‘Land Grabbing’: The Ugandan Government, Madhvani, and Others Versus The Community of Lakang, Amuru District[1]

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Introduction

This study explores the conflict over Lakang land in westernmost Amuru District, northern Uganda, between the Ugandan Government, the Madhvani Amuru Sugar Works, and others versus the Lakang community. This conflict has been one of the most publicised – while also among the most atypical – of the vast number of land disputes marking the Acholi Sub-region over the past half-decade or so, as people have returned to the land following a twenty-year northern Uganda war (1986-2006) and up to a decade of forced displacement.

Based on a close reading of the *judicial* argument in the February 2012 High Court Judgment concerning Lakang land, the study explores the evidence and argument for the legal decision that the land in question is not “customary” land. Turning then to the historical record, the article introduces documentary and oral evidence supporting Lakang as customary land**,** material which failed to reach the High Court. The study concludes with a brief note on developments since the 2012 Judgment and equally brief closing remarks.

1. War, Displacement, and Threats to Lakang Land

The twenty-year war that plagued northern Uganda – and beyond – began in 1986 and was devastating for the region, nowhere more so than in Acholiland, the epicentre of conflict. In addition to the overt violence of war, the Ugandan Government’s policy of forced displacement in Acholiland, beginning in 1996, eventually forced some 90% of the population – about one million people – into squalid, disease-ridden internally displaced persons’ (IDP) camps.[2]

It was inevitable that such conditions would seriously impact return and resettlement, which began in Acholi in mid-2006 with the ending of overt conflict there, and accelerated over 2007-8. Given the poverty and deprivation of camp life, the only

[1] We would like to acknowledge and thank the organizers of the ‘Legal Pluralism and the Anthropology of Law’ Workshop, Institute of Peace and Strategic Studies, Gulu University, for inviting us to present the original iteration of this chapter (Atkinson & Owor 2013); the Makerere Institute of Social Research at Makerere University in Kampala and Human Rights Focus in Gulu for logistical and other support; and most of all the elders and many others in the Lakang community, and elsewhere, who shared their time, information, and perspectives.

[2] For recent broad syntheses of the war, with a variety of perspectives, see Finnström 2008; Dolan 2009; Atkinson 2010: 275-335; Allen & Vlassenroot 2010; and Branch 2011.

productive asset most "owned" when they left the camps was the customary, communal land to which they had rights. But regaining secure access to such land has not always come easily, and has all too often been thwarted or interrupted by numerous land-related problems, which have in turn provided fertile ground for land disputes.

This article focuses on a specific dispute, the on-going conflict over Lakang land[3] in westernmost Amuru District, northern Uganda. Parties include the Ugandan Government, the Madhvani Amuru Sugar Works, and the Lakang community, among others. The conflict here has become one of the most publicized of the vast number of land disputes marking the Acholi Sub-region over the past half-decade or so.[4]

While the Lakang conflict is in some ways a special case, it is important to recognise that many of the issues at stake are common to other land disputes in Acholi, including:

- confusion associated with displacement and lack of continuity of occupation;
- lack of paper records and blurring of collective memories or oral records of land occupation;
- land grabbing in the wake of the uncertainties just noted, often associated with stark asymmetry in the socio-economic status of the people or parties involved;
- the existence of two parallel legal and judicial systems dealing with land issues – customary and state land administration – that are not integrated and that can be contradictory or inconsistent;
- different perspectives concerning rights and ownership between local communities and the state;
- investment and business interests that contribute to increasing the value attaching to land, especially land associated with oil and mineral exploration or discoveries; it is not without interest that the Lakang land sought by Amuru Sugar Works is prime real estate for oil exploration;[5] and
- the disruption and distortion – sometimes exaggerated as destruction – of Acholi socio-cultural norms, procedures and practices.[6]

Moreover, both during the war and since, threats to Acholi customary land (imagined as well as real) have been a major concern both to the Acholi leadership and to many in the general populace.

Such threats are often associated with claims that abundant (sometimes characterised as "empty") land is available in Acholi, which should be opened up for investors, large-scale commercial farming, and other forms of "development." Other voices of course speak for the protection of Acholi land from what they consider exploitation by such interests.[7]

With respect specifically to Lakang, such concerns were fuelled from early 2007 by highly public pressure from central government (including the President personally) for the allocation of vast tracts of land in Lakang to the Madhvani group for a sugar cane

[3] "Lakang" and "Lakang land" will be used in this chapter as shorthand to refer not only to the specific area of Lakang but to the wider area around it that was the subject of the High Court Judgment.

[4] For a detailed report on land disputes (and other land matters) in Acholi, see Hopwood & Atkinson 2013.

