

BALANCING NATURE CONSERVATION AND LIVELIHOODS

**A legal Analysis of the Forestry Evictions by the
National Forestry Authority**



**Onesmus Mugenyi
Bashir Twesigye
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ACODE Policy Briefing Paper No. 13, 2005

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LIST OF ACRONYMS

ACODE	Advocates Coalition for Development and Environment
NRM	National Resistance Movement
NFA	National Forestry Authority
FD	Forest Department
CFRs	Central Forest Reserves
SBFR	South Busoga Forest Reserve
PFE	Permanent Forest Estate
UWA	Uganda Wildlife Authority
NEMA	National Environment Management Authority

EXECUTIVE SUMMARY

Forests are important sources of biological diversity on earth and the most vulnerable ecosystem currently suffering the effects of human activities. Although the economic benefits, in terms of climate control, pollution abatement, and wildlife maintenance, are rarely captured in national statistics, the economic importance of forests and forest products cannot be over emphasized¹. Forests are vital water catchment areas and provide a range of products. Forest provides shelter for wildlife, recreation and aesthetic renewal for people, and irreplaceable supplies of oxygen and soil nutrients.

In the last three decades Uganda has witnessed a serious reduction of the forest cover. Loss of forest cover has had a lot of negative implications leading to soil degradation and loss of biodiversity and contamination of water systems.

While some of the other injuries inflicted on the national ecological system may heal over the course of years, the wholesale annihilation of so many living species through human activities represents a nearly permanent wound on the integrity of the intricate web of life. In order to arrest the wanton destruction, the government of Uganda, among other strategic actions developed The National Forestry Policy, enacted The National Forestry and Tree planting Act and established the National Forestry Authority. Both the Policy and the Act acknowledges the link between forest conservation and poverty reduction. The plan recognizes the quandary of encroachers. It provides for addressing the problems surrounding encroachment through guidelines and practices agreed upon by stakeholders. The practices, the plan says, must meet the commitment to maintain the forest estate, but must recognize the special circumstances of the forest dwellers and pastoralists. The plan anticipated resettlement and compensation of some encroachers and provided for development of the guidelines to minimize the suffering and

¹ The PEAP 2004-2008 suggests that the forests provide an annual economic value of \$360 (6% of GDP) of which only \$112 is captured in the official statistics. See Page 77.

ensure protection of the rights of forest dwellers and communities living adjacent to the reserves.

The National Forest Authority is mandated to develop and manage the Central Forest Reserves (CFR). Soon after its establishment, the Authority started re-establishing the forestry boundaries and embarked on mass eviction of the encroachers. The most affected people have been mainly the poor and vulnerable who lack financial and other resources to enable them challenge the evictions or enable them acquire alternative settlement. Some of the encroachers were born on these reserves where they have lived for decades and do not know of any other home. Their homes have been razed down, their crops destroyed, and their livelihoods endangered. Due to the encroacher's outcry and subsequent lobbying of the highest office on the land, the president intervened by halting evictions, which has been viewed as political interference in the work of the National Forest Authority.

This policy brief therefore examines the question of forestry evictions by the National Forestry Authority in the process of execution of its mandate, the mode of evictions and the plight of the vulnerable communities affected in light of the overall government goal of poverty eradication. The brief also examines the implications of the presidential directives to halt evictions. In this analysis, we have used South Busoga Forest Reserve as a case study.

The ideas presented in this paper heavily draw from the existing literature on forestry evictions from various parts of the world and field study to South Busoga Forest Reserve. A cross section of respondents, which included encroachers themselves, National Forest Authority officials, Government officials and local administration staff provided useful information.

We have argued in this paper that there is need to balance nature conservation and the right to livelihood. Although the government has the mandate to protect the integrity of the forests for the benefit of the current and future generation, it must also recognize the predicament of bonafide and landless encroachers who have settled on the Forest Reserves for decades. The

method of eviction adopted by the National Forestry Authority conflicts with the legal position of right of occupation of land by virtue of long use, the right to property, the right to life and livelihood recognized both at national and international level. The process of eviction is not in harmony with the spirit of the Forest Plan as it relates to the treatment of encroachers and the central objective of the government of Uganda of eradicating poverty and reducing income inequality.

The paper provides key recommendations and actions that can create a win-win situation. It is recommended that a national verification committee should be commissioned composed of professionals with strong orientation towards equity, social justice and environmental management. This committee should verify the rights of different encroachers in different forest resource areas and evictions would be based on the informed findings of the committee. The findings of the committee would also be helpful in the establishment of comprehensive eviction, resettlement and compensation guidelines.

It is not in doubt that some encroachers have acquired some rights over the land they have occupied for decades. Others have been granted titles on the forest reserve by the relevant government agents, which have not been revoked by competent authorities and cannot be evicted without compensation or resettlement. It is therefore proposed that government should establish a resettlement fund and land bank to facilitate the resettlement of genuine dwellers in the Forest Reserves.

It is also proposed that Common Property Rights should be recognized in forestry management and conservation. The forest dependent communities have not been keen at forest conservation largely because they have not been empowered to participate in the management of this resource which they have natured for long. National Forest Authority should continue to facilitate the formation of locally founded management structures over the forest resource.

1.0. INTRODUCTION

Uganda's forestry cover has halved during the last 50 years and continues to decline at a rate of between 70,000 - 200,000 ha per year². At this rate, in a worst-case scenario, Uganda's 4.9 million ha of the remaining forest estate would be exhausted in the next twenty years. The major cause of destruction of Uganda's forestry resources is encroachment³. In a bid to preserve Uganda's natural forest cover and to enhance forest cover acreage, the National Forestry Authority (NFA)⁴ has embarked on a strategy of re-demarcating forest boundaries, planting more trees and evicting all encroachers from forest reserves.

Whereas some of the evicted are new encroachers, many of the victims have lived on those lands for a very long time. Many were born and have grown into adults on forest reserves and know of no other place to call home. In some areas, the length of occupancy stretches to more than 30 years yet the residents are being evicted without compensation or resettlement plan. The most affected are mainly poor and vulnerable peoples who lack financial and other resources to enable them challenge the evictions or enable them acquire alternative settlement. Their homes have been razed down, their crops destroyed, and their livelihoods endangered. Many more people are under threat of eviction.

Drawing on a wide range of literature on encroachment and using the case of South Busoga forest reserve, this briefing paper examines the eviction process of the encroachers. The analysis takes into account the national obligation to manage the forests in a sustainable manner and the predicament of the encroachers. The briefing paper also examines the rights of the encroachers and state obligations to its people.

² National Environment Authority, (2002) State of Environment Report, at p. 122 quoting Forest Department National Biomass Study Technical Report 2002 (Draft), Ministry of Water Lands and Environment, Uganda

³ National Forestry Policy, 2001, at p. 2

⁴ The National Forestry Authority is a semi autonomous institution established under Section 54 of the National Forestry and Tree Planting Act 2003. It replaces the now defunct Forest Department. It is among other things entrusted with the protection of all Central Forest Reserves.

2.0. BACKGROUND

2.1. Forest Management in Uganda: A historical Overview

There is little literature on forestry management in pre-colonial Uganda. It is apparent though that there was clear ownership of forests. Forests formed part of the land that was owned by the different Kingdoms in Uganda at the time. Within a kingdom, forests were either communally owned or used as an open access resource. Communally owned forests were those adjacent to communities. People utilized them for wood and non-wood forest products. They were a cultural asset and were communally managed in the contest of the existing political and cultural institutions at the time.

Upon colonization of Uganda, the British administration realized the benefits of forests early enough and the need for their vigorous protection. It was however, not until the Nicholson report of 1929 that forestry issues began to attract serious attention. The Nicholson report recognized the vital role that forests and trees play in the environment and created the need for delimiting and defining forest boundaries. The report formed the basis for the passing of the Forestry Policy of 1929⁵. The Forestry Policy provided for the use and sustainable management of forests. It provided for a Forest Department (FD), which was a Colonial Government agency charged with over-sight over forestry resources. Tropical forest management systems based on working plans supported by various biological and ecological research studies were adopted in Uganda and important forests for biological and ecological functions were identified, demarcated and reserved⁶.

The demarcation exercise was done through Forest Regulations that had earlier on been enacted under Article 99 of the African Order in Council of 1889. The regulations nationalized all forest resources except those situated on private land⁷. Further, under the Buganda Agreement, all forest blocks

⁵ Nicholson Report, 1929, is a report that was made for the colonial government by Nicholson highlighting the importance of forests and trees and the need to conserve them.

⁶ Hudson J Andrua, (2002), Tropical Secondary Forest Management in Africa: Reality and perspectives, Uganda Country paper, p. 12.

