

Conflict resolution in the Namanve Peri-Urban Reforestation Project in Uganda

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SUMMARY

Kazoora's case study deals with Namanve Central Forest Reserve on the outskirts of Kampala, Uganda. In the mid-1990s, the Ugandan Government made the land available for industrial development. Conflict arose over the issue of compensating farmers (largely retired civil servants) who had planted trees in the reserve as part of a peri-urban plantation project. The farmers organized themselves into an association to pursue their grievance through administrative, political and legal remedies. The study illustrates the importance of formal legal mechanisms in natural resource conflict resolution, including in the process of determining resource valuation for purposes of compensation.

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GUIDING QUESTIONS**KEY ISSUES**

- What are the differences between negotiation, mediation and adjudication?
- Who are the stakeholders or interested parties?

CONTEXT

- Do conflicts over natural resources in urban areas differ from those occurring in the countryside?
- Did the conflict over compensation involve all parties with an interest in the forest?

CONFLICT BACKGROUND OR HISTORY

- What role did formal political institutions play in the development of the conflict?
- Why did the farmers take their case to court?

CONFLICT MANAGEMENT AND RESOLUTION PROCESSES

- Why did the policies and practices associated with forest permits end up contributing to the conflict?
- What role did the Solicitor General play in the conflict management process?

CONFLICT MANAGEMENT AND RESOLUTION OUTCOMES

- What was the basis for the judge's decision?
- Were all issues in the conflict resolved?

LESSONS LEARNED

- What are the advantages and disadvantages of negotiation, mediation and adjudication as approaches to natural resource conflict management?
- How could forestry policies and practices be altered to promote increased local participation?

KEY ISSUES

Owing to the diverse interests of stakeholders in the use of forest resources, conflict is often inevitable. However, one can assume that those who are largely dependent on forest resources for their livelihoods or who have property rights will either have compelling reasons to seek to resolve conflict or a moral responsibility to do so. The central issue in this case study was to resolve conflict between the farmers and the Uganda Investment Authority (UIA), a government agency responsible for granting licences and land to investors, before the Uganda Land Commission (ULC) could effect a transfer of land title to UIA. The farmers had planted woodlots in Namanve Central Forest Reserve under a permit issued under the Forest Act of 1964. The permit outlined the conditions with which the farmers had to comply.

In January 1997, the government degazetted 1 006 ha of the reserve to create an industrial park to be managed by UIA. Of that land, 260 ha were used by farmers who had been granted authorization to plant eucalyptus woodlots.

The remaining part had been planted by the Forest Department. The case was settled through adjudication after the parties failed to agree on the amount for compensation. Although the farmers were not entitled to own land in the reserve, they nonetheless lost the use rights they had acquired under the permits.

In presenting the case study, the intention is to show policy-makers, conservationists and trainers that effective conflict resolution in the use of forest resources starts with integrating conflict management in the forest law, and in other laws and regulations. The case study is valuable in highlighting how community-based natural resource conflict management processes can occur within the domains of administrative and civil law.

The author's objectives are to:

1. illuminate the interplay between negotiation and adjudication processes in conflict resolution;
2. examine the relevance of standard "boilerplate" contracts used by the Forest Department, and official procedures for addressing specific resource conflict situations;
3. demonstrate the role financial and social resources controlled by individuals or groups of individuals can play in influencing conflict management strategies; and
4. highlight the importance of proper resource valuation in conflict resolution.

The key concepts are adjudication, negotiation, mediation and political processes for conflict management. These concepts are important in the case because each one could be employed to resolve conflict without necessarily being linked

to another. However, when all of them are used, as they were in this case, it is interesting to examine the relationship between them, and how they can link together in conflict resolution. By virtue of the key concepts mentioned previously, this case will be of interest to politicians, lawyers, administrators, academics and resource economists.

The case study shows that when the use of a resource that hitherto was accessed by many stakeholders is changed without exercising the principle of equity, conflict will result. It also shows that conflicting parties can follow a process that begins with avoidance and moves on to negotiation before resorting to other methods, such as adjudication or coercion. Finally, it shows that by pooling their resources, farmers found it cheaper than it would otherwise have been to pursue the case. Their collective action was also strengthened by the fact that their aims were the same. They agreed on the methodology for valuing their trees. Had there been great differences between them on valuation procedures, conflict management strategies would probably have differed.