[5] See, for example, the suggestive title given their general Situation Report on Lakang in Refugee Law Project 2012.

[6] This list is based upon Hopwood & Atkinson 2013: 18-19.

[7] See three overviews published over the past decade that focus on the often heated debate between proponents of these two positions: Adoko & Levine 2004, Atkinson 2008, and (focusing especially on Madhvani efforts to obtain Amuru land) Sjögren 2013. See also Nakayi 2012.

plantation.[8] This was opposed – as have been other perceived threats to Acholi land – by most Acholi parliamentarians, local government officials, and others in the region who argued, reasonably and persuasively, that people needed to be back home, on their land, and consulted/negotiated with, before any such alienation occurred.

As the High Court Judgment discussed below makes clear, the proponents of land for development – and the advocates for Madhvani and other respondents in the case – won an important legal victory. As we shall see in the final brief section of the article, however, this is not the last word.

2. The High Court Judgment

On 2 February 2012, the High Court sitting in Gulu, Justice Wilson Masalu Musene presiding, rendered a 45-page Judgment against five individual Applicants – Ocula Michael, Aciro Concy, Penytoo David, Uma Zakeo, and Obalim Jack Weleya – and in favour of four Respondents, two institutional – the Amuru District Land Board and Amuru Sugar Works Ltd – and two individuals, Major-General Oketa Julius and Christine Atimango (Republic of Uganda 2012).

Essentially, the Applicants were seeking two things: (i) a declaration that the allocation of Lakang land to the Respondents by the Amuru District Land Board (also the first respondent in the case) "is null and void and should be cancelled and/or stopped"; and (ii) "that the said allocation violated the Constitutional Rights of Customary Owners of the land as they were not given a hearing and that it amounted to deprivation of their rights to own property and also amounted to trespass" (Republic of Uganda 2012: 3).

The Respondents in turn presented affidavits and argument "that the land in question is not customary land but public land," available for allocation by the Amuru District Land Board, and, moreover, that the allocations made by the Board to the other Respondents "were proper and did not deprive the Applicants or anybody of their Constitutional Rights" (Republic of Uganda 2012: 4).

Fundamentally, then, the key issue before the Court was whether or not the disputed land was customary or public land.

After dealing with three basically procedural/technical issues, Justice Musene turned to this crucial question, briefly describing customary land (identifying additional characteristics later):

> *"Customary Land Tenure refers to the terms and conditions on which land is held, used and transacted in accordance with the ethos and customs of a given community. The local customs govern ownership, use and occupation and transactions in land. They provide for communal ownership and use of land, in which parcels of land may be recognized as sub-divisions belonging to a single person, family or a traditional institution. Land under customary tenure is owned in perpetuity. The land is not Registered under the registration of Titles Act or vested in the Local Government or Central Government of Uganda."* (Republic of Uganda 2012: 10).[9]

Following two pages of testimony by the Applicants asserting their rights to land that they claim is customary, counter arguments by the Respondents contend that the

[8] The first public indication of Madhvani's interest in a sugar cane plantation in the "north's central part" of Uganda – that is, Acholi – came in a New Year's Day Business section article in the Government-backed English-language daily, *The New Vision*, 'Madhvani to set up second sugar factory,' 1 January 2007.

[9] It is worth noting that this depiction includes recognition of *communal* customary land.

disputed land "was and is" public land (Republic of Uganda 2012: 10-13). Additional evidence and arguments to the same effect appear throughout the document, cumulatively playing a decisive role in the final Judgment against the Applicants

Justice Musene then summarised Ugandan and Kenyan legal decisions addressing factors important for successfully establishing that disputed land is indeed customary land. The examples presented indicated that this was not a simple or straight-forward issue, and one case cited emphasised that a fairly high evidentiary bar had to be cleared: "As a matter of necessity, the customary law must be accurately and definitely established." A second case indicated one way to clear that bar: "The opinion of experts is relevant in establishing the existence of a custom or customary law." (Republic of Uganda 2012: 14).

It turned out, as indicated in considerable detail in the Judgment, that the Applicants fell short on both these points. Both in court and in the field where the disputed land was located, all gave vague or contradictory evidence about the particular tracts of land that they were claiming and the specific justifications for their customary rights to such land. And at least as damaging, as pointed out a number of times by Justice Musene, none of the Applicants provided supporting evidence from elders or chiefs, thus failing to avail themselves of the crucial "opinion of experts" in establishing the legitimacy of their claims, or indeed, "in establishing the existence of [relevant] custom or customary law" at all. (Republic of Uganda 2012: 15-21).