⁷ Arinaitwe Anthony, (1996), Community Participation in Forest Conservation: A Legal Perspective: LLB Dissertation, MUK, at p. 21.

were declared crown land, coming under government control. In some cases, even small forests on private (mailo) land were considered for gazettelement. The Toro Agreement of 1900, Ankole Agreement of 1909 and Bunyoro Agreement of 1933 echoed what was happening in Buganda by declaring all forests in the kingdoms to be under Government control.

The over-riding objective for the creation of forest reserves was to create a sufficiently forested estate that would cater for the country's forestry products and services needs. Thus the various agreements and enactments prevailing at the time prohibited the exploitation of crown forests without permits and licenses, which would be acquired upon payment of a fixed fee. The Agreements stipulated products, which could be extracted without permits and licenses, which mainly comprised firewood and poles for domestic use. By 1940 forest boundaries had been identified, evidenced by marks on the ground with numbered posts or some other form of boundary mark approximately as they stand today⁸.

It is important to note that the process of acquiring land by Government for conservation purposes has been gradual, unsystematic and sometimes crude. In some areas, forest reserves and wild life protected areas were declared in occupied territories, in effect denying the holders of that land their proprietary rights. The Benet community in Tingey County, Kapchorwa District have proved before court that they are the historical and indigenous inhabitants of the areas they occupy which was declared a wild life protected area⁹. The Batwa, an indigenous community of South Western Uganda had their indigenous home in the Mgahinga and Bwindi Forests. The Batwa were evicted after the forest was gazetted as forest reserves. Large areas of erstwhile common lands including village grazing lands, community forests and grasslands were gazetted forest reserves through blanket notifications. Many of these areas were not natural forests.

⁸ *ibid*; at p. 24.

⁹ Uganda Land Alliance Vs Uganda Wildlife Authority and Attorney General. Miscellaneous Cause No.0001 of 2004. The High court sitting at Mbale ruled that the Benet community is entitled to stay in the areas they occupy in Kapchorwa District, which had been gazetted as a wild life protected area.

The Forestry Ordinance of 1947 re-affirmed the forestry boundaries. It classified forests into three categories; Central Forest Reserves (CFRs) under the control and management of the FD, Local Forest Reserves under local authorities who were answerable to the FD, and Village Forest Reserves, which were created for the benefit of the communities.

At independence, all natural resources including Crown forests become property of the Government of Uganda¹⁰. The Forest Act of 1964 retained the British colonial administration approach of forestry management. Under the 1967 Constitution, forest services were centralized, local and Central Forest Reserves were fused and management vested in the FD. This amalgamation was not largely due to considerations of forestry or environmental welfare but was rather a part of the general shift towards political centralization ensuing at that time¹¹.

Until 1967, forest management in Uganda is believed to have been excellent and is credited for the excellent environmental conservation standards recorded at that time, which were applauded by the international community¹².

The period between 1970 and 1986 witnessed a serious reduction in the forest cover in Uganda, and a major erosion of the effectiveness of the FD¹³. Forests were degraded on an alarming scale. For example, 76 percent of South Busoga Forest Reserve in Mayuge district was seriously degraded and 24 percent of Mabira forest reserve was depleted. It is estimated that almost half of the permanent forest estate was cleared in just half a century¹⁴.

The Administrative weaknesses at the time coincided with the rapidly increasing population levels, resulting in massive settlements in areas gazetted as forest reserves. These settlements continued unchallenged until the country began to see political calm after the National Resistance Movement (NRM) Government took over power in 1986.

¹⁰ The Uganda Independence Act, 1962, Section 1.

¹¹ A.C Hamilton, (1984) Deforestation in Uganda, reprinted in 1987 at p. 58.

¹² Hudson J Andrua, *op. cit.*

¹³ A.C Hamilton, *op. cit.*, at p. 59.

¹⁴ National Forest Plan., (2002) at p. (ix) quoting FAO sources.

After taking over power, the NRM Government established the Ministry of Environmental Protection to coordinate and enhance natural resource management. The Forest Department as it then was, effected some evictions from the forest reserves. For example, encroachers were evicted from Mabira forest reserve and Mt Elgon national park in the late 1980's¹⁵. The FD also evicted a number of encroachers from different forest reserves in 1991 and land titles that had been issued to them were cancelled¹⁶. The FD however, lacked resources and personnel to effectively monitor the diverse forestry estate. Thus, in a number of areas where evictions had been effected, the encroachers took them over again.

Since the year 2000, efforts have been intensified to transform the forest sector and reduce forest degradation. In 2003, the National Forestry and Tree Planting Act was enacted. It replaced the Forestry Department (FD) with the National Forestry Authority (NFA). NFA is entrusted with the management and oversight over all Central Forest Reserves (CFRs)¹⁷. NFA identifies encroachments on forest reserves, as it's biggest challenge. It has established a Law Enforcement Unit, which is charged with eviction of encroachers. NFA has embarked on a three-phase strategy; opening the boundaries, sensitizing the people on the importance of forestry, and evicting the encroachers¹⁸. As a result of mass sensitisation, NFA maintains that some encroachers have voluntarily vacated from CFRs around lake Wamala in Mubende district, Itwara Forest Reserve in Kyenjojo district, Kashoha-Kitomi in Bushenyi district, among others. It was reported that resistance has been encountered in Rwoha Central Forest Reserve in Mbarara district, Kakoona Forest Reserve in Mukono and South Busoga Forest Reserve in Mayuge district, in which case NFA has attempted to forcefully evict the encroachers¹⁹.

¹⁵ Edward Mupade, (2003) 'Towards Collaborative Forest Management in the Conservation of Uganda's Rain Forests' at p. 4 – 7.

¹⁶ National Environment Authority, (92001-2002) State of the Environment Report at p. 33.

¹⁷ National Forestry and Tree Planting Act, 2003, Section 54.

¹⁸ National Forestry Authority; National Forestry Authority Guidelines for Addressing Encroachments in Central Forest Reserves

¹⁹ National Forestry Authority; *The Forester*, April 2005, News from the Uganda Forestry Sector, Issue No. 11 at p. 4.

Amidst the conflict that ensued between NFA officials and the encroachers, the president stepped in, halting the evictions pending the findings of a special presidential technical committee. The encroachers that had successfully been evicted from the reserve seized this opportunity and restored their positions²⁰.

3.0. THE CONCEPT OF ENCROACHMENT

3.1. Encroachment Defined

The National Forestry and Tree Planting Act, 2003 does not define 'encroachment'. According to *Long man English Dictionary*,²¹ an encroacher is a person that gradually takes control of another's possessions, rights etc. In the *Forest Conservation Case, WP No. 202/1995*,²² while dealing with the problem of deforestation and its causes, encroachment was defined as illegal or unauthorized occupation or cultivation of forestlands. In that context, the definition of an encroachment is related to that of trespass. Generally, a trespass applies to a person making an un-authorized entry onto another's land. An encroachment, on the other hand, can also apply to a structure or some other physical object that illegally protrudes or invades another's land²³. Black's Law dictionary defines a trespass as "... a wrongful entry on another's property". A trespass is actionable in both criminal and civil courts of Law. In addition, a property owner or a person having authority thereof is entitled to use reasonable force to evict the trespasser.

An encroachment is occasioned where there is actual extension beyond the true boundary line. It includes erection of buildings or other structures, or any form of unauthorized interference with another's land. There are a limitless variety of encroachment scenarios including settlements, cultivation, harvesting trees, etc. An encroachment may be of a temporary or permanent nature. The bottom line is that the action taken on another's land is not permitted in

²⁰ Interview with Godfrey Acaye, Law Enforcement Specialist (encroachment), National Forestry Authority on 13th July 2005.

²¹ Longman English Dictionary, 1995 Edition.

²² Center for Civil Society, (2003) Keepers of Forests: Foresters or Forest Dwellers. New Delhi, at p.4

²³ Encroachments: Unwelcome Invaders; available on <http://recenter.tamu.edu/pdf/1074.pdf>.

the circumstances²⁴. In Uganda, CFRs have management plans that articulate activities that can be carried out in the reserve, all those activities that fall out of the sanction of the management plan amount to encroachment.

An encroachment may be created through negligence, willful intent, or honest mistake. It is important to note that the manner of creation has no bearing on the existence of an encroachment but does have a bearing on the remedy²⁵. It is at this point that other factors like the length of time of encroachment come into play. Under American Jurisprudence, there is a big connection between an encroachment and the law of limitation and the adverse possession doctrine. If the difficulty and cost to remove an encroachment is found to be too great, the removal may not be granted²⁶. An example of an encroachment resulting into title gained by adverse possession is the case of *Bell Vs. German*. In this case the defendant gained ownership of a narrow strip of land on which their building was encroaching²⁷.

A landowner faced with encroachment has legal rights and remedies. The remedies for encroachment include; ejection, injunction restraining the encroachers from further encroachment, quiet title -this is an action to affirm ownership of land and action for damages.