The fresh insight offered by the case is that it should not be assumed that institutions responsible for the implementation of forest policies and laws understand them and have the capacity to handle conflict when it arises.

This particular case will be of interest to a wide audience because the strategy of adjudication is universal in conflict resolution situations, although the laws under which it is administered differ from one country to another. This in itself could be an object of study. Many societies resort to the rule of law when other processes and strategies fail to resolve a conflict situation.

The time line indicating milestones, key events and actors is given in the Box. This time line is referred to throughout the case study.

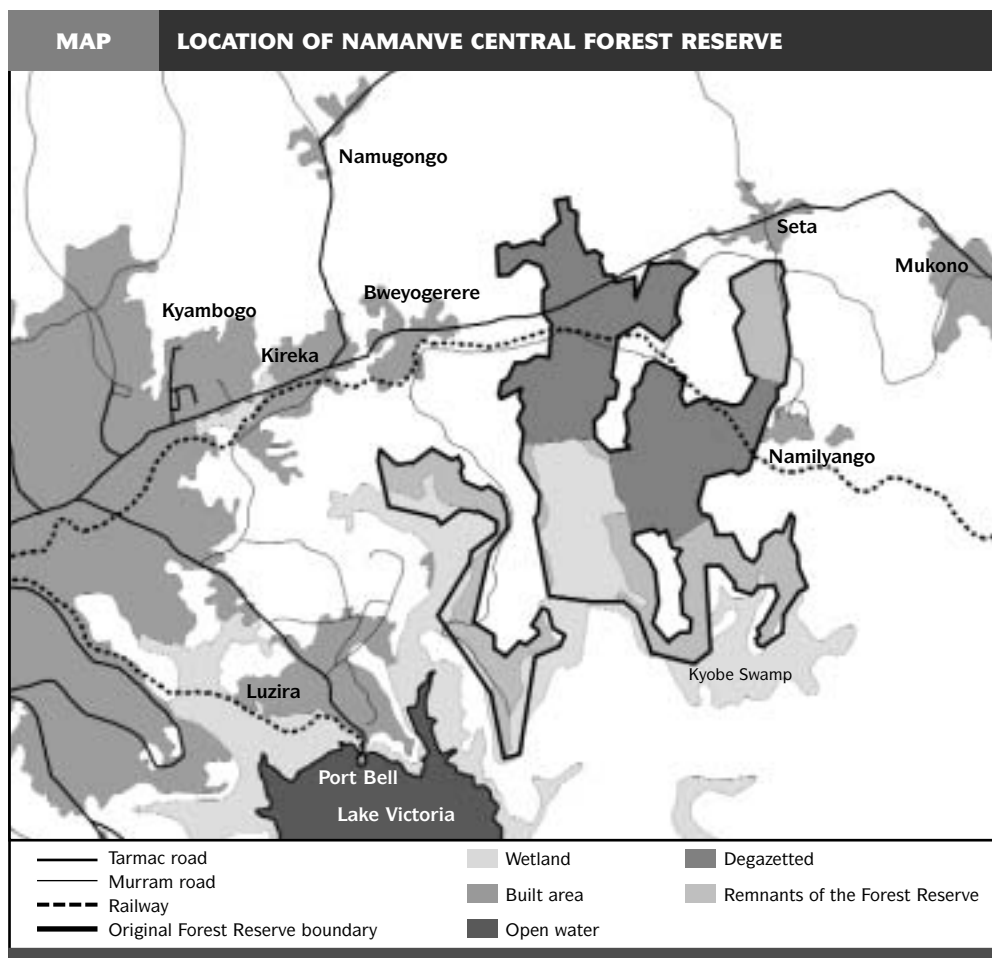
BOX TIME LINE FOR CONFLICT RESOLUTION PROCESS		
Date	Key events	Milestones
December 1996	Parliament debates the degazettement of Namanve	Minister for Natural Resources gives a degazettement order on 30 December 1996
January 1997	Statutory Instrument No. 1 released by government	1 006 ha cease to be a forest reserve with effect from the date of the order