When the Judge turned to the case presented by and for the Respondents, he references – and accepts – frequent claims that the disputed land was not customary land. At one point he endorses "**as wholly uncontested**" [emphasis in original], the deposition by the Amuru District Chairman that the land allocated to the Respondents has "never been" customary land. The main basis for the Justice's position, returned to again and again, was that the allocated land was part of a game reserve inherited by independent Uganda from the colonial period, then degazetted in 1972 and made available for commercial farming, thus making it public land. (Republic of Uganda 2012: 21-25, 27-31).[10]

In the midst of the recurring arguments that Lakang land was public – not customary – land, Justice Musene introduced into the record a 6 August 2008 letter by the Secretary of the Uganda Land Commission, the country's highest authority on land matters. Reluctantly introducing the letter – as it was addressed to someone who attempted without success to be included among the Applicants – the Judge quotes Counsel for the Applicants (tongue-in-cheek as will be clear below) stating that the Secretary is "a very competent person on the subject, proving that the disputed land is customary land of the people."

The letter reads as follows (with spelling as in the Judgment):

> *"As you may be aware Gazzettement or otherwise is done by Parliament ultimately not by Uganda Land Commission. Secondly, it is not true that Parliament in the last forty years has gazzetted any land for a particular use. It is therefore false to say that Uganda Land Commission gazette[ed] the land in Amuru or degazetted the same for commercial farming. I am of the view that whoever is claiming that degazettement took place is doing so for his or her own claims. If the population were living on the land before moving to IDP camps, then when did gazettement and degazzettement take place? This is a game of disowning the population of their land. The Commission should not be made a scapegoat."* (Republic of Uganda 2012: 25).

[10] The quotation from the Amuru District Chairman and the Judge's questionable assertion that it was uncontested are on p. 23.

Justice Musene immediately proceeded to make a three-point rebuttal. The first two were procedural: (i) the letter was addressed to a person ultimately not part of the case and thus not cross-examined; and (ii) rather than this letter, the Secretary should have been called by the Applicants as a witness or submitted an affidavit on their behalf. The third point is a brutal – and, it seems to us, disingenuous – dismissal of the Secretary's submission. It reads:

> *"When Mr. Mubbala, the Secretary to Uganda Land Commission writes that there has been no gazettement of the land in dispute for the last 40 years that was not true because the case for the Respondents was that the degazettement by the Government of Uganda was in 1972 [citing the law]. So when the Secretary to Uganda Land Commission was writing in 2008, degazettement had taken place in 1972, which was 36 years ago. It is therefore a total open lie to write that no degazettement had taken place for the last 40 years when it took place in 1972, 36 years earlier as from 2008. So the Secretary to the Uganda Land Commission, Mr K.S.B Mubbala, whom Counsel for the Applicants .... praised as a very competent person on the subject has turned out to be a liar or ignorant or uninformed, as degazzettement took place in 1972, 36 years before 2008 when he wrote."* (Republic of Uganda 2012: 26-27).

In order, the Judge states, to "clarify this issue once and for all," he then presented a highly favourable summary of the Amuru District Chairman's affidavit also contradicting the Secretary's letter, before declaring that "this Court agrees with all the Advocates for the Respondents that the Land in question was public land after being degazzetted from its former status as a hunting area" (Republic of Uganda 2012: 27-28).

Next, Justice Musene cited three instances from Ugandan court cases that included important criteria for assessing customary land and customary tenure claims: (1) a "paramount consideration" for successfully asserting customary tenure rights, which was "to be in occupation of the land and actively utilizing it"; (2) "customary tenure was found to exist as the appellants had enjoyed userfructuary rights over the land by cultivating seasonal crops or grazing cattle ..."; (3) the existence of customary tenure was demonstrated by "the abundant evidence that the Plaintiffs had occupied and utilized the suit land over a long period of time for grazing cattle ... had numerous homesteads on the suit land [and] before them, their parents and grandparents had utilized the same land." Justice Musene then concluded that none of these criteria were met with respect to the disputed Lakang land, further strengthening his conclusion that this land was not customary, but rather public, land. (Republic of Uganda 2012: 28-31).

Given the above, the Judge's answer to the final substantive question addressed in the Judgment – on the Applicants' contention that the Respondents infringed on their rights – was entirely predictable: "no." (Republic of Uganda 2012: 38-40).

The Judgment then notes that on the same day that the Amuru District Land Board approved granting Lakang land to Amuru Sugar Works (a 49-years' lease), more than 60 other applicants had land requests approved as well, some far outside Lakang. Thus the Judgment had consequences far beyond Madhvani and the other Respondents. A partial list of successful applicants was included, containing many prominent and powerful individuals, among them Major-General Oketta, the late Walter Ochora, Brigadier Charles Otema, and the Acholi Paramount Chief Rwot David Ocana. (Republic of Uganda 2012: 40-42).