In Uganda, the government is entrusted with the management of natural resources for the general benefit of the people²⁸. Under the law of trusts, a trustee holds the legal title to the property. To that extent, the government holds the legal title to all Central Forest Reserves in the country. Any person or group of persons that appropriate, convert or damage or in anyway alienate any part of a reserve in contravention of the management plan of that particular reserve is deemed to be an encroacher. It is a legal and moral duty of government as a trustee of forest reserves to protect those resources from all forms of destruction including encroachment.

²⁴ MC Dermott, Thomas; Removal as a legal remedy for relief against encroachment; Surveying and Land Information Science, September 2004; available at www.findarticles.com/p/articles/mi-qa4039/15-200409/91_n9473535-30k-.

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ Constitution of the Republic of Uganda; 1995, Article 273.

3.2. State of Encroachment on Uganda's Forest Reserves

Encroachment on forestry reserves is not a new phenomenon. However, it is evident from FD reports that illegalities including encroachment were not serious problems before the 1960's. Encroachment became a wide spread problem after 1972. Since then, large stretches of erstwhile virgin forest have been cleared mainly for settlement and agriculture. The worst affected forest reserves are South Busoga Forest Reserve where more than 76% of the reserve has been encroached on, Mabira Forest Reserve, Kibale Forest Reserve, and Mt Elgon Forest Reserve among others²⁹.

NFA is still conducting a study on the extent of encroachment on Forestry Reserves. The table below shows the magnitude of encroachment on the National Forest Reserves³⁰.

²⁹ National Environment management Authority, op. cit., at p. 123.

³⁰ This data is not indicative of petty theft and selective timber cutting, which represent a high level of encroachment.

Zone	District(s)	Total area of CFR (ha)	No. of encroachers	Area under cultivation. (ha)	No. of livestock.	No. of titles or leases.
Arua	Arua	51,520.00	5,510	765.65	1,162	3
Budongo	Masindi	99,958.00	1,473	722	978	2
Bugoma	Masindi	88,912.00	13,337	2,066.35	3,409	0
Bushenyi	Bushenyi, Kasee, Kamwenge, Rukungiri	105,726.00	444	700.00	1,547	0
Gulu	Gulu	30,138.00	1,599	2,254.27	2	0
Luwero Complex	Nakasongora, Luwero	49,988.00	10,748	8,545.72	24,254	69
Mabira	Jinja, Mukono, Mayuge	76,812.30	21,643	6,397.93	2,299	0
Masaka	Masaka, Rakai, Sembabule, Kalangala.	74,455.69	65,643	27,768.88	56,898	10
Mbarara Plantations	Mbarara, Ntungamo	14,547.00	217	152.40	5,555	0
Moyo	Moyo	34,434.00	3,971	2,072.76	1,160	0
Mpigi Archipelago	Mpigi	33,227.00	3,275	472.93	13,500	0
Mubende	Mubende, kiboga	63,118.00	6,985	5,555.00	2,398	0

Table 1 Source: National Forestry Authority working figures, June 2005

3.3. Forms of Encroachment

Encroachment manifests itself in a number of ways, and these include;

- (a) Settlements; reports from NFA indicate that there are more than 150,000 people settled in forest reserves. This number continues to rise in the process of re-opening boundaries. In South Busoga forest reserve for example, 10 accomplished villages are located in a forest reserve. Resettlement schemes are also many times located in forestry and wildlife reserves. For example, ex-soldiers have been resettled in Rusibe Forest Reserve in Mubende, Refugees from Sudan have been resettled in a forest reserve in Masindi.

- (b) Cultivation has also taken up a large chunk of the reserves. This is perpetuated by land shortage and degraded soils outside reserves, which can no longer support agriculture.
- (c) Grazing.
- (d) Infrastructure development. For example markets, trading centers and schools have been established in forest reserves³¹.

3.4. Causes of Encroachments on Forest Reserves

The main causes of the forest encroachment have been breakdown of the law and order system due to political instability, poor management and monitoring system and population pressure.

The overriding cause for forest encroachments is the breakdown of the law and order system in the country especially in the 1970s and 1980s. During this period, forest cover rapidly disappeared as the rule of law was undermined. For example, it is reported that 16 square miles of Mt Kei Forest Reserve were cleared by a friend to the then president Idd Amin during the latter's period of office. Eria Forest Reserve was also cleared under similar circumstances³².

The ruling regimes in 1970`s and 1980's were not keen at natural resource conservation and management. President Amin's declaration that Ugandans were free to settle anywhere, encouraged people to settle in forests. It is on that account that Bakiga immigrants cleared part of Kibale Forest Reserve and almost the whole of nearby Kisangi Forest Reserve in 1972³³. Even government officials at the time were fond of allocating forestland to individuals³⁴.

Political instability and political influence also greatly contributed and continue to encourage encroachments on Forest Reserves. Much of Mabira Forest Reserve for example was lost to encroachment after the 1979 liberation

³¹ Interview with Gaster Kiyingi, NFA Public Relations Officer on 28th June 2005

³² AC Hamilton, *op. cit.*, at p. 62

³³ *ibid*

³⁴ Arinitwe Anthony, *op.cit.* , at p. 31.

war. Poor politics escalated the problem, as neither incoming nor outgoing regimes considered urgent and important to take a firm stand against encroachers. It is estimated that some two thirds of total encroachment on Mabira Forest Reserve were lost between 1980 and 1983 condoned by local politicians for fear of losing popularity³⁵. Like wise, local politics continue to be a major cause for encroachment in South Busoga Forest Reserve. Local politicians condon encroachment for fear of being defeated in local elections³⁶.

The FD suffered from economic constraints from the 1970's causing a decline in its performance. The FD was therefore unable to undertake active protection measures such as boundary maintenance and patrols as it did before. Some staff started supplementing their meager salaries by accepting payments for cultivation rights on forest reserves³⁷.

The failure of the taungya system also cost Uganda a large stretch of its protected areas³⁸. This is a system that uses unpaid local people to clear forestland, by granting them temporary cultivation rights³⁹. Trees are planted in freshly cleared lands, along side the farmers crops and when they outgrow the crops the farmer is supposed to move on to another plot. Despite some degree of early success especially in the mountain Elgon region, the system has backfired due to lack of constant monitoring and supervision by forestry staff. Thus, trees that were planted were deliberately destroyed or uprooted by the cultivators, as they held on firmly onto the land. Encroachments on Semliki and Mountain Elgon Forest Reserves were to a greater part due to the failure of the taungya system⁴⁰.

Increasing population growth over the years has caused land shortages in various parts of Uganda. This is especially so because the majority of Ugandans depend on the land resource for their sustenance and livelihoods.

³⁵ Peter C Howard, (1991) *Nature Conservation in Uganda's Tropical Forest Reserves* at p. 46.

³⁶ Interview of John Abingwa Mayuge RDC on 6th July, 2005

³⁷ *ibid*; at p. 45.

³⁸ Peter C Howard, *op. cit.*, at p. 45.

³⁹ *ibid*.

⁴⁰ *ibid*.

People have therefore encroached on Forest Reserves to establish settlements and to practice agriculture on both subsistence and commercial basis. It is however observed that it is mainly those forested areas that are perceived to have weak management and conservation mechanisms that are targeted by encroachers⁴¹.

4.0. A CASE STUDY OF SOUTH BUSOGA FOREST RESERVE

South Busoga Forest Reserve (SBFR) is located in Mayuge District on the northern shores of lake Victoria lying between 0°09 and 0°20 North and 33°27 and 33°39 East. It measures 16382 ha and is located 33 kilometers South of Iganga town and 24 Kilometers East of Jinja town.

It is generally a low-lying forest and has an extensive shore fringe of papyrus swamp and scattered rock out crops⁴².

When compared with other Ugandan Forests, South Busoga Forest Reserve (SBFR) is not especially biodiverse and is only of average conservation value. Only a few areas of intact forest remain with the rest being composed of numerous areas of grassland. The main area of intact forest is situated in the South East, where it is very rocky and inter-speared with many areas of shrubs and savannah grasslands⁴³. The reserve however has fairly diverse small mammals and large moths, un common tree and shrub species not only in Uganda but also in Eastern Africa⁴⁴. It also has an average number of bird and butterfly species. The South Busoga Forest Reserve Biodiversity report ⁴⁵ attributes the reserves loss of biodiversity to encroachment on the reserve in the 1970's and 80's.

⁴¹ Syntheses Report Vol.1; April 2001 *Voices From the Field: Review of Forestry Initiatives in Uganda*, at p. 60.