Box continued

Date	Key events	Milestones
February 1997	Farmers form UWFA and elect Mr Kagoolo as chairperson	Farmers form an association, a legal entity that can sue and be sued
February 1997	Mr Kagoolo writes to UIA asking for negotiation No response received	
June 1997	Mr Kagoolo writes to UIA again, seeking negotiation	No response received
October 1997	UIA makes application for a lease over the degazetted area	ULC offers the lease on 10 February
April 1998	UWFA secures the services of a lawyer, Mr Muhanguzi	Mr Muhanguzi establishes that UIA is in the process of getting a land title before paying compensation to farmers
July 1998	Farmers sue UIA (Mr Twijukye and others versus UIA)	The conflict moves from avoidance to adjudication
July 1998	Farmers seek injunction on the planned development by UIA	UWFA puts a caveat on the degazetted land
August 1998	UIA agrees to compensation in principle, and appoints the Chief Government Valuer to calculate it	Valuation is done in September and October 1998, and a valuation report is released in March 1999
August 1998	Chief Judge summons the Chief Government Valuer to give evidence	The valuer defends the methods used for valuation and the proposed compensation amount of USh2 021 513
September 1999	Chief Judge makes the court ruling	Compensation of USh2 021 513 is awarded, with interest at 25 percent
September to November 1999	UIA asks High Court to review judgment,	High Court upholds judgment over principal and allows UIA to appeal over interest
March 2000	UIA pays the farmers principal of compensation	UIA secures the land title and authorizes EIA to develop an industrial park

CONTEXT

The conflict took place over Namanve Central Forest Reserve, located 10 km east of Kampala City. It was gazetted, i.e. listed as a publicly owned area, in 1930, with land use restricted to supplying poles and fuelwood to the poorer areas of the city. In total, it covers 2 018 ha, a third of which is inundated and is an extension of a swamp that stretches from Lake Victoria. The rest is raised, well-drained land on which eucalyptus has been planted to replace the luxuriant vegetation that once existed. Environmentally, part of the reserve is a wetland that purifies water before it enters Lake Victoria (an international body of water), which supplies the urban population with water. Another resource within the reserve is sand, which is mined for building. The Map shows Namanve Central Forest Reserve and its location.



Mainly peasant farmers, especially from the Baganda tribe, surround Namanve, which is predominantly planted to eucalyptus trees. Before 1989, only the Forest Department planted trees there. However, the area is peri-urban and other tribes have settled there.

A large section of the local population depended on the forest for employment and sometimes for cultivation of food crops in clear-felled areas. The small towns of Bweyogerere and Seta share boundaries with the reserve, and their populations depend on it for building poles and fuelwood. Some residents from these areas were dependent on trade in poles, fuelwood and sand. Occasionally, the Forest Department found some people undertaking illegal activities, such as construction, settlement and grazing, without permits. Exercising its powers under the law, it would evict them.

Politically, the government wanted to maintain its credibility with investors it had wooed to the country, and it therefore had to prove that the environment was favourable for them by providing land, among other things. However, it is government policy to promote ecologically sound investment, and this is why the government formulated the National Environment Statute of 1995. Under the terms of the statute, certain listed projects, such as those concerned with industrial development, are subjected to environmental impact assessment (EIA). The guidelines and regulations for EIA have been developed by the National Environment Management Authority (NEMA), which has a mandate to supervise, monitor and coordinate environmental management in the country. In short, industrial or any other kind of economic expansion should be harmonized with the desire for sustainable environmental protection.

Thus it was that, in its attempt to provide land for investors, the government degazetted 1 006 ha of the reserve in 1997, for the purpose of establishing an industrial park, to be managed by UIA. The key stakeholders in this conflict are shown in the Table.

