

The “Lost Counties”: Politics of Land Rights and Belonging in Uganda

Les « communes perdues » : politique des droits fonciers et identités en Ouganda

Rune Hjalmar Espeland*

University of Bergen and Chr. Michelsen Institute, Norway

Abstract

The colonial and postcolonial legacy of the “Lost Counties” land issue has recently resurfaced as a contentious ethno-political issue in Uganda. The aim of the paper is to critically examine the politics of belonging and land rights in relation to Ugandan land legislation and the “Lost Counties” issue. The empirically basis of this paper is primarily derived from field work in Kibaale District, during the period January to July 2004.

Résumé

La problématique foncière des « communes perdues » (« Lost Counties ») en Ouganda existe depuis l'ère coloniale ; mes ces dernières années elle a réapparu comme question ethnique et politique bien contentieuse. Le but de cet essai est d'examiner de façon critique les relations entre les droits fonciers et les identités populaires en Ouganda, et en particulier de comprendre comment la question des « communes perdues » soit utilisée par les acteurs ougandais dans une poursuite de fins politiques. L'analyse prend comme point de départ la législation foncière ougandaise et l'histoire des « communes perdues » ; et elle est fondée sur des données recueillies dans le district de Kibaale dans l'ouest du pays entre janvier et juillet 2004.

Keywords: Land rights, land legislation, ethnicity and Uganda

* Espeland is currently completing a Master in Social Anthropology at the University of Bergen. The issues presented in this paper are an integral part of this project. Please do not quote without the author's permission since the text is a work in progress.

Uganda's recent and distant pasts do relate, in fairly direct if perverse ways. Many of the events and relationships characteristic of Uganda's recent history – including politics and political violence – have been intimately bound up with Ugandans' perception of their social and ethnic identity. Of course these perceptions are social constructions, representations rather than features, of the real world. Such representations, moreover, not only change over time but often distort and manipulate, particularly as part of a discourse of domination emanating from those in power in successive colonial and postcolonial regimes¹.

Ronald R. Atkinson

Introduction

With the 1900 Uganda Agreement the British Government granted the elite in Buganda Kingdom large tracts of titled land in parts of Bunyoro Kingdom. This area, including the present Kibaale District, is commonly referred to as the "Lost Counties". The colonial and postcolonial legacy of the "Lost Counties" land issue has recently resurfaced as a contentious ethno-political issue in Uganda. Claims are debated at different levels, and this paper will deal with the macro-narrative level of land claims. Historicised narratives are important in the contested claims between Banyoro and migrant ethnicities which will be referred to as Bafuruki². The Banyoro elite are, with considerate success, pressuring the government to grant their ethnic group full and exclusive land rights in Kibaale based on ethnohistorical claims. The aim of the paper is to critically examine the politics of belonging and land rights in relation to Ugandan land legislation and the "Lost Counties" issue.

This paper is organised in the following manner; firstly the it deals with my own fieldwork encounters with the "Lost Counties" issue, the secondly the paper presents the historical background to the "Lost Counties", thirdly it examines the issue in relation to post-colonial land legislation in Uganda, fourthly it briefly contrasts the legislative aspects with the indigenous situation in rural Kibaale District, fifthly it explores how the historical issues are used in the politics of belonging, and lastly it brings together the above matters in one case to explore how the "Lost Counties" issue can advance ethnicised land claims in the current political environment.

¹ Atkinson (2001)

² The prefix Ba- is normally used when talking about a group of people while the prefix Mu- is used about an individual person. In this article I will only use the Ba- prefix to simplify the vernacular terminology.

Entering the issue of the “Lost Counties”