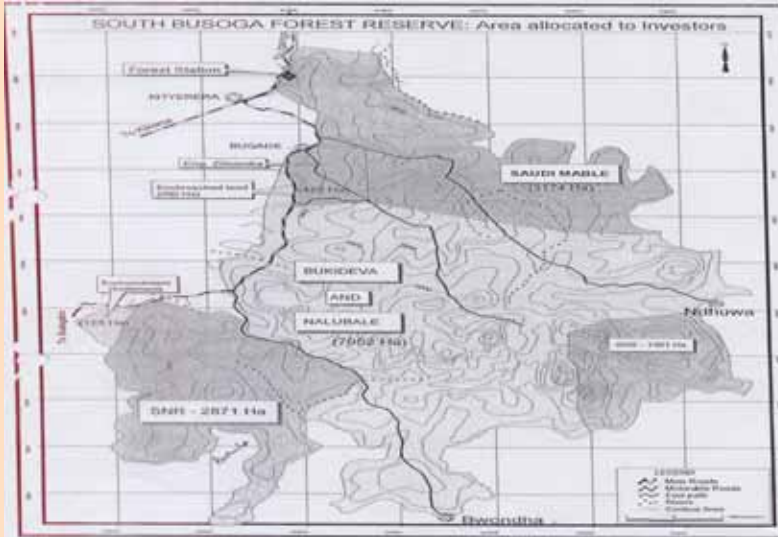
⁴² Forest Department, (1996) South Busoga Forest Reserve Biodiversity Report.

⁴³ Forest Department; (1996) South Busoga Forest Reserve Biodiversity Report at p. 3.

⁴⁴ *ibid.*

⁴⁵ *ibid.*; at p. 95.

The Map of South Busoga South Forest Reserve



Source : Forest Inspection Department, 2000.

South Busoga Forest Reserve was first gazetted in 1938 under Legal Notice No. 110 as 'South Busoga Crown Forest'. At the time of gazettement, there were a few people living on the reserve. In 1941, there was an outbreak of sleeping sickness epidemic causing a declaration of "South Busoga Sleeping Sickness Area" under Legal Notice No. 296 of 1941. All people that had established themselves in the area were evacuated to the north of the reserve.

In 1948, under Legal Notice No. 41, the title of the forest was changed to South Busoga Forest Reserve. This change in name did not involve change in status. All other aspects of the reserve remained the same. At about the same time, incidences of disease had decreased, and people were slowly crossing the boundary into the reserve. By 1954, there were a number of families living in the reserve in the neighborhood of the Kabire River⁴⁶.

⁴⁶ Forest Department, (1954) Working Plan for South Busoga Forest Reserve, 1955 – 1965

Encroachers on the reserve were evicted shortly before independence and the reserve was largely free from encroachment until the 1970's⁴⁷.

In the 1970's, given the prevailing political environment and the erosion of the efficiency of the Forest Department as well as increasing population in the Busoga Region, people attempted to encroach on the forest but were largely repulsed between 1974 and 1975⁴⁸. Increased encroachment was witnessed in the late 1970's when there was total breakdown of the political and institutional structures of Government. The FD at this time was unable to maintain the integrity of the diverse forest estate in Uganda.

The period between 1981 and 1986 witnessed the greatest destruction of SBFR. The Government at the time encouraged settlements on the reserve, which had become hiding place for rebels who were opposed to the existing government⁴⁹. As a result, a big part of the reserve was cleared for settlement. Encroachers even penetrated what is considered 'strict nature reserve' and cleared it, converting it into agricultural land and settlement.

By 1990, the level of encroachment on Uganda's Forestry Reserves and protected areas in general reached alarming levels. Government responded by appointing an inter-ministerial committee, which was to examine this matter and to come up with recommendations. The committee resolved that all encroachers should vacate the reserves. As a result evictions on the Forest Reserve commenced, which cleared the largest part of the forest from encroachers⁵⁰. The reserve was once again fairly free from encroachment up to a round 1996⁵¹. In 1996, when president Museveni visited the area on a mobilization tour, he promised the encroachers that settled villages will be curved off from the reserve⁵². This gave comfort levels to the encroachers who started scaling up their agricultural activities on the reserve. In the subsequent year, the Vice president Dr specioza Kazimbe visited the area

⁴⁷ AC Hamilton op. cit., at p. 68.

⁴⁸ Ibid., at p. 69.

⁴⁹ Interview with Kabi Maxwell, NFA Sector Manager, Bunya, South Busoga Forest Reserve on 6th July 2005.

⁵⁰ *ibid.*

⁵¹ Interview with Acaye Godfrey, op.cit.

⁵² See the report of elders to His excellency the president of Uganda dated 14th July,2005.

and encouraged all the evictees to re enter their plots where they had been evicted⁵³. These political statement from the highest political office encouraged further encroachment leading to the current ten villages that are settled on the reserve. According to the community in Kikyerera sub county, the major conflict between the National Forest Authority rotates around these ten villages, which the community strongly feels should not be part of the reserve⁵⁴.

Between the 2000- 2001, the FD attempted to evict the encroachers. The evictions were however largely failed due to lack of resources. The macro political situation at the time as well as local politics in South Busoga also greatly hindered the Forest Department's work.

Follow up activities like planting trees were not effected for the same reasons. Like the 1990 situation, encroachments reverted and in bigger numbers severely cutting down the remaining part of the forest to establish maize plantations.

4.1. Current Status of the Reserve with Respect to Encroachment

Whereas the national biomass study of the year 2000 indicated that SBFR is the most encroached forest reserve in Uganda, with 76% of the reserve under encroachment, it is reported that the level of encroachment on the reserve has now risen to over 90 percent,⁵⁵ with some officials putting it at over 95 percent⁵⁶. Un official results indicate that more than 844 households



Figure 1: A cross section of settlements in South Busoga Forest Reserve (cover photo)

⁵³ ibid.

⁵⁴ Several community leaders interviewed including the chairman LCIII Kikyerera Sub county insisted that the National Forest Authority has shifted the original boundaries signifying the magnitude of the conflict.

⁵⁵ Interview with Acaye Godfry, op.cit.

⁵⁶ Interview with Kabi Maxwell, op. cit.

are settled on the reserve yet these figures are exclusive of all households of Kikandwa, Lutalo and Bukalenzi villages, which have not yet been registered⁵⁷. It is estimated that each household has 8 persons on average⁵⁸.

Other than the massive cultivation of the strict nature reserve in SBFR, there are ten villages located in the buffer zone and these are; Kikandwa, Bugoya, Lutale, Bukalenzi, Bukuku, Bumwene, Bulobode, Bukatabira, Bugata, and Nakengo

The above figures are exclusive of seasonal migrants from Teso, Kayunga, Mbale, and Western Kenya among others who come and camp in the reserve during the maize planting seasons and leave after harvest. These groups have particularly penetrated the remaining

stretch of the inner forest (what is considered 'a strict nature reserve') and severely cut it to establish commercial maize plantations. They live in huts made of mud and wattle within or by the side of their plantations. Some of these people have now permanently settled on those grounds surrounded by the forest. They form the first target of NFA in the eviction process⁵⁹.



Figure 2: A maize plantations on forestry land in South Busoga Forest Reserve (cover photo)

⁵⁷ National Forestry Authority working figures, 2005.

⁵⁸ Interview Kabi Maxwell, op. cit.

⁵⁹ Interview with Maxwell, op. cit.

4.2. Recent attempts to Evict Encroachers from the Reserve

In early 2005, the National Forestry Authority (NFA) embarked on a national wide strategy of evicting all encroachers on all Central Forest Reserves (CFR). In South Busoga Forest Reserve, NFA officials started by attempting to evict all occupants and cultivators of the remaining part of what is considered 'a strict nature reserve' irrespective of individual circumstances and the length of occupation. Though a few of the settlers left voluntarily upon advice and sensitization by the NFA,⁶⁰ a big number was forcefully evicted and their homes and crops destroyed⁶¹.



Figure 3 : A razed home of an encroacher in South Busoga Forest Reserve

With respect to the 10 villages that have been established on the reserve, NFA is in a process of registering the occupants on an individual basis. Their fate has not yet been determined. It is however suggested that NFA could 'legalize' their stay on the reserve by placing on the settlers' conditions that would foster adoption of land use, which is consistent with the management plan of the reserve⁶². The registration process has been viewed with suspicion by some of the people. For example, the residents of Kikandwa, Lutalo, and Bukalenzi villages, are still reluctant to register with NFA.

Evictions in SBFR have been met with a lot of hostility with residents accusing NFA officials of using crude methods; beating people, burning houses and cutting down crops among other evils⁶³.

⁶⁰ Interview with Kabi Maxwell, op.cit.

⁶¹ Interview with John Abingwa, op.cit., corroborated by Kabi Maxwell, NFA sector manager, South Busoga.

⁶² Interview with Godfrey Acaye, op.cit.

⁶³ Interview with John Abingwa, op.cit. NFA officials in South Busoga refute the allegations, although they admit that there are situations where they had to burn down makeshift houses to force the encroaches to leave.