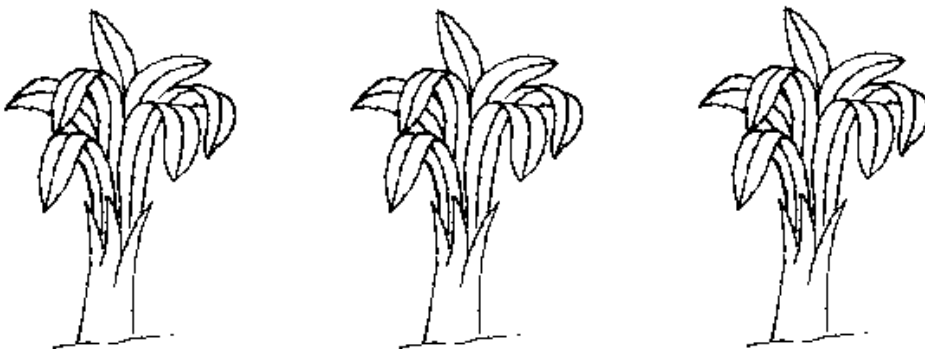


TABLE		STAKEHOLDERS IN THE NAMANVE CONFLICT AND THEIR RESPECTIVE INTERESTS	
Stakeholder		Interests	
UWFA		Compensation for their trees	
UIA		Land for an industrial park, free of any encumbrances and claim by other parties	
Ministry of Finance and Economic Planning		The amount of compensation farmers would demand	
Forest Department		Namanve to remain a forest	
Kampala City Council		Industrial area expansion	
Veterinary Department		Holding ground for cattle in quarantine	
Environmentalists		Namanve to remain a "green belt" in the capital city	
Natural Wetlands Programme		Conservation of wetlands	
The President		Land for investors	
Uganda Railways Corporation		Railway line passing through Namanve forest	

The primary stakeholders in the dispute were UIA, a government agency for processing and granting licences to investors, and the wood farmers. The farmers consisted of a wide range of people and institutions, including retired civil servants (some of whom had once served as foresters), well-to-do individuals, non-governmental organizations (NGOs) and institutions such as the army. The farmers were not poor peasants, but well-to-do individuals, since the conditions that had to be satisfied before a farmer (or a group) could apply for a minimum of 5 ha from the reserve under the peri-urban plantation project eliminated poor farmers. They could not afford to invest in such a big piece of land over a long period of time.

Serving civil servants who could hire labour to work for them were also allowed to participate in the project, and indeed some of them were foresters from the Forest Department.

It should be noted that this project was not confined only to Namanve Central Forest Reserve. It also included other peri-urban reserves in the towns of Mbarara, Arua, Jinja, Tororo, Mbale, Kasese and Soroti. It was a project aimed at alleviating fuel shortages where a biomass study had highlighted potential energy shortages. The project was funded by the Norwegian Agency for International Development (NORAD) under a broad World Bank Forest Rehabilitation Programme that started in 1988. It sought to involve local communities surrounding the forests, individuals, NGOs, etc. in replanting and managing the forest. This introduced a new concept: managing forests with the people.

It was not usual for well-to-do farmers, or even very poor peasants, to engage in such forestry. The project brought with it an innovation – working with the people in forest management – and provided two types of incentive for this. These were access to the use of government land and a nominal charge of US\$25 000 (equivalent to about US\$25) for 5 ha for five years, subject to renewal. But the way the project was designed did not allow poor peasants to participate, and the relationship between the well-to-do farmers in the conflict and the poor peasants was sometimes a “master-servant” relationship (where the latter agreed to work for the former). When there was no contractual relationship, the two groups simply observed each other.

There were two kinds of resources involved in this conflict, namely eucalyptus trees in the case of well-to-do farmers, and land (which accommodated the farmers’ trees) in the case of UIA. UIA falls under the Ministry of Finance and Economic Development, but is an autonomous body.

No regional or global institutions were directly involved in the conflict. However, of the national and foreign investors who wanted land, some wished to take advantage of a liberalized trade regime to penetrate a global market, while others wanted to be located near the largest market in Uganda, Kampala City.

CONFLICT BACKGROUND OR HISTORY

By 1995, it had become clear that, as more and more investors responded to the government’s call for investment, land around Kampala, the capital city, was becoming scarce. Complaints were raised by would-be investors about land scarcity. The President, Mr Kaguta Y. Museveni, came to know about this when the Chairperson of the Uganda Manufacturers’ Association (UMA), Mr Mulwana, referred to the problem in a speech at a trade fair organized by the association in October 1995. UMA is an umbrella organization for manufacturers and other investors.

The President asked the then Ministry of Natural Resources¹ where land could be secured. The Ministry gave him a report in early 1996: according to land-use zoning by the Physical Planning Unit of the same Ministry, part of Namanve Central Forest Reserve had been earmarked for industrial expansion under the Greater Kampala Development Plan.

One may wonder whether the farmers anticipated the land-use change, and whether their planting was speculative. Given that they had started plantations back in 1989 and increased gradually over time (see Figure on p. 53), following standards that had been set for all eight peri-urban areas, it is difficult to argue that the motive was speculation. Besides, they were scattered in different compartments within the reserve (compartments 1, 2, 10, 13, 15 and 16). Others were not affected by the degazettement (see Map on p. 44) and they maintained their plantations.