My masters project started off as an investigation into one incidence of communal violence in Kibaale District in 2003. The event had attracted considerable attention in the national media although only a small number of people had actually been killed. Stimulated by the apparent paradox I began to look for the possible reasons for the national signification of the event. I soon discovered that the event had taken place in relation to a major district land redistribution. My project was not primarily concerned with land issues *per se*, but land was a matter of great concern to many of my informants. Researching communal violence inevitably involved talking about land. When I spoke with Banyoro peasants about land they constantly brought up the issue of the “Lost Counties”. I then decided to follow up the matter in my interviews with political actors who were implicated in the land redistribution. One of the principal actors was the Mubende Banyoro Committee (MBC). The MBC is a Banyoro ethno-political social movement who claim to represent all Banyoro in Kibaale. They are also in close contact with Bunyoro Kingdom, the district leadership and Banyoro members of parliament. The “Lost Counties” grievances became even more evident and pronounced when I talked to key members of the MBC. My key informant was Henry Ford Miirima, who is the current MBC secretary and press secretary of Bunyoro Kingdom. Their official documents, as well as those of Bunyoro Kingdom, are permeated with historical references that come together in a relatively coherent manner. The pervasiveness of the “Lost Counties” issue made me conceptualise it as a collective Banyoro narrative. Like many marginalised groups the MBC’s self perception and political ideology is shaped by the dialectics of collective suffering and resistance. The “Lost Counties” narrative is important in the representation of the current Bafuruki conflict and the Banyoro elite’s political agenda. As Briggs makes clear, “narratives constitute crucial means of generating, sustaining, mediating, and representing conflict at all levels of social organization” (1996:3). Furthermore, historical narratives in particular not only represent conflict in terms of the past but can be used to create social differentiation, i.e. relations of power, based on ethnicity. This paper will explore the political implications of the “Lost Counties” issue in relation to recent Ugandan land registration.

Background to the “Lost Counties” issue

The 1900 Uganda Agreement defined the boundaries of Buganda Kingdom, including the important areas of Bunyoro south and East of the Kafu River. The area soon became known as the “Lost Counties”³. The “Lost Counties” were included as a sub-national territorial element of Buganda Kingdom as a reward for their assistance in defeating Bunyoro. The administration of the “Lost

³ What came to be known as “Lost Counties” comprises Buyaga and Bugangaizi (Kibaale District) and other areas still in Buganda Buhekura (parts of Mubende District), Buruli (Nakasongola District), Bugerere (Kayunga District), North Singo (Kiboga District) and North Bulemeezi.

Counties” as well as Bunyoro itself was modelled on the Buganda political system and under the leadership of Baganda chiefs. After 1900 the Baganda elite received land titles to most the land in the “Lost Counties”, referred to *mailo* land. In 1918 a group of young Banyoro founded the Mubende Banyoro Committee (MBC) as an ethnic protest movement for all Banyoro in the “Lost Counties”. During the colonial period Bunyoro Kingdom and the MBC tried to regain what was lost with the 1900 Uganda Agreement, but the British postponed the contentious “Lost Counties” issue until after independence.

After a referendum in 1964 where the local Banyoro voted for a return, political and administrative powers were transferred from Baganda to Banyoro authorities in the counties of Buyaga and Bugangaizi (present Kibaale). However, in all the “Lost Counties” *mailo* land arrangements remained unchanged. This has left most of the arable land in the present Kibaale District, around 60 percent, in the legal possession of Baganda absentee landlords (Wilson & Nolan 2001). With the transfer of the two “Lost Counties”, the Mubende Banyoro Committee decided to dissolve even though the land titles to *mailo* land in the “Lost Counties” were neither transferred from the Baganda landlords to Bunyoro Kingdom nor to the people living in the counties. Why did they not continue the struggle for land? First of all, most landlords were forced to leave the area following the referendum. Then the now absentee land lords had few possibilities of collecting ground rent or controlling settlements on their land. Furthermore, Idi Amin introduced a Land Reform Decree in 1975 that made all *mailo* land into public land, owned by the government under the management of the Uganda Land Commission. The decree officially existed until the passing of the 1995 Constitution, but it was never really put into effect by Amin’s anarchic regime. Subsequently it was also largely ignored by local authorities, tenants and landowners alike.

Any comprehensive account of Ugandan history could not evade the contentious “Lost Counties” issue. The (hi)story of how the counties were lost and regained is widely known in Uganda, and a number of books and articles make extended references to the colonial and post-colonial events and disputes surrounding the “Lost Counties” (Beattie 1971; Dunbar 1968; Gukiina 1972; Ibingira 1973; Karugire 1980 ; Kirkman 1966 ; Kiwanuka 1971 ; Low 1960 ; Mutibwa 1992 ; Roberts 1962 ; Sathyamurthy 1986; Tumusiime 1998). The post-colonial historians have tended to stress the adverse effects the colonial wars had on the “Lost Counties” and Bunyoro proper (especially Beattie 1971). They claim that Bunyoro lost its best land, livestock and culturally important sites. The scholarly material has in turn informed official Banyoro historiography, self-perception and political rhetoric. Banyoro leaders present Bunyoro Kingdom as the most powerful kingdom in East Africa prior to colonialism, and the “Lost Counties” legacy is used to explain the poor state of the kingdom as well as