This hostility primarily stems from political incitement by local leaders who have taken over the forest as a political asset⁶⁴. Whoever wants votes pledges the forest⁶⁵. It looks more like local politics in the area are hinged on accessibility to the reserve. It is therefore not surprising that the District leaders in search for political gains call for degazettement of the whole reserve.

From the discussions with local communities, it is apparent that NFA has not extensively sensitized the people on the need to preserve the reserve and has also accepted to become a party in the conflict. This has certainly not been good for the environment, as people have demonstrated their anger with the NFA by cutting down tree plantations that the Authority had commissioned. It is only proper that NFA resolves the hostilities by reconciling with the local politicians within the Government structures. The law should also apply to local politicians who incite people to encroach on the reserves.

NFA has summarily forcefully evicted occupants of the reserve without taking into account their predicament. Though NFA refutes charges of violating the rights of the encroachers as baseless, the propriety of the evictions remains an outstanding issue in as far as NFA lacks comprehensive guidelines on evictions, resettlement and compensation.

The affected peoples peculiar circumstances have not been put in perspective as provided for in the National Forest Plan⁶⁶. There is also no evidence of consultation of stakeholders (who include the victims) in the formulation of the guidelines and there has been neither compensation nor resettlement of bonafide victims as required by the National Forestry policy and National Forest Plan⁶⁷.

It is on this very issue of propriety of the evictions in SBFR that the local people through their leaders appealed for state intervention. The president responded by halting forestry evictions pending the findings of a special presidential committee assigned for the matter⁶⁸. The presidential

⁶⁴ Interview with John Abingwa, op.cit.

⁶⁵ *ibid.*

⁶⁶ National Forest Plan 2002; at p.39.

⁶⁷ *ibid.*

⁶⁸ The New Vision, Thursday, May 19, 2005 at p. 1

announcement has only helped in escalating the problem. Encroachers that had left took this opportunity to come back and re-establish their positions. The presidential committee has finalized its report. The report brings out an elaborate evaluation of the importance of Central Forest Reserves (CFRs) and highlights the need for their protection. In particular it details the biological and ecological functions of the over five hundred CFRs, and recommends that the reserves should be cleared of encroachers. With respect to long standing encroachers, the report calls for licensing such people until a more lasting solution is found. In that respect, the report does not provide actionable recommendations that can create a win-win situation for both the forestry authority and the forest settlers. For example the report does not recognize the need for resettlement and compensation guidelines to help government in dealing with desperate bonafide settlers that may require alternative source of livelihood.



Figure 4 : A new tree plantation in SBFR that was commissioned by NFA

Unlike the previous evictions by the FD in 1990 and 2000 where encroachments reverted soon after the evictions, NFA has embarked on a mission of planting trees where it has successfully evicted the encroachers. It is contracting investors to plant trees in those areas as well as areas

where the natural forest is scanty. This is a positive effort of ensuring that the encroachments do not revert.

5.0. EXPERIENCES OF FORESTRY EVICTIONS IN OTHER JURISDICTIONS

The eviction of forest dwellers is not unique to Uganda. Forestry evictions have taken place in Kenya, Tanzania and beyond the East African region. A reflection on how these have been handled could provide lessons for Uganda. In Kenya the Ogiek Ethnic community was evicted from the Tinet Forest, which the community had occupied for a long period of time. Evictions have also taken place on Mau forest in Narok District, southwestern Kenya and

Kazizumbwi forest reserve in Tanzania. The manner of evictions where police and armed personnel has been used, houses torched and gardens cut down has raised a lot of concern from human rights organizations and has created tension and conflicts. Evictions in these areas have also ended up in courts of law where the evictees are seeking alternative source of livelihood. While granting Ogiek a stay of execution of a high court order to evict the forest settlers, the Kenya Court of Appeal's observed that an eviction would have far-reaching effects on their livelihoods and the stay of execution was necessary in order to avoid a major upheaval⁶⁹.

In order to avert the eviction crisis and potential conflict, the government of Kenya has announced a plan to resettle forestry evictees. The office of the president has identified 282 plots of land in Nakuru District, in the rift valley province where some of the evictees especially the landless would be settled⁷⁰. The renown environmentalist and senior member of Mwai Kibaki's government, professor Wangari Mathai has condemned the brutality used to evict thousands of peasants from the forest reserves and advised that forests should be protected but bonafide encroachers and the landless should be compensated and provided with alternative livelihoods⁷¹.

6.0. FORESTRY EVICTIONS AND THE PLIGHT OF ENCROACHERS: A LEGAL AND POLICY PERSPECTIVE

6.1. International Instruments

Uganda has subscribed to a number of international instruments that requires it to manage its natural resources in a sustainable manner. These instruments include; the Convention to Combat Desertification 1994, International Convention on Biological Diversity, 1992, Bonn Convention on Migratory Species 1979, Convention on International Trade in Endangered Species

⁶⁹ This was an appeal arising out of case No 283/1999. Ogiek People Vs District Commissioner, Case No 283/1999 (Indigenous Rights to Tinet Forest)

⁷⁰ Reuters, October 5, 2005. Kenyan Government announces Plan to Resettle Forest Evictees. Also available at <http://forests.org/articles/reader.asp?linkid=46959>

⁷¹ Andrew Cawthorne (2005) Forest Evictions Condemned, available at <http://www.theage.com.au/news/world/evictions-condemned>.

1973, Convention on Protection of World Cultural and National Heritage 1972, Ramsar Convention among others. However, Uganda has also signed other instruments committing her to guarantee property rights, especially for poor and vulnerable peoples. Many of such international instruments proscribe arbitrarily deprivation of peoples' right to property including land. The Universal Declaration on Human Rights⁷² is the central instrument passed by the United Nations General Assembly highlighting peoples and human rights. Among other things, it provides that every one has a right to property as an individual as well as in association with others and prohibits arbitrary deprivation of property⁷³. The right to property has been reiterated by the International Covenant on Economic, Social and Cultural Rights,⁷⁴ which emphasizes that in no case may a person be deprived of his only means of subsistence⁷⁵. The African Charter on Human and People's rights⁷⁶ also provides for the right to property and further provides that people that have been dispossessed of their property rights have a right to full recovery of their property⁷⁷.

The Indigenous and Tribal Peoples Convention, 1989 (No. 169)⁷⁸ provides for recognition of ownership rights of land and resources that indigenous and other tribal peoples occupy. The Convention makes it a responsibility of governments to develop coordinated and systematic actions to protect property rights of tribal peoples and to respect their integrity. In that respect, eviction of tribal groups or vulnerable communities from forestry resources they have occupied for long periods of time without alternative source of livelihood does not only violate the provisions of the Convention but is also a negation of the primary responsibility of Government as provided for under the convention.

⁷² Adopted by the United Nations general assembly resolution No. 217 A (III) of 10th December 1948

⁷³ Article 17 of the Universal Declaration of Human Rights

⁷⁴ Adopted by the United Nations general assembly in 1966, entered into force on 3rd January 1976. Uganda ratified the Covenant in 1987

⁷⁵ Article 1 of the ICESCR

⁷⁶ Adopted on 26th June 1981, entered into force on 21st October 1986,

⁷⁷ Article 21 of the African Charter on Human and People's Rights.

⁷⁸ Adopted on 27th June 1989 by the general conference of the International Labor Organization, at its seventy sixth sessions. Entered into force on 5th September 1991.

6.2. The Constitution of the Republic of Uganda

The Constitution vests all land in the citizens of Uganda. Natural resources including forests are held by government in trust for the people of Uganda⁷⁹. The Government as a trustee is mandated to protect forests from all forms of degradation and encroachment⁸⁰. Objective XXVII, calls for sustainable utilization of forest resources (among other natural resources) for the present and future generations. The constitution also provides for protection of the family, provision for the marginalised and vulnerable communities or groups to reduce the imbalances which exist against them. Consequently, evictions of the landless groups without alternative livelihood would be inconsistent with the spirit of the constitution.

6.3. The National Forestry and Tree Planting Act

The Act reiterates the Constitutional provision that all forests vest in the government, which holds them in trust for the people of Uganda⁸¹. Under Section 54 of the Act, government has delegated its managerial powers over forest reserves to the National Forestry Authority (NFA). Sections 14 and 32 of the Act prohibits unauthorized conduct in a forest reserve, and this includes encroachment. Encroachment on forest reserves therefore constitutes an offence and is punishable under the provisions of Section 14 and 32 of the Act. NFA would well be within its powers, in evicting encroachers from CFRs. However, the Act must be read together with the National Forestry Policy and the National Forest Plan.

6.4. The National Forestry Policy and the National Forest Plan

The National Forest Plan recognizes that there has been severe encroachment on the Permanent Forest Estate (PFE) and this has severely degraded the

⁷⁹ *ibid*; Article 237.