Based on the report from the Physical Planning Unit, the government went through the process of degazetting the reserve. Because gazettement is authorized by Parliament, degazettement is also effected by the same institution. So, degazettement had to be tabled and discussed in Parliament. Some members of Parliament, especially members of the sectoral committee on natural resources, challenged the decision because they had not been consulted before the matter was brought to Parliament. They felt that the Executive (Cabinet) was undermining their authority. Their Chairperson was the Late Hon. David Mageezi. They sought to defer degazettement and as a compromise demanded that a compensatory area be found for a plantation.

A meeting was also held between the President and the Parliament's sectoral committee on natural resources. The President wished to secure land for an industrial park after consultation with technical departments of the government. He argued that, being under a monoculture of eucalyptus, Namanve did not have a high biodiversity value. Environmentalists argued that it would deny Kampala the only forest ecosystem whose services were needed. Journalists followed developments and the matter received extensive coverage in the local media.

After several other consultations and meetings, Parliament, including the sectoral committee on natural resources, agreed to degazette only a part of Namanve (1 006 ha). The Minister for Natural Resources gave the order for degazettement on 30 December 1996. This was effected under Statutory Instrument No. 1 of 1997. The instrument amended the Forest Reserve (Declaration) Order of 1968. The effect was that the 1 006 ha (consisting of compartments 1, 2, 10, 13, 15 and 16 in Namanve Central Forest Reserve) ceased to be a forest reserve with effect from 30 December 1996, the date of the order.

1. The Ministry has since been renamed the Ministry of Water, Lands and Environment.

The farmers started panicking, fearful that they were about to lose their investments. Mindful of the threat, they started to hold informal meetings among themselves to discuss what to do. Eventually, they decided to form an association and register it with the Registrar of Companies, which they did in February 1997. The name of the association was the Uganda Woodfarmers' Association (UWFA).

By being registered, the association became recognized in law as an entity, with the powers to sue and be sued in its own name. The members also elected an executive committee. The total membership of the association was about 70 people. In law, a legal entity is recognized as an artificial person entitled to certain rights in accordance with the law under which it is formed.

In February 1997, Mr S. Kagoolo, Chairperson of UWFA, wrote to the Executive Director of UIA, asking to negotiate compensation on behalf of the members for their trees only. They were not asking for compensation for land since they had only been given permits to *use* the land to grow trees, not to *own* it. UIA did not respond. In June 1997, Mr Kagoolo wrote once more, but again he did not receive a reply. The panic and fear among the farmers intensified.

In the meantime, UIA had begun the process of taking possession of the degazetted area. On 10 February 1998, ULC offered a lease to UIA for the degazetted land (1 006 ha). A lease is conveyed in the form of a legal document prescribing the lessee, the land area, its location, and the terms and conditions for leasing it.

When UWFA's members learned of this development, they realized that unless they lodged their complaints quickly, UIA would acquire title to the land.

In that event, there was a risk that UIA would remove the farmers' trees before any compensation was paid. Even with the likelihood of compensation in retrospect, once the evidence (trees) was removed, the farmers' chances of negotiating fair compensation would be reduced. Accordingly, they acquired the services of a lawyer, Mr Muhanguzi. There was one major requirement concerning the choice of lawyer: the person chosen had to be convinced that the farmers had a good case, for he/she had to be willing to be paid his/her professional fees after the court ruling.

Mr Muhanguzi conducted a search with ULC and established that UIA had applied for a land title. ULC is the only agency in Uganda mandated to issue and transfer land titles. It has a central registry for all such titles. The lawyer advised UWFA that the only way to prevent UIA from acquiring a land title was to lodge a caveat with the Registrar of Titles in ULC. A caveat is a form of complaint or warning stopping someone from doing something unless the person raising the complaint withdraws it or his/her consent is sought in effecting a transaction. The caveat was lodged with ULC on behalf of farmers in July 1998. Lodging

caveats with ULC until the grievances of the aggrieved party are listened to and resolved is normal practice under Ugandan law.

In addition the farmers, represented by Mr K Twijukye and others, filed a case in the High Court in July 1998 (Case No.761 of 1998). The legal process in Uganda follows a long vertical structure in the following order: Local Council 1 (LC1) Court (village level), LC2 Court (parish level), LC3 Court (subcounty level) and LC4 Court (county level). Then follow Grade 3 Court, Grade 2 Court, Grade 1 Court and the Chief Magistrate's Court. Higher still there is the High Court. Above this are Courts of Appeal and the Constitutional Court of Appeal, at the same level. Above them all is the Supreme Court.

