report 2005, when property rights are secure, economic growth is faster. It argues (2005, xx) that ‘the better protected these rights from government or third parties, the stronger the link between effort and reward, and thus the greater the incentives to open new businesses, to invest more in existing ones, and simply to work harder’.

Further, within this frame, states’ involvement in coordinating and managing land within their territory is an essential and important activity of state building and state legitimacy. Borrás et al. (2013) have identified at least five ways in which the state plays an essential role in the capturing or acquisition of land for both investment and environmental purposes. Firstly, the state must have sufficient compulsory power or develop a case that is acceptable to the dominant actors within a region (internal and external political actors, local elites and those with responsibility for implementing law) of the need for land acquisition. Such justifications can include economic development, conservation, and environmental protection (Fairhead et al. 2012; Leach et al. 2012). Secondly, the state is responsible for classifying and categorising land for various uses. Thirdly, states are responsible for the physical process of mapping and identifying land for use. Fourthly, states acquire or appropriate the identified land. Finally, states then take the lead in reallocating land (Borrás et al. 2013, 167). To these tasks, we include the additional task of legally facilitating land titling – again, a critical task of the state in this regime.

2.3. Normative assumptions

These claims find firm foundations within the Liberal democratic philosophical tradition regarding the role of government and the institution of property. For example, according to Rawls (1999, 8, emphasis added),

an important role of government, however arbitrary a society’s boundaries may appear from a historical point of view, is to be the effective agent of a people as they take responsibility for their territory and the size of their population, as well as for maintaining the land’s

¹²We recognise that ‘vernacular markets’, where usufruct rights are exchanged between individuals for money, are increasingly common in communal tenure systems across Africa (see Chimhowu and Woodhouse 2006) and, in our case study, in Teso in particular.

¹³For further discussion on land utilisation under customary practices see Rugadya (2008).

environmental integrity. *Unless a definite agent is given responsibility for maintaining an asset and bears the responsibility and loss for not doing so, that asset tends to deteriorate ... the role of the institution of property is to prevent this deterioration from occurring.*

According to this account, processes of state building require the imposition of authority and control over regions that had previously been beyond ‘the pale’ – outside the reach of central government’s control and concern. Not only is this justified on the basis of legitimate *right* of state sovereignty and territorial integrity, but it is also a state’s *duty* to exercise control over its territory on behalf of the population, both present and future. However, quite how a state manages the fulfilment of these duties is an internal matter, protected by the rights of non-interference, sovereignty and territorial integrity. Further, this is premised on the assumption that such an arrangement is beneficial to all actors within the state because, as the World Development Report (2005) argues, well-defined property rights are meant to link effort and reward and provide an incentive structure for populations to raise productivity.

Within the Rawlsian liberal tradition, this is linked to a further idea of reciprocity – that those who participate in social cooperation within the boundaries of the state are entitled to (have special rights to) a share in the benefits and burdens of their shared enterprise. However, such ideals are largely, *de facto*, absent in many African states where ordinary people hold the status of subjects rather than citizens as a result of the colonial heritage of governance modalities (Mamdani 1996). More akin to a Hobbesian Leviathan, in these contexts the rights of the sovereign are paramount, and it is duty of citizens as subjects to obey.¹⁴ This assumes particular importance where Regalian theories and practices of land mean it is state owned (Hall et al. 2011), and results in sometimes ostensibly democratically elected leaders exercising feudal-type authority, which is often almost untrammelled.