⁸⁰ *ibid*; Objective xiii of the National Objectives and directive principles of State policy

⁸¹ Section 5 of The National Forestry and Tree Planting Act, 2003.

forest cover base. The worst affected has been the woodlands and the former village forests that have virtually disappeared under encroachment.

The National Forest Plan calls for improvement in the protection of the boundaries as a way to control the encroachments. It calls upon NFA and UWA to ensure security of the PFE boundaries. This is to be done by identifying boundaries that are not clear or that are disputed, surveying and agreeing on boundaries, ensuring legal instruments for boundary changes, rationalizing boundaries if necessary and resolving disputes, marking boundaries appropriately and enforcing the law with regular patrols and continuous monitoring.⁸² These measures are seen as likely to cure the problem of fresh encroachments.

As for the prevailing encroachments, the plan calls for redress of the problem by adoption of practices that are agreeable to stakeholders. But the bottom line is that these practices must recognize the special circumstances of forest dwellers and pastoralists. It calls for formulation of guidelines for

Guidelines for compensation and resettlement will be developed as appropriate means to minimize the suffering and protect the rights of the forest dwellers.

Source: National Forest Plan, page 39

compensation and resettlement to minimize the suffering and to protect the rights of forest dwellers and communities living adjacent to the resource.⁸³

The above provision in the National Forest Plan is in line with the guiding principles for the forest sector under the National Forestry Policy. The policy provides that the improvement of livelihoods should be a major goal in all the strategies and actions for the development of the forest sector so as to contribute to poverty eradication⁸⁴.

⁸² *ibid.*, at p. 38.

⁸³ *ibid.*, at p. 39.

⁸⁴ National Forestry Policy, *op. cit.*, at p. 13.

Policy statement Number 1 of the National Forestry Policy calls for the need to manage the Permanent Forest Estate (PFE). It calls for afforestation of bare areas of the PFE. It also calls for identification of other areas of biodiversity importance and gazette them as part of the PFE under the provisions of the constitution⁸⁵. In a bid to rationalize the above policy statement, the policy calls for a re-survey of all government reserves with a view of demarcating and rationalizing boundaries and resolving encroachment problems.

To that extent, the National Forest Policy and the plan thereto recognize the importance of forestry resources and call for their vigorous protection. The documents also realize that humanitarian aspects must be put in perspective before encroachers may be evicted from forest reserves. Therefore, the actions of NFA are considered to be insensitive to the policy for at least three reasons. First, the evictions commenced without categorizing different encroachers in order to determine the appropriate remedies. Second, evicting the helpless peasants from lands they have occupied for decades where they derive their livelihood with out compensation or resettlement is incompatible with the government goal of eradicating poverty and income inequality. Third, commencing evictions without putting in place resettlement and compensation guidelines indicates lack of commitment to solve the problem of landless communities. To this extent the NFA actions run counter to the Forestry policy, which provides for compensation to bonafide encroachers before they are evicted.

6.5. National Forestry Authority Guidelines for addressing encroachment in Central Forest Reserves

The guidelines call for the opening of forest boundaries and ensuring clarity in the process. They call for the handling of encroachment cases on a case-by-case basis owing to the uniqueness of situations obtaining on the ground. A list of encroachers is supposed to be prepared by name and the

⁸⁵ Article 26 (2) of the Constitution calls for payment of adequate compensation or resettlement as a condition precedent to appropriation.

activities they engage in. Encroachers are then required to be made aware of the consequences of their actions and the need for restoration of forest reserves and persuaded to leave. Eviction notices would then be issued to the encroachers and the NFA would maintain pressure on the encroachers by conducting constant patrols to monitor their movements.

The guidelines further provide that every area of CFR that is vacated would be immediately brought under the control of NFA and immediate follow up activities would be undertaken including planting of trees and boundary planting. The guidelines call for a solution to the encroachment problem once and for all.

These guidelines are a good attempt but are lacking in a number of respects. They for instance do not define the powers of NFA field staff and do not provide for situations of forceful evictions, yet a number of evictions have in fact been forceful. The guidelines do not acknowledge rights that some of the encroachers may have, let alone respect of those rights. They do not provide for issues of compensation or resettlement of bonafide encroachers and in that respect employ a blanket categorization of all encroachers as illegal encroachers.

The guidelines are also largely unknown even among field staff that they are designed to guide⁸⁶. It is therefore relevant to revisit the guidelines to make them more elaborate. It is also important that guidelines for compensation and resettlement are developed as appropriate means to minimizing the suffering and protecting the rights of the forest dwellers as provided for in the National Forest Policy⁸⁷.

7.0. RIGHTS OF THE ENCROACHERS

It has been noted that there are different types of encroachers. There are those who have lived on the land for decades and know of no other

⁸⁶ Interviews with National Forestry Authority Officials between 28th June and 18th July

⁸⁷ National Forestry Policy, op.cit.

home other than the land they occupy and those who carry out agricultural activities on the reserve but have homes outside the reserve. It is therefore important to establish what rights such settlers would have in respect to their settlements. This section embodies the social and humanitarian aspects associated with the evictions especially in line with the government policy on poverty reduction especially among the poorest and most vulnerable communities.

7.1. Right to Occupation of Land by Virtue of Long Use

At common law, an encroacher on land may after a prolonged and uninterrupted use and occupation of that land acquire a proprietary interest in that land. This common law principle is called the doctrine of adverse possession⁸⁸. It is legally conceded that uncontested long possession of land ultimately confers legal title to the occupier irrespective of the formal or documentary record of ownership. This common law principle forms the foundation of the bonafide occupants recognized under the Land Act.⁸⁹

Oliver Wendell Holmes suggests that the purpose of the doctrine is to protect the expectations of those who have used property for a long time⁹⁰. Richard Posner reasons that the purpose of adverse possession is to preserve the status quo⁹¹. He argues that the adverse possessor has become attached to the property and losing it would be a serious loss, whereas the titleholder would view the acquisition as sudden, unexpected increase in his wealth. The doctrine rewards productive owner, while penalizing the unproductive owner who sleeps on his rights. As strange as it may seem, adverse possession confers actual title to the holder who occupies land for long enough and meets the following basic requirements⁹²;

⁸⁸ John T Mugambwa; 2002, Principles of Land Law in Uganda, Fountain Publishers, at p. 67.

⁸⁹ Section 29(2) (a) of the Land Act Cap 227 provides for a bonafide occupant. A bonafide occupant is defined under the section as a person who had occupied and utilized or developed any land unchallenged by the registered owner for a period of twelve years from the coming into force of the Constitution. The Constitution came into force on 22nd September 1995. For one to be a bonafide occupant, he must have been on that land by 22nd September 1983. The Act though restricts the concept of bonafide occupant to a person occupying registered land. The spirit of the bonafide occupant under the Land Act was to protect the rights of occupiers who have lived on a given land unchallenged for a reasonably long period of time, this could by implication be extended to unregistered land as well.

⁹⁰ Kyros Kostantine; Adverse Possession: The basics, available at <http://www.lawyersviews.com/lawsite/basicinfo/ap.html>, accessed on 20th Nov.2005.

⁹¹ *ibid.*

⁹² *ibid.*

- The adverse possessor must have actually entered the property,
- The possession must be notorious-the possession must be seen,
- The possession must be adverse to the owners claim and
- The possession must be continuous.

Indeed, the forest encroachers on the ten settled villages on the South Busoga Forest Reserve meet these basics. The land has been cultivated and improved. The government has set up infrastructure including a school on the reserve. The encroachers for all intents and purposes treat the land as theirs. Consequently the right of adverse possession rightly accrues to them.

The doctrine of adverse possession operates in conjunction with the Limitation Act Cap 80⁹³, which provides that an action to recover land must be brought within twelve years from the date of the cause of action. The central feature of the Limitation Act is that if an owner of property fails within a certain period to secure the eviction of an encroacher from his land, his own title is extinguished and he is thereafter statutory barred from recovering possession of the land. The Limitation Act thereby reflects a policy that 'those who go to sleep with their claims should not be assisted by the courts in recovering their property.'

Since many of the encroachers have occupied those lands for decades (in some areas, the encroachers have occupied the lands for more than 30 years) without successful eviction, the government will find it difficult to enforce the evictions at this point without providing an alternative. A failure on the part of government to protect the integrity of the reserves should not prejudice people's lives. Thus, the people should be given the most viable alternatives before they are evicted.

7.2. Right to Property

Having established that encroachers have had a prolonged and uninterrupted use of the part of the protected land, they have acquired a proprietary

⁹³ Limitation Act Cap 80, Section 5.

interests in that land. These people therefore, have legally protected property rights in that land. It is important to note that some people still hold freehold and leasehold titles, which have not been revoked by bodies with competent jurisdiction⁹⁴. Article 26(1) of the Constitution provides for people right to property or interest in property. Under Article 26(2) of the Constitution, a person can only be deprived of his property upon payment of adequate and prompt compensation. The Land Acquisition Act provides for the procedure of compulsory acquisition of property by government⁹⁵. In all cases, the affected party must be adequately and promptly compensated or resettled.