Case No. 761 of 1998, Kabbs Twijukye and others (plaintiffs) versus UIA (defendant), was lodged in the High Court. This was because it was the lowest court in the legal system structure with unlimited jurisdiction over the case. The lower court (Chief Magistrate's Court) could not hear the case because, when compensation is claimed, it can only handle cases where the amount involved is less than US\$5 million.

Realizing that it could not get a land title without removing the caveat, and with a pending court case, UIA finally responded to the letters that UWFA had sent it in February and June 1997. It agreed to the issue of compensation in principle, and stated that it had appointed the Chief Government Valuer, Mr Eddy Nsamba Gayiyya, to value the woodlots. The role of the valuer was to inform the conflict resolution process about the value of the trees.

To both UIA and the farmers, the valuer was like a mediator who was only facilitating negotiations without imposing his valuation on either party in the conflict resolution processes.

The valuer arrived at a valuation of the woodlots in September and October 1998. During the valuation process, he held several meetings that were attended by staff from the Forest Department and UIA. He also collected data and information in writing from them and interviewed several people. He produced his report in March 1999.

However, UIA disregarded the valuation report for two reasons, namely that the value of US\$2 021 513 was too high, and that the Forest Rules, which constituted part of the permits to farmers, did not allow for compensation.

For their part, the farmers were satisfied with the valuation report and the amount of compensation. Because UIA was not willing to pay compensation, the farmers requested their lawyer to pursue legal action further through the High Court.

CONFLICT MANAGEMENT AND RESOLUTION PROCESSES

Overall, this conflict could have been avoided if the two opposing parties had interpreted the conditions attached to the farmers' permits in the same way. The permit (Form E) under the Forest Act of 1964 has six standard conditions.

However, these were not the focus of interpretation in the conflict. The permit has space on which the Issuing Officer (Commission for Forestry) states additional special conditions. Two out of ten additional conditions state:

1. *The renewal of the permit after 5 years shall depend on the adherence to the conditions of the same by the holder.*
2. *The Issuing Officer may at any time terminate this permit by giving the permit holder one year's notice.*

In addition, the permit is governed by the Forest Rules, under the same act. These are standard rules, and one of them provides that:

14(3) On expiration or determination of a permit, unless there is an agreement to the contrary, the holder shall not be entitled to compensation for any improvements made by him to any land to which the permit relates or for any crops planted by him in any such land and all fixtures on any such land shall become the property of the government.

The Forest Department, perhaps fearing political pressure, tried to cancel all the permits it had given to farmers. This action was based on the above provision in the permits stating that one year's notice would be given if the permit had to be cancelled by the Issuing Officer.

There was no provision for arbitration if the other party were affected negatively (see Forest Rule 14(3) above). This rule was clearly one-sided and potentially explosive. Being a group composed of individuals of generally high social, economic and academic standing, the farmers held consultations with other people who have some status in society and established good grounds to pursue their case with the government for fair compensation.

The reaction by the Forest Department exposed its weakness in still having permits with standard rules, as it had since 1964. Equally exposed were its inertia and failure to design contract-specific terms, in agreement with other national laws and culture, for building partnerships with the private sector and communities in forest management. It is true that in the past, as a party to the permits, the Forest Department had resolved some form of conflict it had had with its contracting parties. This case, however, exposed it to the wider public and brought new dimensions in interpreting the very Forest Rules of which it was a custodian.

There is another side to this story. The farmers, too, who agreed to invest in trees under the relevant conditions and rules, did so without seriously examining those rules, which were certainly one-sided and a potential source of discomfort.