Recognition of the risk of a potential mismatch between liberal ideals of the institution of property and the reality of background conditions in post-colonial states has contributed to much focus on ‘codes of conduct’ and ‘principles to guide the process of land acquisitions’ for both international *and* domestic actors. These principles are rooted in liberal ideals of fairness, justice, respect for basic human rights, and the duties of states, under international conventions, to protect the rights, dignity and autonomy of affected individuals. It is possible to discern at least four guiding principles which, it is argued, should inform the actions of all those engaged in appropriation and expropriation of land for private commercial and public use (see for example, Cotula 2014; Borras et al. 2013; De Shutter 2011). First is the principle of consent that is free, fair, non-coercive and voluntary (Franco 2014). Free and fair consent assumes choice and access to alternative livelihood strategies. Second is appropriate compensation and access to the courts for disputes and redress. Third is respect for autonomy and agency of affected individuals. Finally, there is the principle of social sustainability which assumes that appropriations and expropriations of land will not increase vulnerability and food insecurity. However, in spite of the intentions of these principles, it is not clear that all actors will, or indeed can, benefit from

¹⁴We are not seeking to make an argument of African exceptionalism in this case, as there is an extensive literature on the reasons for authoritarianism in peripheral societies (see Thomas 1984). Rather, we argue that struggles for state accountability have been more successful in Western contexts given their histories of industrialisation, class formation and struggle (Reuschmeyer, Stephens and Stephens 1992), meaning that the separation of powers and individual rights is more likely to be enforced in those contexts. Their industrialisation was of course enabled by the abrogation of others’ rights through slavery and colonialism elsewhere (see Williams 1994).

the transition to liberal land management practices and formalised property rights. The potential for conflicts of rights is clearly identified in the 2013 Land Policy, and indeed the priority of the rights of some is explicitly articulated. It states: ‘whereas nomadic pastoral practices are allegedly associated with land invasions or grabbing and “illegal” land buying in some areas it is necessary to protect pastoral land rights, *but not at the expense of non-pastoral communities*’ (RoU 2013, 23, emphasis added).

Further, it is not entirely clear that this set of guiding principles, based on the protection and expression of individuals’ human rights, fully captures the collective losses that communities experience when moved from their ancestral lands, or provides a framework for evaluating conflicts of rights between different parties as these arise. Such methodological individualism can render invisible the intrinsic value and importance of communal and customary traditions and practices, and how these are connected to particular places and spaces (Martiniello 2015b). Further, in the commodification of land and the move towards private ownership and exclusive access rights, particular ways of living and being¹⁵ not only are devalued by the state, but may be rendered unviable. Thus, a liberal theoretical framework of ownership and individualism makes it difficult to examine socially situated accounts of human practice, where participants can be ‘conceived not in abstraction from relations of social power but as operating as social types who stand in relations of power to one another’ (Fricker 2007, 3). Such individualist frameworks, which are hegemonic in the West, leave hidden the dynamics of power and identities, and the unequal distribution of credibility held between different social types such that the rights of one group can be taken to carry greater weight over those of another, simply qua social type.

In developed capitalist market economies, characterised by hegemony of private property rights, principles of procedural justice, such as appropriate compensation, access to courts for redress where necessary and equality before the law are essential ingredients for protecting basic rights of individuals, enforcing duties and enabling the distribution of the benefits and burdens of social cooperation through monetised exchange practices. In the absence of clear principles of justice, and well-functioning institutions, structural forms of exclusion, marginalisation and inequality thrive. In such circumstances, the realisation of basic rights of security and subsistence may be rendered impossible for marginalised groups.

Creating conditions that link effort and reward may meet the requirements of efficiency and represent a ‘smart’ policy change for governments to support economic growth; however, further principles are required to ensure that the outcomes are more equitable than is currently the case. For example, as Shue (1996) has forcefully argued, this sometimes requires action to protect persons whose subsistence is threatened by the individuals and institutions that will otherwise intentionally or unintentionally harm them, through, for example, loss of access to the means of subsistence. Distributive principles can then be employed in the task of arbitrating between the claims of various agents and parties when interests conflict and the demands of all cannot be realised.

Identifying, allocating and implementing formalised freehold private property land rights is particularly problematic when implemented in contexts with complex and overlapping systems of land tenure. In the case of Uganda, the 1995 constitution and 1998 Land

¹⁵We are not seeking to romanticise these, and recognise diversity within them, so that, for example, ‘pastoralist rules of resource use, therefore, display a combination of collective and individual features appropriate to their niche’ (Markakis 2004, 5).