From the foregoing, if the government in the process of implementing its plan decides to evict the bonafide encroachers, it is by law obliged to furnish adequate and prompt compensation or could with the consent of the affected parties resettle them to other lands.

7.3. The Right to Life and the Right to Livelihood

The right to life is a universally recognized traditional human right that forms the basis for the realization of all other rights. It is guaranteed under article 22 of the Constitution⁹⁶. The article prohibits conduct that would result in loss of life.

“... An equally important facet of the right to life is the right to livelihood because; no person can live with out the means of living, that is, the means of livelihood. If the right to livelihood were not treated as part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.”
Source: Justice Chandrachud in his judgment in the case of Olga Tellis

The right to life is now interpreted to go beyond physical termination of life to encompass the right to sustenance and livelihood. To that extent, the right has been extended to a whole range of socio-economic rights like right to food and shelter. It therefore follows that curtailing a person from his or her very means of deriving livelihood is tantamount to violation of the right to life.

⁹⁴ Acaye Godfrey J, (2005) The current Situation of encroachment in the Central Forest Reserves and the Way Forward. Workshop presentation during the sensitization seminar in Kampala. See also table 1 at p.7.

⁹⁵ Land Acquisition Act cap 226, Section 5 and 6.

⁹⁶ op.cit; Constitution of the Republic of Uganda, 1995.

In the case of *Olga Tellis and Ors Vs. Bombay Municipal Corporation and Others*⁹⁷ the petition was brought in respect to removal of pavement dwellers and demolition of shanty dwelling places of slum dwellers in Bombay. The ground of the petition was that the action of the respondents infringed the right to life guaranteed under the Indian Constitution. The Indian Supreme Court held that the right to life conferred by the Constitution extended to protect the right to livelihood and that the removal of pavement dwellers as well as demolition of slum dwellings endangered that right. Court went on to hold that the slum dwellers were entitled to alternative shelter should they be evicted. Justice Chandarchud in his judgment noted, "... The encroachments committed by these persons are involuntary acts in the sense that they are acts compelled by inevitable circumstances and not guided by choice. Here, as else where in the law of torts, a balance has to be struck between competing sets of values".

In *Ain O Salish Kendro (ASK) and other Vs. Government of Bangladesh and others*⁹⁸, it was reiterated that the right to life extends to the right to livelihood. Therefore, eviction of people who have lived on forest reserves for decades and who derive livelihood from the forests falls within the rights that the case of Olga Tellis and Salish Kendro as legitimate.

On the whole, it emerges that long and uninterrupted occupants of forest reserves have by virtue of long occupancy acquired rights in that land. The Land Act Cap 227 defines a bonafide occupant on land as a person who has occupied, utilized or developed any land unchallenged by the registered owner for a period of 12 years from the coming into force of the constitution⁹⁹. This definition restricts the concept of bonafide occupant to registered land. This does not in any way extinguish the rights of adverse possession that are recognized by common law. If we are to adopt a test of a bonafide occupant under the land Act, occupants of the reserves 12 years before the coming into force of the Constitution have rights in the reserve. These rights must be

⁹⁷ [1989] LRC (Const) 351 (Indian Supreme Court) available at <http://www.legalserviceindia.com/articles/case.htm>

⁹⁸ Writ Petition No. 3034 of 1999, (1992) 2 CHRLD 393 (available at <http://www.interights.org>)

⁹⁹ The Land Act cap 227, Section 29(2)(a) .

protected. New encroachers on the other hand are not protected under the law and can rightly be evicted as long as eviction guidelines are followed in order avoid hostility and mitigate the loss.

8.0. SEARCHING FOR LASTING SOLUTIONS: RECOMMENDATIONS AND CONCLUSION

8.1. Systematic Re-survey of Forest Boundaries, Massive Sensitization of Communities Living around Forest Reserves and Deterring Fresh Encroachment

National Forestry has commenced a process of opening boundaries to all forest reserves. The process should be continued and completed for all Central Forest Reserves once and for all. It is also important that accuracy is observed in the process¹⁰⁰. Where forest boundaries have been altered, they should be restored through negotiation with the concerned communities to avoid conflict and hostility that have continued to characterize the work of government agencies charged with conservation of natural resources.

A lot of encroachment is a result of failure to appreciate the role of forestry in the social, economic, and environmental spheres. Therefore a lot of effort is needed to sensitize encroachers, local leaders, politicians, district councils and government officials on the role of forestry from social, economic and environmental perspectives. This is both a good practice and a constitutional requirement under Objective xiii of the National Objectives and Directive Principles of state policy of the Constitution. This would probably encourage encroachers to leave in a non-hostile way, and would also go a long way in deterring future encroachers. It has the effect also of encouraging sustainable utilization of forest resources. Whereas it is indicated that NFA is doing some sensitization, it ought to be scaled up.

¹⁰⁰ The Uganda Wildlife Authority wrongly surveyed and demarcated the Mbwa tract in South Western Uganda before it was gazetted a wild life reserve in 2002. The land belonged to the communities in fact, and this has presented a challenge on how the problem can be redressed, and caused unnecessary hardship to the actual owners of the land.

There is need to deter future encroachers on the forest reserves. NFA should bolster its surveillance unit, which should monitor forest reserves and ensure their integrity. NFA should sensitise law enforcement agencies charged with prosecution of encroachers. Timely prosecution of encroachers would go a long way in deterring future encroachers.

8.2. Politicization of Conservation Issues

One of the underlying challenges facing government agencies in the implementation of the law and policy is politics. National and Local politics have largely undermined the institutional mandate of NFA causing massive encroachment of Forestry Reserves¹⁰¹. It is therefore important to divorce conservation issues from politics. In 1996, the president of Uganda while addressing a public rally at Kuluuba primary school around South Busoga Forest Reserve, promised to curve off the settled land from the reserve. He instructed Hon. Henry Kyemba who was then the minister in the president's office, to implement the promise. This promise created an impression that the encroachers were legally entitled to the land they occupied. When the then Vice president, Specioza Kazibwe visited the area, while addressing a rally at Bukalanzi primary school in Malongo Sub County, she encouraged all the former evictees to resettle in their plots¹⁰². In May 2005 when evictions commenced again the president intervened and halted forestry evictions¹⁰³. These temporally and sporadic political intervention have escalated the conflict between the mandated institution and the encroachers. Such interventions only work to erode the confidence and integrity of those institutions.

¹⁰¹ See the report of elders to His excellency the president of Uganda dated 14th July, 2005.

¹⁰² *ibid*.

¹⁰³ New Vision, Tuesday, May 19th, 2005.

8.3. Establishment of a National Verification Committee to Determine the Rights of the Different Encroachers

There is need to establish the types of encroachers on the reserve. The prolonged settlements on forest reserve ought to be distinguished from new encroachers, bonafide forest settlers from illegal encroachers and those who are absolutely landless from those who have alternative settlements. This could probably be done by a verification committee composed of local administration staff and community leaders. The committee should be composed of professionals with staff orientation towards equity, social justice and environment management. Evictions should not be commenced until the encroachers' rights are verified and disputed claims settled through a transparent and democratic process. It has already been observed that there are different categories of encroachers who enjoy different rights or who ought to be treated differently. This calls for a study of different encroachments in the different resource areas on a case-by-case basis, to determine appropriate remedies. The work of this verification committee should be complemented by the registration exercise already going on by NFA to establish the type and number of encroachers in every Central Forest Reserve. This is a necessary tool not only for determining the nature of the remedy, negotiation of voluntary vacation agreements but also for proper planning for the sensitization, compensation or resettlement programmes as the case may be.

8.4. Respect of Peoples' Rights and Minimization of the Suffering of the Evictees

As already observed, Uganda is a signatory to a number of international instruments where it has committed her self to protect the rights of its citizens. The most relevant being the International Covenant on Economic, Social and Cultural Rights. The Covenant requires the states to refrain from interfering with the enjoyment of economic rights, social and cultural rights. Thus the right to housing and income are denied when the state engages in eviction of the people who have not been provided with alternative source of livelihood.

Some of the encroachers have by virtue of long stay acquired rights in forest reserves. Some few have even been granted land titles. It is important that these rights are respected. Should the evictions be justified within the overall mandate of the state to sustainably manage the forests, these people should be compensated or resettled. The Government for along time has failed to maintain the boundaries and integrity of the reserves and should not punish the bonafide encroachers without providing viable alternatives. After decades of uninterrupted occupancy by local communities, it would be a travesty of justice to evict them without providing alternative source of livelihood. The state has an obligation to ensure that evictions should not result in rendering individuals homeless and landless. Where those evicted are unable to provide for themselves, the state must take all appropriate measures whether legislative or budgetary to ensure adequate alternative housing, resettlement or access to productive land, as the case may be.