underdevelopment in Kibaale District⁴. At present the revelatory past provides an interpretative framework for collective ethnicised claims to land and political supremacy in Kibaale District. The Banyoro's "Lost Counties" grievances have attained much attention in recent years, the question is then how the historical claims are turned into political capital in terms of land legislation and government intervention.

Recent Land Legislation

The current 1998 Land Act is the latest legislative framework on land matters in Uganda, and it replaces all previous arrangements dating back to the 1900 Uganda Agreement between the British Government and the Kingdom of Buganda. A number of related policy documents have followed the 1998 Land Act, but it is the Land Act that stipulates the institutional implementation of issues concerning rights, duties and transfers of land. Moreover, the 1998 Land Act is also an outcome of the particular ethno-political nature of land issues in Uganda.

Manji (2001) argues that the current land reform process started in 1990. With prospects of political stability USAID and the World Bank sponsored a land tenure study conducted by Makerere Institute of Social Research and the University of Wisconsin Land Tenure Center (1990). The study report is significant because it provided the empirical basis for later provisional land legislation culminating in the 1998 Land Act⁵. The objective of the study was to analyse the existing land tenure systems in the country and come up with recommendations for appropriate changes in the national land tenure policy. Bazaara (1999) claims that the timing of the study arose partly from rural unrest in Uganda as well as an external donor driven agenda of privatisation. There is not space here to discuss all the findings in the study, but one significant point must be mentioned. The researchers found that there was considerable uncertainty on land issues among the rural population, especially regarding the status of *mailo* land in Buganda. We should therefore not fail to recognise the contentious nature of land issues in Uganda throughout the country at the time of the National Resistance Movement's (NRM) takeover in 1986. Cross (2002) states that land grievances were not one of the NRM's initial concerns, but that land rights would soon turn into one of the key political questions throughout the country.

The NRM's political philosophy entailed a fundamental shift in land reform; the 1995 Uganda Constitution vested land in the citizens of Uganda and not the state. Furthermore, the bill of rights enshrined in the current constitutional order guarantees the rights of all Ugandans to own land and settle anywhere in the country, regardless of ethnic origin. The 1998 Land Act cautiously affirms the four tenure systems outlined in the 1995 Constitution; *leasehold*, *freehold mailo* and *customary*. Here I

⁴ In this respect it is worth to notice that Bunyoro Kingdom and a group of prominent men in Kibaale District launched a law suit against all their former colonial adversaries in 2004; Britain, Buganda Kingdom, absentee landlords and the Republic of Uganda. Their aim is to get

⁵ See CBR (1993) for a critique of the empirical basis and fundamental assumptions of the study.

will only deal with the latter two tenure systems. Rights and duties to settlements on public land are legally referred to as *customary* tenure, but people in Western and Central Uganda would refer to their usufruct tenure rights as *kibanja* (pl. *bibanja*). Public lands emerged from the colonial crown land as land belonging to the state. The leases on public land that was established under Amin was converted back to their original *mailo* and freehold status. The government maintains control on public land, which covers all land that is not titled with an individual, group or authority. With the implementation of the Land Act there has been devolution of powers, and public land is, with a few exceptions, under the management of the district land boards⁶.

During the Constituent Assembly (CA) in 1994 the Banyoro delegates tried to get a special clause for the “Lost Counties” land in Kibaale into the new constitution, but the required majority of the delegates did not recognise their motions. Instead the CA decided to restore freehold and *mailo* tenures to their pre-1975 status. Bazaara (1999) suggests that the National Resistance Movement chose to reintroduce *mailo* tenure in order not to completely alienate the influential landlords in Buganda. The argument is supported by Cross (2002) who also claims that appeasing the Baganda political elite was the NRM’s driving force towards a formal land reform. However, the majority of Ugandans are tenants and not landlords. A compromise between the two interest groups was therefore reached by securing favourable usufruct rights of *mailo* tenants in the constitution⁷. There was also intense lobbying by Banyoro leaders and Uganda Land Alliance to return the *mailo* land to the Banyoro with the 1998 Land Act (Bazaara 1999; Miiroma 2001). However, in the final document the “Lost Counties” issue was left out, and the land remained with the absentee Baganda landlords. However, the interest of the Ugandan Land Alliance in the Kibaale situation would bring to life the dormant “Lost Counties” in national politics.