Act recognises the operation of four different systems of land tenure – freehold, leasehold, *mailo* and customary. Where the rights of certain groups are prioritised over those of others there is a risk that force, rather than fairness, will determine the outcome when what appear to be legitimate rights – that is, both legal rights and basic rights – collide.

The following section presents results from fieldwork in North Eastern Uganda based on the experiences of people affected by state-induced and -supported land grabs. It then examines the implications of these findings for the rights of the state and the rights of displaced populations, giving consideration to both the procedural requirements of justice and the distributive effects of this practice in the Ugandan context.

3. The Ugandan context

Uganda commenced its programme of clarifying, simplifying and regulating land tenure governance in the 1990s.¹⁶ As noted earlier, the 1995 constitution, supported by the 1998 Land Act, recognises four types of land tenure rights. The constitution protects against the arbitrary appropriation of property, save in cases of public interest when it may be ‘necessary for public use or in the interest of defence, public safety, public order, public morality or public health ...’ (Constitution of Uganda, Art. 26). The constitution also identifies specific institutions to be charged with the governance and management of the land tenure systems – these include the Uganda Land Commission, District Land Boards, and Land Tribunals. However, the state, and central government ministries, hold ultimate responsibility for land management on behalf of citizens (RoU 2013).

Uganda is also a member of the main international investment agencies including the Multilateral Investment Guarantee Agency and the International Centre for the Settlement of Investment Disputes. Thus, the institutional and regulatory structure in Uganda is substantial, placing significant responsibilities into the hands of state actors to manage the land on behalf of the population. These structures have contributed, according to the World Development Report 2005, to Uganda’s strong economic growth. Indeed, according to a US Government Briefing Paper (2012), Uganda has an improving reputation based on ease of doing business, and they point to the Heritage Foundation’s 2011 Index of Economic Freedom which ranks Uganda the seventh ‘freest’ economy among the 46 sub-Saharan African states and in third place for responsible government spending and fiscal policies.

Although Uganda can point to a strong *de jure* regulatory and institutional framework, in practice the state has struggled to adequately resource the institutions to administer and adjudicate in disputed cases (RoU 2013). Land disputes are common and the process for registration is weak. Acquiring land with clear title is a challenge for business communities and foreign direct investors. The most recent policy framework has grasped the opportunity to assert state control and responsibility in this critical area, ostensibly on behalf of its current population and future generations. It outlines (RoU 2013, 5) a ‘harmonised framework with a common horizontal denominator ... to stem conflict regarding administrative decisions, regulations and law ...’. In so doing, the rights and duties of the state to command control over the full reach of its territory is reinforced. This is solidified in policy 36 (c) which states (RoU 2013, 16): ‘the use and management of land under *all*

¹⁶Earlier codification of land began with the Buganda agreement of 1990 which defined the boundaries of the Buganda kingdom with the British. Another important milestone was the 1975 Land Decree which nationalised all land in the country.

tenure systems shall be subject to the regulatory powers of the State to ensure compliance with physical planning standards, regulations and guidelines for orderly development'. Land has thus become a key site of struggle over the exercise of legitimate authority, giving rise to multifold social struggles across the country, although there have also been other recent protest movements, such as the 'walk to work' protests demanding increased democratisation (Branch and Mampilly 2015).

3.1. *The Karamoja and Teso cases*

There have been a variety of axes of conflict around land in Uganda, ranging from 'guerrilla agriculture', where people plant quick-growing crops surreptitiously in protected areas, for example (Cavanagh and Benjaminsen 2015), to dispossession for industrial development and mining (see Martiniello 2015a). For our study, fieldwork was undertaken in four districts in North Eastern Uganda – three in Karamoja (Napak, Moroto and Nakapiripirit) and one in Teso (Katakwi).