There is need to compensate or resettle the bonafide settlers and purely landless people. New illegal encroachers should be evicted as soon as possible, but measures should be taken to minimize their suffering. Settlers should be given sufficient notice and cultivators should be allowed sufficient time to harvest their crops.

8.5. Establishment of Comprehensive Eviction, Compensation and Resettlement Guidelines

National Forest Authority has passed guidelines for evictions. This is a positive development, which is inline with the National Forestry Plan. However these guidelines are not comprehensive enough. The process was less participatory and did not involve the majority of the stakeholders. The guidelines have not been publicized and are not known by some of the law enforcement agencies that have been involved in forced evictions.

During this research it was established that there are no guidelines for compensation and resettlement of bonafide encroachers on forest reserves

as provided for in the National Forest Plan¹⁰⁴ and other international instruments¹⁰⁵. The suffering placed on evictees is internationally recognized.

The committee on Economic, Social and Cultural rights has long proposed that the least that needed to be done was to provide a procedure to be followed while carrying out evictions, where forced evictions cannot be avoided¹⁰⁶. The committee observed that an opportunity should be given for genuine consultations with those affected, adequate and reasonable notice for all affected persons prior to the scheduled evictions, information on the proposed evictions and the alternative available or to be made available to the people affected should be communicated. Where groups of people are involved human rights groups and government representatives should be available during an eviction, all the people carrying out eviction must be properly identified, evictions should not take place at night or bad weather unless the persons consent otherwise, and the people should be given an opportunity to seek legal aid. It is important that these considerations should be taken care of in the guidelines. The responsible agency should make sure that the process is highly participatory.

Compensation and resettlement of evictees is in line with the government overall objective of eradicating poverty and reducing income inequality. This objective which is grounded in the Poverty Eradication Action Plan (PEAP) cannot be achieved if the landless evictees are not provided with alternative source of livelihood. These evictees finally migrate to urban centers to do odd jobs thereby increasing the number of slum dwellers. This phenomenon has the effect of making the achievement of the millennium goal of reducing slum dwellers more elusive.

¹⁰⁴ The national Forest Plan provides that guidelines for compensation and resettlement will be developed as appropriate to minimize the suffering and protection of the rights of forest dwellers and communities living adjacent to forests. See p. 39.

¹⁰⁵ See the International Covenant on Economic, Social and Cultural Rights.

¹⁰⁶ International Environmental Law Center (2004) Law and the Constitution: Eviction of Forest Communities. Available at <http://www.ielrc.org/content/f0401.htm>

8.6. Establishment of a Forestry Resettlement Fund and a Land Bank

It has been established that some forest settlers being labeled encroachers have acquired rights in the land they occupy. Others are landless and do not have alternative means of livelihood. These settlers have to be compensated or resettled before they are evicted. It is therefore important for NFA in conjunction with The Prime Minister's Office to establish a forestry resettlement fund. The government can also buy land and reserve it to meet such unforeseen demands. This proposal is in line with the government mandate under the constitution to provide for the marginalised and vulnerable groups and communities.

8.7. Recognition of Common Property Rights in Forestry Management and Conservation

Local forest dependent communities have not been keen at forest protection, and have in many areas been the destroyers of forests yet they are the immediate beneficiaries of the resource. It is on this footing that it is recommended that common property rights be recognized for communities that have historical trends of forest management and conservation. Common property regimes empower local communities with proprietary rights over the forests. These rights inculcate responsible behavior in the exploitation of forests and create a locally founded management structure over the forests¹⁰⁷ The National Forestry Authority should facilitate formation of institutions that would form a management structure over the forests. This facilitation would take the form of education, legal mandate, good will and technical expertise like dispute resolution mechanisms.

¹⁰⁷ Refer to Advocates Coalition For Development and Environment (ACODE) research series on Community-Based Property Rights.

8.8. Degazettement of Long Settled Reserves that Government has Failed to Restore

Some forest reserves have completely been settled. For example in South Busoga Forest Reserve, ten accomplished villages have long been established on the reserve. It makes no sense at all to continue describing this part as a forest reserve, more so where there is no likelihood that these people will ever be compensated or resettled by Government. The committee set up by the president to advise him on the issue of encroachment observed that previous degazettement of part of south Busoga did not solve the problem. The report however, also noted that contradictory policy statements, breakdown of the law and corruption have largely contributed to the problem of encroachment. It is our considered opinion that if there was proper enforcement of the law, the outcomes would have been different. The National Forestry Authority should seriously consider this option.

Failure to resolve the issue of the long settled land has kept the settlers in perpetual fear and cannot establish meaningful investment on the land. This situation undermines community development. On the other hand it also encourages other people to establish settlements on protected areas with a hope that after some time their settlements would be legitimized. It is on that basis that we propose the re-adjustment of the reserve boundaries to cater for these settlements. Otherwise as the 5th IUCN World Park Conference recognized, as long as the parks and protected areas remain island surrounded by hungry, angry and poor communities, their existence and that of their biodiversity will remain threatened¹⁰⁸.

¹⁰⁸ The Fifth IUCN World Parks Congress was held in Durban, South Africa from 8 to 17 September, 2003.

9.0 CONCLUSION

In this brief we have argued that the government of Uganda and its responsible agencies have the mandate to protect the integrity of its forests. Through its policy pronouncements, the government has committed itself to ensure sustainable utilization of the forests. It recognizes the problem of encroachment and commits itself to deal with the problem through practices and guidelines agreed by stakeholders. The government also recognizes that these practices must meet policy commitments to maintain the Permanent Forest Estate for purposes of forestry development but must also take care of the special circumstances of forest dwellers and pastoralists. The government recognizes bonafide encroachers and foresaw the need to compensate and resettle some forest dwellers that may need to be moved from areas of high biodiversity and ecological value and proposed in the National Forest Plan to put in place the guidelines. It is important that these guidelines be put in place in order to minimize the suffering of the forest dwellers and communities living around forest areas. The implementation of the national policy must be consistent with the Poverty Eradication Action Plan (PEAP) objectives of reducing income inequality and poverty generally. The Forest Authority in execution of its mandate to restore the integrity of the forest estate must put into perspective the rights of vulnerable communities and explore alternatives that create a win-win situation.

LIST OF REFERENCES

Legislations and Policy Documents

1. National Forest Plan, 2002.
2. National Forestry and Tree planting Act, 2003.
3. National Forestry Authority Guidelines for Addressing Encroachments in Central Forest Reserves, National Forestry Authority.
4. The Constitution of the Republic of Uganda, 1995.
5. The Land Acquisition Act, Cap. 226.
6. The Land Act, Cap. 227.
7. The Limitation Act, Cap.80.
8. The Uganda Forestry Policy, 2001.
9. The Uganda Independence Act, 1962.

Articles and Reports

1. Arinaitwe Anthony; (1996), Community participation in Forest Conservation: A legal perspective, LLB Dissertation, MUK.
2. Encroachments: Unwelcome invaders; available on <http://recenter.tamu.edu/pdf/1074.pdf>
3. Forest Department; (1954), Working Plan for South Busoga Forest Reserve for 1955 - 1965
4. Forest Department; (1996), South Busoga Forest Reserve Biodiversity Report.
5. Forest Department; (2002) Uganda Forestry Nature Conservation Master Plan.
6. Forest Governance Learning Group; February 2005 to January 2009, Enabling Just and Sustainable Forest use, Project Document -International Institute for Environment and Development.
7. Frank Emmanuel Muhereza; (2002), "Environmental Decentralization and the Management of Forest Resources in Masindi District", A report

prepared for the Center for Basic Research and World Resources Institute.

8. Hudson J Andrua; (2002), Tropical Secondary Forest Management in Africa: Reality and perspectives, Uganda Country paper.
9. MC Dermott, Thomas; (2004), Removal as a Legal Remedy for Relief against Encroachment; Surveying and Land Information Science, available at www.findarticles.com/p/articles/mi-qa4039/15-200409/91_n9473535-30k-.
10. Ministry of Water Lands and Environment; June 2005, Brief to the President on Encroachment and functions of Central Forest Reserves in Uganda.
11. National Environment Management Authority; 2000/2001, State of the Environment Report for Uganda .
12. National Environment Management Authority; (2002), State of the Environment Report for Uganda.
13. National Forestry Authority, October 2004, The Forester.
14. National Forestry Authority; April 2005, The Forester.
15. Peter C. Howard; (1991), Nature Conservation in Uganda's Tropical Forest Reserves.
16. Syntheses report Vol.1; April 2001 Voices from the field: Review of Forestry Initiatives in Uganda.

Books

1. A.C Hamilton; (1987), Deforestation in Uganda Oxford University Press with the East African Wildlife Society.
2. John T. Mugambwa; (2002), Principles of Land Law in Uganda, Fountain Publishers



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