As compromise solution to *mailo* tenants, especially in Kibaale, the NRM government promised to create a Land Fund that could be used to acquire the registrable interests from the Baganda landlords. The original purpose of the Land Fund was that all tenants in Uganda would acquire the registrable interests on the land they had tenure rights to, the political purpose has however become to buy registered *mailo* from the Baganda absentee landlords in Kibaale, and lately Nakasongola District which is also part of the “Lost Counties” (*The Monitor*: 14 December 2004). One of the major objectives of the fund, according to the latest comprehensive national land policy document, is to redress the historical injustices and inequities in the ownership (Land Sector Strategic Plan 2002). The Land Fund is under the Uganda Land Commission (ULC), but political indecisiveness remains to whether the acquired *mailo* land is going managed directly from ULC or redistributed via Kibaale District Land Board. The 1998 Land Act does not specify the arrangements, but the government’s decentralisation approach would suggest the latter arrangement. The government has on several occasions promised to purchase all *mailo* land in Kibaale at the current market value. The full

⁶ In accordance with Section 60 (1) of the 1998 Land Act

⁷ Through Article 237 (8) and (9) of the 1995 Uganda Constitution.

cost of purchasing the *mailo* land titles could be at least US \$500 million (Bosworth 2002)⁸. It would therefore be pertinent to ask why the NRM would be willing to use their already scarce funds on a largely political question. I will return to this question in the following section.

The land of our ancestors?

Kibanja land tenure arrangements differ greatly throughout Uganda, and they are often divergent or incompatible the state's official intentions. In Kibaale the formal land owners have had little or no control over their possessions since the 1960s. The Banyoro forced their landlords to leave in 1964, and they have not had any direct relations with them since. For several decades it was of little relevance to the Banyoro who had a title to the *kibanja* land they were tilling, and I found that many Banyoro tenants do not know or care if their land is public or *mailo*. Nearly all Baganda landlords were forced to leave the area in 1964, and they never returned to claim any rights over the land. In other words, the land owning ethnic group no longer had control over access to land but were made absentee landlords. In Kibaale people seem to have followed largely indigenous strategies of land management amid the political turmoil in the 1970s and 1980s. *Kibanja* rights were, and still are, most often sold and bought without consulting the government or absentee landlords. Close to all people I interviewed had not previously considered to acquire formal documentation to the land they were tilling⁹. The cost and time-consuming nature of the process had simply outweighed the potential benefits. Peasants argued that the elected local councils and parish councils guarantee their non-certificate *kibanja* rights. It is important to note that, for the most, the common rural Banyoro Kibaale recognise the *kibanja* rights of the Bafuruki. In contrast, the MBC has formulated an opposing understanding of how Bafuruki have gained access to land in Kibaale. They refer to Bafuruki settlement practices as "land grabbing", "corruption" and "encroachment". All terms point to illegal activities prohibited by law. The MBC argues that a formalisation of land holdings is necessary to control the Bafuruki situation.

The politics of belonging

The resurfacing of the "Lost Counties" question is closely linked to the actions of the Mubende Banyoro Committee and Bunyoro Kingdom. With the transfer of political and administrative powers in 1965 the Mubende Banyoro Committee decided to dissolve, and the kingdom was abolished by president Obote in 1967. During the NRM rule president Museveni restored the kingdom as a cultural

⁸ Austin (2005) argues that with the recent price escalation of *mailo* land in Kibaale District, that the full cost is likely to exceed the equivalent of US\$1b.

⁹ A finding that is elaborated in a survey by Wilson and Nolan (2001).

institution, and in June 2001 the Mubende Banyoro Committee met for the first time in 36 years. The “Lost Counties” issue was once more on the official agenda.