Karamoja was, until relatively recently, heavily conflict affected. According to media reports, the office of the Prime Minister referred to Karamoja as 'a complete write-off, insecure, gun-infested, hunger-prone, derelict and very backward region' (Human Rights Watch Report 2014, 30). It has the lowest human development indicators in all of Uganda, with higher than average levels of malnutrition and stunting, and lower than average levels of basic education. Teso was also heavily conflict affected in the 1990s, and subject to attacks by the Lord's Resistance Army in the early 2000s (IRIN 2003). While there are differences between them, populations in these regions are largely nomadic and agro-pastoralist, and land tenure is mostly based on customary law. As noted earlier, the Karamoja region experienced massive population displacement during the conflict between the Lord's Resistance Army and the Ugandan state; however, resettlement commenced in the 2000s.

Since 2009, the Office of the Prime Minister has allocated responsibility for development of the Karamoja region to Mrs. Janet Museveni (spouse of the President) as minister of state for Karamoja (Minister for Karamoja Affairs – Full ministry from 2011). As noted, national rhetoric identifies this region as 'backward' and 'underdeveloped', and Mrs. Museveni has set as her main objective to transform the 'primitive and poor quality' traditions, practices and lives in this location (quoted in Human Rights Watch 2014, 21). This includes a stated intention of the government to end the nomadic and pastoralist traditions and ways of life.¹⁷ As Markakis (2004, 5) notes, 'the double imperative of the pastoralist mode of production is extensive land use and freedom of movement'. Thus, moves by the state to constrain movement of populations and prioritise this area for economic development and conservation represent a double disadvantage to pastoralist communities. Not coincidentally, sedentarisation is a necessary condition for the effective commodification of land and labour. This project, however, encountered resistance. As Bonte and Galaty (1991, 5) note, 'African pastoralists have been and remain both subject to larger forces of influence and agents of their own futures'.

3.2. *Drivers of displacement*

Primary data was gathered during a series of structured interviews with populations who have been moved from lands in former conflict-zone areas (Moroto, Napak, Nakapiripirit

¹⁷Although the Land Policy of 2013 contradicts this. Strategic ambiguity is often a useful governance technique as different policies can be cited in different contexts to the advantage of power holders.

and Katakwi). Twenty-two families who had been displaced from land in these districts were surveyed. The respondents were selected using a purposive sampling method, as all had recently lost access to land as a result of displacement.

During the conflict period much damage was inflicted on these areas. The land became degraded with problems related to soil erosion, deforestation and the devastation of biodiversity within the region (Rugadya et al. 2010). This region has also experienced population growth, putting additional pressures on local ecosystems. The response of the government to these issues had been to degazette much of Karamoja, while (en)forcing conservation areas through expulsions in other parts of the region (Rugadya et al. 2010). The vast majority of our interviewees were moved from their homes for this reason. Economic development accounts for the other reason for displacement identified by the remaining participants, which entailed a government plan to build a factory for the production of cement. Thus, the ostensible primary drivers of displacement in this case are both environmental protection and economic development, each with its own accompanying set of rights, and grounded in the duty of the state to manage its territory on behalf of the population.

Many people in this region were displaced from their traditional and ancestral territory by conflict beginning in the 1960s and all had been resettled by 2010 (Respondents 2013). The land had been held in customary tenure by the communities 'from time immemorial', according to one interviewee. In one case, it contained a sacred burial ground where generations of families have been buried. From 2007 to 2010, the populations had been advised by government to return to 'their lands'. This land had previously been used for settlements, grazing, hunting and cultivation, and was governed by a diverse and complex mixture of access, usufruct and ownership rights. However, in 2013 the Uganda Wildlife Authority (UWA) informed the population under study that the land belonged to this agency and that it would be clearing it and protecting it on behalf of the government for conservation reasons.¹⁸