The Judgment's penultimate section would appear to bring us back to the issue of development versus custom:

> *"Before I take leave of these matters, I take this opportunity to applaud Amuru District Land Board for considering the affirmative policy and for being development oriented. It is one of the most enlightened District Land Boards this Court has come across. What it has done can not be faulted or undone. ... Otherwise this Court finds and holds that whatever the District Land Board did in the circumstances was in the interests of development, not only for Amuru District, but for Uganda as a whole."* (Republic of Uganda 2012: 43-44).[11]

The Judgment concludes with Justice Musene lifting a temporary injunction against Respondents' activities on the land issued on 19 January 2009 (Republic of Uganda 2012: 44).

3. Brief Overview of Acholi Customary Land

Abundant evidence makes clear that Acholi customary land tenure is, and has long been, overwhelmingly communal, not individual, with tenure rights vested in localized patrilineal clans (or sub-sections of clans). Beginning in the late seventeenth century, varying numbers of such clans, often the core groups of fenced villages, were incorporated into a system of mostly small, independent chiefdoms, each headed by a recognised chief (*rwot*) and royal clan (*kal*). Importantly, though, land rights continued to be vested in the chiefdom's constituent clans.[12]

Individual clan members who are also household heads have usufructuary (user) rights to particular tracts of clan land that he and his wife (or wives) have under cultivation, or that had been cultivated but was lying fallow, and such rights pass from father to son. Similar user rights also exist for widows and orphans of clan members who remain on the land. But ultimate rights to the land are vested in clans or sub-sections of clans. However, not all who live, farm, and (in the past) hunted on kin-based communal land are clan members. Friends, in-laws, and others can be given access to use – but not own – clan land. And once accepted, such outsiders, and their descendants, should have the right to live on and use the land allocated as long as they remained in good standing with their hosts – but they could not add to such land without permission.

Acholi customary communal land is used, most importantly, for habitation, subsistence agriculture, grazing domestic animals, and as hunting reserves. The boundaries of such land have typically been known and widely accepted by neighbours. Importantly, communal land and customary communal land rights have not been restricted to land currently under occupation and farming, but extended to unoccupied grazing and hunting land. Such rights included, for example, the right for clans to organize and control hunting on their recognised communal land. In the past, this was important both economically and symbolically, and was thus a crucial, recognised component of customary land rights.[13]

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[11] Contrast with the *Daily Monitor* article '10,000 facing eviction as [Amuru District] land board claims 85,000 ha,' 3 September 2008.

[12] The standard colonial ethnography of Acholi is Girlng 1960, with information on land throughout; see also Bere 1955, 1960b. Atkinson 2010, esp. 54-55, 58-61 75-77, describes land tenure and use during the precolonial period. And Hopwood & Atkinson 2013 has as its first key finding: "Over 90% of rural land is understood by the people who live there as under communal control/ownership" (i); see also 55-58.

[13] For discussions of Acholi hunting, see Bere 1960a., n.d.; also Atkinson 2010, esp. 57-58.

4. Historcal Evidence for Lakang as Customary Land (i): Acholi Historical Tradition

In 1970-71, one of the authors as part of Makerere University's History of Uganda Project collected historical traditions throughout western Acholi – designated Acholi Historical Texts (A.H.T.), numbers 201-310.[14]

Shortly after the British established their colonial administrative centre at Gulu in 1911, sleeping sickness spread up the Nile River valley and into Lakang and neighbouring areas. In 1913-14, the British quarantined the area, removing the population nearer to Gulu town and along the main road being built between Gulu and Nimule in southern Sudan. While sleeping sickness was perhaps the precipitating factor here, moving people from more remote areas served to facilitate both trade and political control.

Among the historical texts collected, those with information on settlement in and near Lakang prior to being forcibly relocated by the British are A.H.T. 211-17, 224, and 226, from interviews with elders from various clans in Pagak, Toro, and Pawel chiefdoms. Relevant portions of these texts are discussed in turn.

4.1 A.H.T. 211 (7 July 1970)

In an interview with Lot Alii from Pagak *kal* (born c. 1900-02), at Amuru Trading Centre (current Amuru District Headquarters), he indicated that after moving in the 19th century from their original home in Bunyoro south of Acholi, the royal clan (Pagak *kal*) and eight others that made up the chiefdom eventually settled near the Ome and Apaa Rivers, near Bana Hill, c. 50 km west of Amuru District Headquarters and in or near Lakang. He also stated that Pagak had close ties with the smaller Toro and Parabongo chiefdoms before all were moved in 1913-14 to Keyo hill, c. 10 km northwest of Gulu town.