The MBC and Bunyoro Kingdom have since their return advocated that all the land that was lost with the 1900 Uganda Agreement, public and *mailo*, should immediately be returned to the rightful owners, the Banyoro. The MBC have, with varying success, pursued the land issue at different political levels, from the local to the international. Their claims to ethnic land rights are largely conveyed in the historical “Lost Counties” narrative. I will try to show that through their central historical position the MBC have recently managed to manipulate the intrinsic symbolic capital of the “Lost Counties” issue for political purposes in the macro-narrative context.

Why did the MBC resurface at the turn of the Millennium? As we remember, the MBC had previously been an ethno-political pressure group for the Banyoro when the “Lost Counties” were under Baganda rule. With the return of political and administrative powers in Buyaga and Bugangaizi, the MBC had decided that the struggle was over. According to Miirima (*Interview*: July 2004), the decision to restart the organisation was caused by the increasing influence of Bafuruki in political matters. The old MBC leadership had also not taken the restoration of *mailo* land lightly. Miirima argues that the Banyoro were not fooled by the promises made in relation to the Land Fund (*ibid*). The Banyoro had lived as squatters (*bakopi*) on their ancestral land for long enough. Part of the restoration was also motivated by promises President Museveni had made to the old MBC leadership during the 2001 presidential elections. Furthermore, it was also a widely held sentiment at the time that the newly established Constitutional Review Commission could rectify their grievances and return the land to the indigenous Banyoro (Miirima 2001). According to Miirima they decided to demand what was not fulfilled during the implementation of 1964 Referendum and subsequent constitutions. According to the MBC, the government should acquire the land from the absentee Baganda landlords and hand it over to Kibaale District Land Board, which would be under Banyoro control. They would then redistribute it for free in the interest of the Banyoro. Bafuruki should not be allowed to purchase or otherwise obtain documented land rights in Kibaale.

The 2002 district elections set a precedence for Banyoro supremacy in political matters. A Bafuruki was elected a district chairman, but largely due to the protests of the Mubende Banyoro Committee president Museveni intervened and forced the elected chairman to step down and hand over powers to a Banyoro compromise candidate. The move was clearly a support to indigeneity and legitimated in the “Lost Counties” history in what he described as “a recuperating district with [...] a strong, ancient and wounded tribal psyche” (*New Vision*: 24 April 2002). In response to the electoral crisis, Museveni set up the Kiyonga Parliamentary Committee under the National Political Commissar, Crispus Kiyonga. They investigated the land and political problems in Kibaale in 2002, and made consultations with representatives from both sides. The Kiyonga Report recommended that no more Bafuruki migrants should be allowed into the district. The Kiyonga Committee further recommended that the Bafuruki who unlawfully entered Kibaale district should be resettled in other districts. In

addition, the committee recommended that a high-level judiciary commission of inquiry should be set up to investigate and make final recommendations on how to solve the problems in Kibaale. The recommendations were clearly in favour of the indigenous Banyoro because of their particular “Lost Counties” situation.

One should not fail to recognise that the “Lost Counties” situation is not restricted to Kibaale District. The other five “Lost Counties” did not have a referendum in 1964 and remained with Buganda. In December 2004 President Museveni “restored” Baruuuli Kingdom, which was once part of the “Lost Counties”. During the inauguration ceremony Museveni promised that the government would soon pay absentee Baganda landlords so that the land in Buruuuli can be returned to the indigenous people (*The Monitor*: 14 December 2004). The recent cultural and political revivalism in some of the “Lost Counties” still under Buganda offer striking parallels to the Kibaale scenario.

The political signification of the “Lost Counties”

I would like to illustrate the political potential of the “Lost Counties” issue through a critical case that brings together the issues presented so far. In 2003 the MBC assisted Kibaale District Land Board in a controversial land redistribution.