3.3. *Scale of displacement and compensation*

Of the 22 families interviewed in 2013, all had lost between one and 100 ha of land to the government, with an average loss per household of 42 ha. The total amount of land cleared of the survey respondents was in excess of 1000 ha. Only four of those interviewed received financial compensation. No compensation was offered or given for the land that was expropriated, with only those whose dwellings were destroyed receiving financial reparation. In a number of cases, interviewees were offered compensation for the loss of their home, but refused to accept as they did not want to leave their ancestral lands, thus pointing to the fact that this displacement was involuntary. Only one-third of those interviewed retained 'legal' access to other productive land. The remaining two-thirds did not have access to any land. Of those without formal access to land, many have resorted to more radical forms of resistance such as continuing to use the land in the conservation zone, making them, technically, squatters. Of those who retained access to land, were moved to new sites or purchased land, all stated that the new land parcels were insufficient to support their family and the quality of the land was below that from which they had been forced to move.

¹⁸In Moroto, Kakapiripirit and Napak the respondents were primarily of Karamojong ethnicity, and they were primarily Iteso in Katakwi. In Kangisa parish in Magoro Sub County of Katakwi district, intermarriage amongst people of Iteso and Karimojong ethnicity was common before displacement.

3.4. Experiences of the dispossessed

The following section examines both the direct conflict of rights arising between the affected community and the state, and also other forms of injustice that the dispossessed experienced that are not adequately captured within a narrow individualist rights-based framework. It highlights violations of procedural justice, distributive justice and epistemic justice. Although each entails different forms of rights violations, there are further non-positional harms to the identity, status and continuity of the communities affected that fall outside of the liberal lexicon of rights.

3.4.1. Procedural injustices: inequality before the law and the impossibility of 'free and fair' consent

At least three alternative routes were used by the displaced population to air their grievances and seek redress. Populations in the region traditionally engaged in customary law and practices to redress grievances. A number of those interviewed referred to their attempts to use this system for redress, but their requests had not been responded to by the authorities:

We have tried to voice our grievances through local leaders but no response so far. (Respondent 3)

None of those displaced had sought to access the statutory courts or agencies with responsibility for land management and land disputes. A number of reasons were offered for this. Firstly, financial constraints were the main reason given for not seeking redress through the land courts; secondly, because the land was expropriated by a government agency, there was an express reluctance to challenge a government directed action through the courts. Indeed, some even suggested that they could not challenge a government body:

Can I sue the government? UWA is part of the government. (Respondent 4)

Thus, even where legal rights might exist on paper, displacees' lack of financial resources and their understanding of extant power distributions and the consequences of challenging them meant these were not actualised.

The final route to redress utilised by the population was the 'political' pathway. The population actively petitioned government ministers, including the Minister for Tourism. Although commitments of a response were received, no feedback had been shared with those displaced at the time of writing.

Community wrote a petition ... to the district, to parliament but no response given so far. Another petition is being signed that they intend to give to other organisations. (Respondent 21)

All of the above implies that basic principles of procedural justice were usurped or ignored and thus the basic right to equality before the law of the affected population was violated. The manner of this displacement points to the prioritising of the states' right to govern its territory over the right of the population to free, fair and informed consent. In the Karamoja case, the state followed each of the steps outlined by Borrás et al. (2013). Beginning with the development of a case for development over several years, the state highlighted the outmoded and 'primitive' livelihood practices and the need for transformation and modernisation. The state also took a lead role in the classification, and indeed reclassification, of the land for specific uses.