4.2 A.H.T. 212 (8 July 1970)

The interview at Amuru Trading Centre with Lot Alii, Rafile Otto (born c. 1911; son of the last traditional Pagak *rwot*), and 3 other Pagak elders focused on an earlier Pagak history (probably mid-18th to mid-19th centuries), when it was located northeast of Lakang. At the end of this period, internal secession disputes and external attacks caused the chiefdom to break up and scatter, before re-establishing itself in the area identified in A.H.T. 211, where it remained until removed by the British in 1913-14. Otto also told of two Pagak elders then living some 15 miles (25-30 km) west of Amuru Trading Centre towards the Pagak settlement site noted in A.H.T. 211.

4.3 A.H.T. 213 (16 July 1970)

Again, the group interview with Rafile Otto, along with 3 new Pagak elders, at Lamogi Sub-county Headquarters mostly reiterated the information in A.H.T. 212, including the earlier, more northerly settlement site of Pagak. Towards the end of the interview, the group was joined by Dominico Obwona, the successor to the last *Rwot Moo* of Toro

[14] Copies of these texts were deposited in the early 1970s at the Makerere University Library, MISR, and the Makerere Department of History. All have disappeared. Both hard copy and electronic versions are being prepared to replace the missing collections. Copies are still available in the Africana Collection, Northwestern University Library, Evanton, Illinois, USA.

Pagoro – a second, small Toro chiefdom with a separate royal clan, or *kal*. He stated that the small chiefdom was settled at Bana Hill near Lakang in the late 19th and early 20th centuries (a site identified above in A.H.T. 211 and also often mentioned below).

4.4 A.H.T. 214 (2 June 1971)

Again, the interview with Lot Alii, plus two new Pagak elders, at Amuru Trading Centre, contains numerous general references to Pagak settlement and ritual performances in or near Lakang.

4.5 A.H.T. 215 (2 June 1971)

The interview with Rafile Otto, at his home in Pagoro Parish near Lamogi Sub-county H.Q., provided information on Pagak chiefdom ritual, including their rainstones (*kidi kot*) for "making" rain, which were kept in a pot in River Ome in or near Lakang.

4.6 A.H.T. 216 (10 July 1970)

In an interview with three elders from Toro (oldest born c. 1900-2), at Amuru Trading Centre, they claimed that a large group from the royal clan of Toro in Bunyoro to the south broke away after a succession dispute in the early 19th century and settled as a small independent chiefdom to the north of Lakang. After further moves, the small chiefdom settled near Pagak in or near Lakang as described in A.H.T. 211, where they remained until forced to leave by the British in 1913-14.

4.7 A.H.T. 217 (obtained 17 July 1970)

A one-page written manuscript from Toro Pagoro briefly describes the relationship between the Toro chiefdom and the separate chiefdom of Toro Pagoro. More importantly for present purposes, the document identifies the place where the two became affiliated as "Mbana," almost certainly Bana Hill.

4.8 A.H.T. 224 (28 July 1970)

The interview with Peter Lulya (born probably early 1880s), the last traditional *Rwot* of Pawel, recounted Pawel's many movements, often associated with fragmentation. When the British arrived, Lulya explained that one portion of Pawel was settled on then-restricted (and currently contested) land "at *Got* Mbana [Bana Hill] near the Nile. That was the best place. Even now [1970] Pawel are not pleased because [the colonial] Government has moved them. If the [Ugandan] Government said, even now they would move back there."

4.9 A.H.T. 226 (22 September 1970)

In an interview with Jakeri Gunya, Potwongo sub-clan of Pawel *kal*, Gunya described a split of the small Pawel chiefdom in the late 19th century, with the two parts then brought together again under one *rwot* at "Mbana." Not long after, the group was forcibly removed

(in 1913-14) to northwest of Gulu, near Gulu-Nimule road, where, like Pagak and others, they were placed under the Lamogi *rwot* (who was also a colonial chief).

5. Historcal Evidence for Lakang as Customary Land (ii): Written Sources

This section presents a selection of extracts from six written sources indicating Acholi settlement in the Lakang area before their removal by the British. Each source is listed as it appears in the References; page references are in the text.