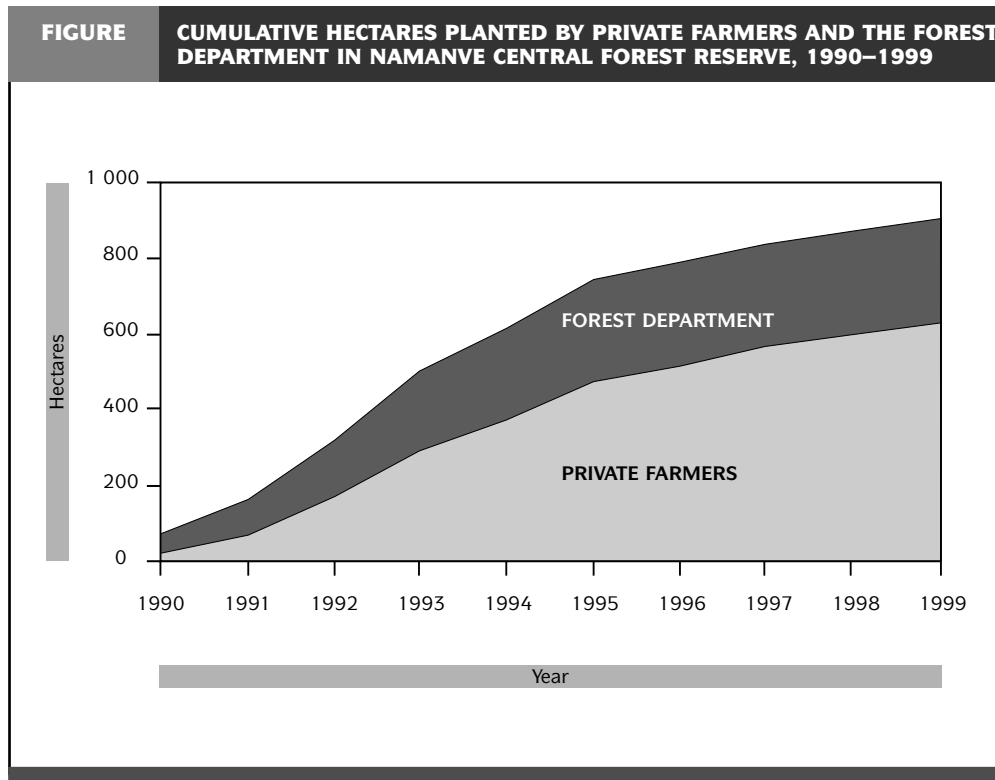
For its part, UIA argued that the land leased to it was government land free of any encumbrances or claims from other parties, and stated that it was not willing to pay compensation. It cited a precedent whereby the government (the Forest Department) had given land to a private company (a well-known soft drinks manufacturer) in the mid-1990s for industrial development, and no compensation was requested by the Forest Department for its trees.

The farmers argued that the Constitution of Uganda guaranteed them the right to own property (in this case trees), and that in the event of compulsory seizure of their property they were entitled to compensation before it was removed. It is important to note that the farmers, in their reasoning, quoted constitutional provisions. The Constitution was promulgated in 1995, after the farmers had acquired and used the permits.

They also argued that they had responded to the government's policy of private sector participation in economic development by taking up permits, a form of property right to plant trees. In natural resources management, property rights are an important concept because they give the owner incentives to manage the resource sustainably. Resources not subject to any property rights, e.g. open-access resources, have been vulnerable to overexploitation and degradation. The permit, as an example of a property right, gives access to the use of a resource under certain rules. The rules are important because they define the rights and obligations of the contracting parties and are helpful in situations where arbitration is sought.

Generally, despite its limitations, the permit system in forestry has been found to be an effective economic instrument to encourage private sector participation in reforestation of forest reserves (Kazoora, 2000).

The Figure is illustrative of the private sector participation *vis-à-vis* the Forest Department in the eight reserves in which this type of economic instrument has been employed. The trend is that the private farmers in all eight reserves are planting more land area than the Forest Department, and using their own savings to do it. So, if the farmers in Namanve Central Forest Reserve lost the case, it would send out a message to other farmers in the rest of Namanve Central Forest Reserve (which was not degazetted) and other reserves countrywide that the permits provided little protection for the farmers' efforts in reforestation. They would also have little incentive to carry on. This case therefore needed to be handled extremely carefully because of its likely effects on private incentives in reforestation in Uganda.



Source: Peri-Urban Project, Forest Department.

UIA sought legal opinion from the Solicitor General once it had refused to pay compensation to the farmers. The Solicitor General is employed by the government and, as a government agency, UIA was entitled to his legal advice. There were two reasons for this step. First, UIA is open to audit by the government's Auditor General, and second, its accounts are also open to the scrutiny of the Public Accounts Committee (PAC) of Parliament. PAC scrutinizes accountability in the use of public funds. Perhaps to protect itself against likely accusations of corruption or negligence in paying out such a large sum of money in compensation, UIA consulted the Solicitor General.