The state's actions in clearing the land could be justified on the basis of the legitimate exercise of its rights to organise and manage its territory, and as necessary to fulfilling its responsibilities to its people in protecting the land for future generations and providing economic opportunities for the current generation. However, there are at least two further observations worth noting. First is the timing of these activities: the state's case to gain acceptability for land acquisitions and changes to land management practices based on the need for modernisation and development was being constructed at the same time as populations were being resettled after the conflict into the very locations that would soon be reclassified.¹⁹ Second is the manner in which the state reclassified the land as an area of environmental concern and for economic development: these classifications would raise significant barriers to the displaced communities' claim to retain access to their communal land. Not only would they need to challenge the state's authority to reclassify land in the courts but, critically, they would have to challenge the constitutional protection afforded to the state. In this case, there is strong evidence to suggest that the basic rights of the affected population were taken to carry less weight than those of the state. Their basic rights to subsistence, equality before the law and access to the courts were thus violated.

The role of rights in liberal democratic states is intended to be essentially radical. They are premised upon the free and equal status of all human beings qua moral agents. Basic rights are thus taken to trump other interests and claims; they provide protections for individual citizens against state interference and control. They also provide compelling justification for a range of social and economic rights which aim to redress unequal background and exchange positions. However, in the case under consideration, the language of rights was usurped to produce the opposite result. In circumstances marked by deeply unequal background conditions, where reasons offered by each party are not given equal weight, and the parties are not considered 'equal' in any substantive sense, the state can usurp the language of rights to justify the abrogation of basic rights of some social groups, ostensibly to promote the interests of others. It is clear that the basic right of refusal was not acknowledged, and free and fair consent was not secured or justified to affected parties in this case.

3.4.2. *Distributive injustice: when those who carry the burden see no benefit to cooperation*

All respondents claimed that their livelihoods had been adversely impacted. Many argued that they are being pushed into poverty and dependency, whereas once they were self-sufficient and independent:

Reduced land for cultivation and poor fields. Poverty is biting! Need food so no choice.
(Respondent 1)

A number of alternative livelihood strategies were identified. These included temporary solutions such as selling livestock or cultivating a neighbour's land, and longer term strategies such as engagement in small-scale market activities such as brewing, selling labour, becoming domestic helpers and so on. However, all respondents expressed a concern about their

¹⁹The UWA claims that the area was already a protected reserve, but the respondents in our study disputed this.

increasing vulnerability to hunger and poverty, with much uncertainty regarding their future.

The affected communities were particularly fearful of the future and what opportunities would be available to their children. They were concerned about basic needs such as access to food, water, shelter, and also educational opportunities.

I have no idea what will happen when my children grow up. (Respondent 2)

Reduced land for production – food shortage, poverty, unable to educate children. (Respondent 4)

There was a clear sense of fear evident in the responses.

I'm now landless. If they harden that we don't have to graze there then shall sell all the animals then we die of poverty and famine. (Respondent 7)

There was also a strong sense of loss – not merely economic loss, but loss of identity as those who had cultivated land, grazed animals and provided for themselves now felt unable to perform these tasks, and alternative roles have not emerged or compensated. Further, the loss of identity based on the connection to the land is clearly evident.

Landless! I have no land of my own ... my father showed me this land. My grandfather was born and buried here. (Respondent 3)

An overriding sense of frustration and anger clearly spilled into the qualitative comments, indicting a strong likelihood of future unrest:

There is a conspiracy to remove resources from us. Why fence us off our land? If government wants our resources, let them consult us and we shall part with some land. Otherwise we want our land. This is the future of our children. We suffered from Turkana and now this time we are too to suffer to develop a place, we are again disturbed. When shall we rest? (Respondent 3)

Indeed, there are strong indications that resistance will continue and future conflict with the state is likely. Respondents expressed a deep mistrust of government officials and a strong sense that their interests were not given due consideration. Bearing in mind that this area has traditionally fallen beyond the purview of central government, and the state has historically failed to provide protection and security, comments from respondents indicate that they are unlikely to submit to central rule in the current context, where they feel robbed of their land and voiceless:

Let them bring a truck and put all 'landless' people and take to the place they want. If possible let them settle us in space we don't need land, or let them kill all of us who are interfering with their projects. We want our land. We have no boundaries with UWA that they come and plant land markers ... land belongs to people with animals. (Respondent 5)