As outlined earlier, the power to determine land rights and undertake redistribution was prior to 1998 vested with the national authorities in Kampala. The 1998 Land Act created a new opportunity structure for the rectification of the “Lost Counties” grievances, and quasi-legal collusion between the MBC and Banyoro dominated land board. The driving agent behind the land redistribution was certainly not the state, but influential Banyoro actors at various levels within and outside the state. According to their own accounts, the MBC were officially assisting the district land board with the redistribution since March 2003. The official arrangements between the district land board and MBC did not become clear in any of my interviews, but it seems that some elements of the local Banyoro elite were contesting each other’s authority and influence in the matter. Minutes from MBC’s meetings around the time of the land redistribution give clear indications to the reasons and motivations underlying the radical land redistribution (*Minutes from MBC executive meeting*: 17 April 2003). According to the minutes the objectives of the land redistribution were twofold. Firstly, the Banyoro would get new land that had historically been denied to them because of the “Lost Counties” situation. The MBC presents it as a political and moral imperative that the Banyoro should get back their land rights that they lost with the 1900 Uganda Agreement. Banyoro would get the land free of charge, and they would only have to pay for the formal demarcation and registration costs. Then secondly, in the minutes of the executive meeting the MBC argued that the allocation of “all land” in Kibaale to Banyoro would solve one of the committee’s key concerns; to halt further Bafuruki migration to the district. The Mubende Banyoro Committee does not recognise the Bafuruki as legal tenants in Kibaale. Although there were some protest in parliament, Kibaale District Land Board went

ahead with the redistribution. The 2003 land redistribution failed, largely because Bafuruki tenants forcefully resisted any surveying on their land. The resistance culminated in an instance of communal violence where the majority of victims were Banyoro.

The following day the state minister of lands¹⁰ went live on the local radio station and made a long official speech (*Kibaale Kagadi community Radio: 26 May 2003*). In the speech he compared the situation with the Baganda situation of the 1960s. He implicitly equalled the Bafuruki with the Baganda landlords that were forced to leave after 1964. The Baganda did not leave voluntarily but were chased by the MBC. From such a perspective history may repeat itself unless the government takes measures to ensure that the Banyoro position is respected. The political signification of the violent events is obvious, but still the signification has nevertheless been thoroughly overlooked by many observer-interpreters. In the same speech the state minister introduced a statutory decree which bans any new migrant from settling in Kibaale. The decree goes directly against Article 29 of the 1995 Uganda Constitution which states that every Ugandan shall have the right to move freely throughout Uganda and to reside and settle in any part of the country. Furthermore the state minister banned any new land transactions in Kibaale District until a new statutory instrument revokes the decree. The power effects were created by the state minister when he used momentum of the communal violence along with the symbolic capital of the “Lost Counties” issue for political purposes. There were some protests in parliament following the move, but the statutory decree persisted in the face of political opposition.

What has transpired in the political field since the 2003 redistribution? Following land related violence the government has appointed a seven-member committee to assist the Uganda Land Commission to resolve the land disputes. The committee is officially called the Land Fund Task Force. The taskforce has a two-year mandate to redistribute land in Kibaale District, West Ankole and Kasese District. The government will purchase land from absentee landlords and redistribute it to the tenants. It will also evaluate the causes of land related conflicts between Banyoro and Bafuruki in Kibaale. The state minister for lands, Baguma Isoke, said that the task force was formed following a cabinet directive from 25 May (*The Monitor: 25 July 2003*) The purpose of the fund is to assist people made landless due to government actions; Banyoro, Bafuruki or other. It will also be used for resettlement of people away from densely populated areas, Isoke said in the interview (ibid). It is however not clear whether government is going to sell the land titles to prospective Banyoro buyers or redistribute the land free of charge. In 2005 a team of surveyors from the Ministry of Lands went Kibaale district to survey and demarcate land of the Baganda absentee landlords (*The Monitor: 2 April 2005*). In the same instance the NRM government is in the process of purchasing the land from Baganda landlords. However, in the absence of a clear and unbiased land policy on Kibaale District

¹⁰ The state minister of land, Baguma Isoke, is a Banyoro and member of parliament from Kibaale District.

the formalisation of land rights will remain a troublesome issue for the local and national authorities as well as the rural tenants who depend on the land for their livelihoods.

Concluding remarks

Bringing the issue of the “Lost Counties” into the analysis on ethnically contested land rights and land reform in Uganda allows for a more nuanced understanding of the processes in the interface. The NRM government has largely tried to reach political and legislative solutions that would not alienate their potential supporters. The colonial and postcolonial legacies of “Lost Counties” issue offers many challenges to the current legal and institutional framework that can not easily be glossed over for political purposes. The paper has especially focused on the challenges in connection to *mailo* land and ethnicity in Kibaale District. If not handled with care, the current processes in Kibaale could bring serious rural unrest in the region.

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