5.1 Colonial Memo (extract) 1939

The following extract makes clear that the land from which people had been removed by the British (including Lakang) continued to be seen by those affected as their customary land, especially for hunting:

> *"2. This area was finally [completely] evacuated in 1921. Since then the game in it has increased considerably and sleeping sickness appears to have been stamped out. ... In short the temptations to illegal entry have multiplied while the causes responsible for complete prohibition of entry have greatly decreased.*
>
> *3. A certain amount of hunting already takes place sub rosa, but the position is not a satisfactory one. The people who, when the area was evacuated, took their enforced change of domicile with docility, now regard the prohibition of hunting [which they evidently saw as their customary right] as an unnecessary restriction. The chiefs sympathies are naturally with their people and they undoubtedly wink at the hunting which takes place, but they cannot allow extensive hunting without its becoming apparent that the Governments' instructions are being disobeyed.*
>
> *4. Unless there are strong medical reasons to the contrary, and I do not see how there can be, I suggest that the inhabitants ... be permitted to resume tribal hunting in the restricted area."*

This "suggestion," as indicated in the following source, was accepted a few years later, at least in part.

5.2 Bere 1947

After presenting a brief, somewhat confused history of precolonial Acholi, Bere deals briefly with the early colonial period. He writes that 1913 was marked by the widespread disarmament of the Acholi, and "depopulation of the Sleeping Sickness Area, which resulted in a great movement of the western clans [*sic*., chiefdoms]. In 1938 part of this area was re-opened and a slow, controlled migration back towards the old lands began" (7) – indicting at least partial acceptance of the suggestion in the previous text.

5.3 Malandra 1947

In his chapter on Pagak (trans. version, 21-29), Malandra locates the chiefdom during much of its precolonial history in the more northerly location indicated by A.H.T. 212 and

213. He then details internal secession disputes and external attacks that caused the chiefdom to break up and scatter, before re-establishing itself in the mid-19th century further south near the River Ome in or near Lakang. He ends with a description of Pagak's forced move near to Gulu by the colonial government, and the ending of an independent Pagak chiefdom.

5.4 Okech 1953

Lacito Okech was one of the earliest Acholi to serve in the colonial administration (and to publish a history text on Acholi). He was appointed a clerk in 1914, an interpreter in 1916, a colonial chief in Lamogi from 1923-35, and served finally in various positions back in Gulu until 1946 (trans. version, 24).

In 1913-14, just as Okech was beginning his first job in the local colonial administration, the British began to collect taxes from western Acholi chiefs, and to relocate chiefdoms affected by sleeping sickness in Lakang and nearby areas. He mentions specifically the Pagak, Toro, and Pawel chiefdoms noted above, plus Parabongo and Lamogi (25-27), and later in the book presents a brief history of each.

The Lamogi chiefdom, he asserts, had always stayed just west and southwest of Mt. Kilak (well northeast of Lakang). They had close ties with the Pagak, Toro, and Parabongo, the first two of which, as we have seen, were eventually settled in and near Lakang (52-53).

In his brief history of Pagak he writes that the chiefdom settled near the River Ome in or near Lakang, some two or three generations before 1900, where it remained "a long time" (54).

Okech then briefly discusses Toro as a small chiefdom from Bunyoro that settled near the River Ome in the same area, and timeframe, as Pagak. He concludes with: "Sleeping sickness decreased their number while they were still at Ome stream and at Keyo [after being moved by the British]. ... But now they are increasing quite well" (54).

Finally, Okech's entry on Pawel reiterates some of the detail from A.H.T. 224 and 226, including parts of the chiefdom's settlement at various points in their precolonial history at and near Bana Hill near Lakang (69-71).

5.5 Crazzolara 1954

Vols. 2 and 3 of J.P. Crazzolara's classic work includes renditions of historical traditions of numerous Acholi chiefdoms, including, in vol. 3, Lamogi (459-73).

The most relevant details on Lamogi for present purposes is the brief assertion (459) that while Lamogi *kal* was "always" settled west and southwest of Mt. Kilak, the chiefdom as a whole "at one time extended further [west] towards the *Naam* (Nile)." This would have almost certainly included land in or near Lakang. Crazzolara does not identify which Lamogi clans lived further west, but after identifying Lamogi clans living near *kal* and Mt. Kilak, this leaves the Pailyec, Paingor, and/or Pokure as likely candidates (460).[15]

[15] Pailyec is one of the relatively few clan names that appear frequently in the Lakang Judgment, showing up eleven times, sometimes as a group name, others as a place name. Pailyec also showed up in an unexpected way when Major-General Julius Oketta brought Pailyec into his case for ownership of some 10,000 acres of disputed land. In essence, Oketta claims that Pailyec elders "gave" him the land. While this claim seems highly dubious (Oketta is even from another Lamogi clan), the wider context of Oketta's story clearly indicates that he is describing Pailyec customary communal land – in contradiction to a final Judgment based primarily on the argument that the disputed land was *not* customary land. See the article 'Atimango squeezed over 40,000 acres of land,' *Red Pepper*, 11 November 2011.