From these testimonies it seems clear that basic distributive principles of justice were absent. It is not clear to those affected that they will, or can, benefit from the changes in land classification and ownership imposed by the government. Further, all of those interviewed expressed concerns that they are now worse off than before. Their basic rights to subsistence, food and access to water have been threatened, and the primary duty bearer, the state, is directly responsible for these deprivations. Within the liberal lexicon of rights, the state is the primary duty bearer with responsibility for protecting and fulfilling

the basic rights of their population. However, in this case it seems clear that the rights of the displaced have been violated by the very institutions charged with their protection. The result, from the perspective of those interviewed, is an increase in oppression and domination of an already marginalised and vulnerable population in the supposed interests of the wider community and future generations. When considered from this perspective, this seems to represent a classic 'conflict of rights'. However, this fails to capture the full range of loss and harm arising from this change. Further, in the absence of equitable principles of distributive justice that can guide distribution of the benefits of social cooperation to all participants involved, there is also deep scepticism that the wider community and future generations will be the ultimate beneficiaries.

3.4.3. *Violations of epistemic justice and the rights of the displaced to equal moral status*

The imposition of liberal land management practices in this context should not only be viewed as a matter of the commodification or territorialisation of land. Rather, ways of living, doing and being of affected populations are disrupted. This represents the imposition of not only new rules and laws, but norms and values concerning what constitutes valuable livelihood activities and, indeed, what are credible reasons for doing and acting. In classifying the practices of the displaced populations as 'primitive' and 'backward', the state essentially undermined the voice and testimony of this population, devaluing their perspectives and expressions of oppression. Thus, the implications of the state's actions stretch beyond land reform. The fundamental form of social and economic organisation is challenged and disrupted by the state as it is deemed inappropriate for a modern capitalist economy.

Relations of social power, and ways in which power can be exercised, are difficult to examine within a narrow theoretical framework of individual rights. In order to understand the range of positional and non-positional harms experienced by the displaced population, it is necessary to look to the broader context which explains why the claims of some groups carry greater force than others. In this case, the way the displaced population was characterised by the state ensured that their voice carried less weight than that of a government acting, or seemingly acting, within its rights and upon its duties to the wider population. Rather than protecting citizens from state interference, the narrow liberal language of rights equipped the state with powerful language that effectively compounds the exclusion and marginalisation of the displaced population. This is a practical problem entailed in the operationalisation and application of a narrow liberal rights frameworks without consideration of socially situated background conditions.

Examining this case through a narrow rights and property lens renders invisible the deeper sense of loss expressed by the population involved. It is not simply land that has been taken, but a way of life; connection to traditions, customs and historical identity are existentially threatened. Access to the means of subsistence and basic security has been reduced and so basic rights have been violated. However, the deeper sense of injustice concerning the process whereby land has been reclassified and territorialised, and the distributive effects of these changes, which render some worse off than before, seems to be compounded by deep losses of a way of life which has now been deemed outmoded and archaic.

At least three types of loss and non-positional harms are evident from the testimonies: firstly, loss of identity, as people are moved from lands and divorced from practices they associate with their ancestors, to areas that they do not yet feel emotive connection or affiliation. Indeed, in some cases they have been moved with no clear destination to go to. Secondly,

there is loss of purpose, as male respondents in particular noted their uncertainty about their future as their skills were rendered redundant with the withdrawal of access to land. Thirdly, this process has interfered with the social status and position of members of an established community. Traditional structures for negotiation and remedy have not been successful. Those interviewed expressed concern about not only their own individual rights, but the viability of their collective future. The sense of loss expressed by a number of respondents suggested a deep sense of disempowerment and reduced agency for those affected. In particular, male respondents who could no longer provide for their families, or engage in traditional customs and livelihood practices, shared their concerns and sense of despondence.

Autonomy – that is, the idea that one has the capacity for self-governance, for decision-making and for choice – is taken to be a foundational aspect of human beings as moral persons, and is foundational to the idea of human rights within the international human rights regimes. In this instance, the value those interviewed placed on their place and space runs significantly deeper than the idea of the land as a tradable commodity. However, their freedom (or right) to value their place in this way is no longer deemed appropriate by the state. As such, their basic autonomy has been challenged, and they now face a number of constrained choices that, it could be argued, represent their new status as ‘unfree’, dominated and oppressed.

3.5. Gendered experiences

It is also evident that the effects of displacement had a different social impact on males and females. Firstly, loss of access to land required women to shift their time from cultivation of family land to increased market-based productive activities outside the household. Historically (Rugadya 2008) and currently, women and children engage in a range of non-household-based income-generating activities, in addition to the task of subsistence farming and household food production, perhaps most appropriately described as a ‘multiple modes of livelihood’ strategy. However, the need to engage in market-based income generating dramatically increases when subsistence food production decreases. Activities that female respondents referred to included selling their labour, sending children to work in domestic labour, and brewing and selling local beer. Some might describe this shift as an opportunity for empowerment of women and driving forms of gender equality. In reality, according to the women interviewed, this change arose as a matter of necessity. Rather than representing a shift towards gender equality and women’s empowerment, changing work patterns in this case reflect women’s duties within the household, to provide basic subsistence to their dependents. Patriarchal norms thus remain unchanged and the status of women does not necessarily improve (Ossome 2014).

On the other hand, all male respondents indicated that they were continuing to find ways to graze their animals and perform their ‘traditional’ roles. However, without realistic alternative livelihood options, the loss of land represents a clear disempowerment of affected male respondents.

Some female respondents indicated that the compensation received was not spent on the family, reflecting pre-existing unequal distribution of decision-making power within the household (Rugadya 2008), which had detrimental effects on women and dependents. Further, even if compensation were more widely available, there is little reason to think that women and children would be beneficiaries (Ossome 2014).

Real poverty! Even money from the compensation I have not seen. When he got the money he disappeared and drank all the money. Even children are at home. They have to help me to look for food. (Respondent 13)

Thus, the changes in this instance seem to point to both intra-household conflict between husband and dependents, and also inter-generational harms as children were sometimes withdrawn from school to support the household.

4. Conclusion

Rather than achieving the basis of a liberal state, where reward and effort can be (highly imperfectly) linked, contemporary land management changes in Uganda and elsewhere risk further marginalisation, exclusion, inequality and poverty for the most vulnerable populations. An examination of practices in North Eastern Uganda finds that the rights of the sovereign trump the basic rights of the affected population. Further, we have argued that a narrow application of liberal property rights leaves hidden many of the basic rights violations and non-positional harms and losses experienced by the affected population. In the absence of clear principles of procedural and distributive justice, where all can be protected and can benefit from the practice of social cooperation, the rights of the dominant groups, in this case the state, are in practice given priority over all others. Indeed, the capture of the language of rights is used to legitimate violence and coercion against the poorest members of the community as the state exerts its power and control over the full reach of its territory. The particular and problematic power constellation that is the state in Uganda is reflected in this paper. The Museveni government has been able to leverage its success in HIV and poverty reduction, in addition to its geostrategic importance, to access substantial inflows of overseas development assistance. However, as we have demonstrated in this paper in relation to land, the Ugandan government has also been involved in the abrogation of the rights of its citizens, in favour of its own rights. The vertical power inequality between the state and the citizenry has increased. However, empirically examining the narrow application of a liberal rights framework through the testimony of those affected shows the need for fundamental reform. Donors should be concerned about the operations of the Ugandan state, as should non-governmental organisations, concerned citizens and supra-national bodies such as the African Union. By highlighting unjust outcomes when rights collide, we hope to contribute to debate about more just ways to resolve conflicts in favour of those living in poverty, with the least rights, thereby 'putting the last first'.

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