Crazzolara then has a brief account of Pagak, Toro, and Parabongo, closely linking the three as do other sources. He locates Pagak from the early to mid-19th century in the same River Ome area in or near Lakang as do many others, then adds that Toro, as an independent chiefdom, was also living in the same area until both were removed by the British to Keyo Hill in 1913 (473-74).

5.6 Dwyer 1972

In his chapter on the famous Lamogi rebellion against the British in 1912, Dwyer echoes Crazzolara when he writes: "The area in which the Lamogi live lies west and slightly north of Gulu, and at one time their domain probably extended all the way to the Nile." He adds that when he was doing research during the 1960s, however, much land west of Lamogi was a restricted government game reserve (131).

6. Historcal Evidence for Lakang as Customary Land (iii): MISR Research

In July 2012, the two authors, two Research Fellows from the Makerere Institute of Social Research (MISR) in Kampala, and a staff member from Human Rights Focus (HURIFO) in Gulu, conducted eight interviews with elders in and near Lakang. These interviews were part of an informal, preliminary enquiry related to one of MISR's six designated research themes, "Land: Access and Conflict."

6.1 Elder 1 from Pojok Clan, Pagak Chiefdom (at Bana Hill)

He was born in 1949 at present-day Pagak Sub-county headquarters, and came to Bana Hill from Amuru Camp in 2006. Among other details, he stated that the Pagak, Pawel, and Toro Pagoro were living in the Bana Hill area before it was quarantined by the British. He recounted hunting in the area as a young man with his father and other clan members, and indicted that before such hunts took place, Pawel *kal* was responsible for appeasing the spirits (*jogi*; singular, *jok*) of Bana Hill (to bless and sanction the hunt), while Toro Pagoro had a similar responsibility for the *jok* at nearby Mt. Ojigu.

6.2 Elder 2 from Toro Pagoro (at Lakang Trading Centre)

He was born probably in the late 1920s at Keyo, and came to his present home in 2006 from Pagak Camp, Lamogi Sub-county. He established his homestead where he did, he explained, because his father had lived at this very site, and married his mother here, before sleeping sickness came and the British moved the people away. His father was also the local *won tiim* ("owner of the bush"), the person in charge of the large multi-clan, and usually multi-chiefdom hunts in this area on behalf of his Toro Pagoro clan. He remembered, as did Elder 1, hunting in this area, and reiterated that Toro Pagoro was in charge of appeasing the *jok* at Mt. Ojigo. He also remembered that among other clans who hunted in the area were Lamogi *kal* and Lamogi Pailyec, as well as the Pagak clans of Ogoropii and Pacunge.

6.3 Elder 3 from Toro Pagoro *kal* (at Lakang Trading Centre)

He was born in the late 1930s/early 1940s. He provided a brief *rwodi* list of the Toro Pagoro chiefdom from the mid-19th century into the early 20th, with accompanying details. These details included identifying Ajung as the *rwot* forced by the British to lead people away from this area (in 1913-14), and his successor, Nekemiya Loka, as *rwot* when Toro Pagoro and other chiefdoms began to be amalgamated under Lamogi and "then under Lacito Okech" (in the 1920s). He not only reiterated that Toro Pagoro was responsible for appeasing the "big" *jok* at Mt. Ojigu, but added that they also helped appease *jogi* at smaller hills in the area.

6.4 Elder 4 from Pagak *kal* (at Lakang Trading Centre)

He was born in Gulu town, probably during the 1930s, and returned to the area in 2006 when, as he put it, "the government announced that people can return to their places of origin." He is the traditional *lawing rwot* (spokesman of the *rwot*). He explained that the British quarantined this whole area c. 1914, with people beginning gradually to return after independence in 1962. He also noted that there is still evidence of earlier habitation such as graves, grinding stones and broken pots, adding that the graves are mainly those of people who died of sleeping sickness.

6.5 Second Interview, Elder 2

He began by repeating that he was born and grew up in Keyo, that he returned to his present home in 2006, and that his father was the *won tim* responsible for organising group hunts in the area. He corroborated Elder No. 4 when he stated that by the time of independence in 1962, people started returning to the area, and even built houses. They remained into the Amin era (the 1970s), but left during the LRA insurgency and only started returning in 2006. Many of those who have returned are, like him, from Keyo and surrounding areas, and many still have family members and homes there.

6.6 Elder 5 from Toro Pucet (at Lakang Trading Centre)

He was born in 1945 in Keyo. He described both large dry season hunts called *arum*, with many clans participating, as well as smaller rainy season hunts and hunting with nets – all of which he joined in as a younger man. Honey was also harvested, both from natural hives and those set by local people. He left Keyo in the early 1970s to begin gradually returning to Lakang near where his grandfather had been buried; his father died and was buried en route. They were displaced after 1986, and after returning temporarily, again in the 1990s when they went to camps. Evidence supporting previous settlement in the area comes from the presence of early graves and of large fig (*kituba*) trees planted by earlier inhabitants.

6.7 Elder 6, also from Toro Pucet (at Lakang Trading Centre)

He was born in Keyo in the 1940s. He provided many details of life in Lakang before removal by the British: for example, living in fenced villages for protection from enemies; farming (including communal labour); tending livestock; and tribute due the *rwot* (*tyer*). He also noted the hardships and great distances involved when men, women, old people, and children were forced to move. Like the others interviewed, he had participated in hunts

in Lakang as a younger man, which he briefly described, and then added some details on fishing. As with Elder 6, he also began returning to Lakang in the 1970s, moving in phases from Keyo to Olwal (c. 15 km), then to Amuru (approximately another 25 km), then to the Apaa River (c. 25 km again), and finally to Lakang (c. 20 km).

6.8 Elder 7, also from Toro Pagoro (at Lakang Trading Centre)

He was born in Keyo, in the early to mid-1920s. His father had been born in Lakang, and before he died in the early 1930s had told his son about his ancestral land. He noted various details of life in Lakang before removal, similar to those provided by Elder 6, including hunting and fishing expeditions in Lakang in which he participated that could involve several nights away from home. His father, who was married in Keyo, was a skilled hunter who lived much of the time in Lakang. Elder 7 also began gradually returning to Lakang before war in the 1990s "meddled up their return." He finally came back in 2006. Evidence of earlier settlement in Lakang come from the presence of planted trees marking gravesites and homesteads, and sometimes by physical traces of old homesteads.

7. Sketch of Developments since High Court Judgment and Closing Remarks

As noted above, the High Court Judgment decided the Lakang case in favour of the Respondents – and more generally in support of the proponents of land for development. The decision was, of course, based on evidence submitted to the Court by the plaintiffs. We provide examples of evidence that, in terms of the criteria set out in the judgement, might have had a bearing on the case. But evidence of this kind was not brought before the Court.

The Ugandan Court of Appeal on 28 September 2012 issued an injunction that still stands, barring Madhvani (and others) from carrying out activity on the disputed land. Three of the original Applicants have appealed the original Judgement, challenging the leasing out of the contested land. Meanwhile, a host of disparate actors – some involved previously and some new, some supporting and some opposing the Judgment – are jockeying for position on multiple fronts and using multiple tactics.

The following list of actors – and it is only a partial one – perhaps begins to convey, on its own, a sense of the extent and complexity of the yet unresolved struggle over Lakang land:

- Lamogi "Clan" government, eventually branded illegal with its "Interim Chairperson" briefly held by Police;
- Acholi Land Forum, a group started after the 2011 elections and comprised mainly of losing opposition party candidates;
- Land Protection Committees in Lakang, whose membership includes village chiefs and elders, Local Councilors, community leaders, and reporters;
- Local communities in and nearby Lakang;
- Central government, often in the person of President Museveni personally;
- Various "Interim"or ad hoc committees and delegations, typically comprised of a mix of prominent Acholi on both sides of the Lakang debate; these groups have frequently met – or alternatively refused to meet – President Museveni in his frequent instances of direct involvement;

- Acholi Parliamentary Group;
- Acholi cultural leaders from the Acholi cultural organisation, Ker Kwaro Acholi;
- Amuru Resident District Commissioner and Amuru District Government;
- Ugandan police and military, in particular those currently posted in Lakang;
- Various Civil Society Organisations and the UN whose assistance has been requested by Lakang residents, including Refugee Law Project, Acholi Religious Leaders Peace Initiative, and Human Rights Focus;
- News media;
- Lawyers and law firms representing interests across the spectrum of those involved.

In closing, we would like to emphasise that there is historical evidence – documentary and oral – bearing on customary tenure in Lakang that would be relevant in terms of the legal arguments presented in the High Court Judgment. This evidence – and there is more waiting to be found – was not presented.

Clearly, this is a particular, even narrow, view of the Lakang case. Clearly, there are many kinds of actors and many interests – political and ideological – involved, ranging from the powerful both within and outside Acholi to ordinary Acholi men and women. The Lakang case provides a stage for larger debates of significance in and beyond Uganda.

But it is also a case in law, and it is important not to lose sight of this specific context. And we would argue that a fundamental issue in this context hinges on the strength of evidence for customary tenure claims, and the task for any legal challenge to the February 2012 High Court Judgment will be to collect and present such evidence.

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