The Solicitor General argued that the degazetting of Namanve amounted to a termination of the permits of the farmers, who should be compensated for the value surviving the permits that had been cancelled (i.e. five years). At this point, UIA realized it would have to pay compensation. However, according to the Solicitor General's opinion, compensation could be for the standing trees, which had been planted for the initial period of five years.

CONFLICT MANAGEMENT AND RESOLUTION OUTCOMES

On 26 August 1999, the Chief Government Valuer was asked to give guidance to the High Court, based on the valuation report he had produced. The valuer submitted that the economic life of the plaintiffs' crops was determined on the basis that the permits would normally be extended unless breach occurred. The valuer stated that additional expert advice received was that trees took four or five years to mature for cropping.

However the original plant could have a life of 16 years. Using this as a basis, he used market prices to determine the value of the trees. But he further testified that there was an element of discounting, i.e. calculating future flows of income at current values. No other witness was called to the High Court in this case.

In his submission, the counsel for the plaintiffs (UWFA) contended that it was disappointing that UIA could not agree with the Government Valuer's assessment. His view was that the main point of contention was the interpretation of the Forest Act and Rules. The counsel argued that the acquisition of the land that the farmers had used was in conformity with Article 26 of the Constitution. This article stresses the right to own property, and to compensation.

The article reads:

- 26 (1) *Every person has a right to own property either individually or in association with others.*
- (2) *No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied:*
- (a) *the taking of possession or acquisition is necessary for public use in the interest of defence, public safety, public order, public morality or public health; and*
 - (b) *the compulsory taking or acquisition of property is made under a law which makes provision for:*
 - (i) *prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and*
 - (ii) *a right to access to a court of law by any person who has an interest or right over the property.*

In the Namanve case, the farmers did not have ownership rights over land, they only had use rights. With these use rights, they had acquired property in the form of woodlots. They wanted compensation for these before transferring the degazetted land to UIA.

The counsel for the defendant (UIA), on the other hand, argued that the Government Valuer had overlooked the provisions of the Forest Act when he val-

ued the trees. One provision stated: “the permits are given for a period of five years subject to renewal if the permit holder fulfils the stated conditions.” The other important provisions are those of Forest Rule 14(3), set out earlier.

According to the counsel for the defendant, degazetting of the disputed land terminated the plaintiffs’ permits and there was no written agreement to the contrary, as required by Forest Rule 14(3). He argued that renewal of the permits was not automatic and that the farmers had not entered into agreement to the contrary after the expiry of the first five years. The counsel said that the permit holders were entitled to compensation equivalent to the value that would survive the permits (i.e. five years) and that the 16-year period advanced by the Chief Government Valuer was quite unreasonable.

The counsel also cited the opinion of the Solicitor General, who recommended that compensation for the trees be based on a five-year period. He concluded that the law that applied was the Forest Act and asked for an order or revaluation and the removal of the plaintiffs’ caveat from the land.

In his judgment, Justice Richard O. Okumu Wengi (adjudicator) ruled that the degazettement of Namanve Central Forest Reserve was not an ordinary termination of the permits. Degazettement had changed part of Namanve from a forest reserve to public land. Had it been ordinary termination, then the area used by the farmers would have reverted to the Forest Department, which originally managed it. The judge argued that the order of the Minister for Natural Resources to degazette Namanve appropriated the farmers’ permits and the value of their investment by removing the legal basis on which it was founded. He ruled that denial of compensation would be contrary to Article 26 of the Constitution of Uganda (1995), whose provisions have been listed previously.

The judge cited several law cases to show that the “right to property is one of the very fundamental ones in all societies”. It cannot just be taken away even if the taking involves what he termed “legal engineering, such as the one adopted of degazetting the Forest Reserve”. The cases he cited were:

- ◆ Davies versus Minister of Land, Agriculture and Water Development [1996] 22 CLB 138;
- ◆ Mahboob versus Government of Mauritius [1983] 9 CLB 8;
- ◆ Blomquist versus Attorney General of Dominica [1987] 13 CLB 799;
- ◆ Akonaay and Another versus Attorney General [1994] 2 Law Reports of the Commonwealth 399.

In legal proceedings, citing from case law is as good as statutory law provided the case law does not conflict with statutory law. However, citing cases from other countries is persuasive. But if the cited case is from a High Court of Uganda whose ruling is based on the country’s statutory laws, then it strengthens the ruling.

The judge ruled that the compensation of US\$2 021 513 determined by the Chief Government Valuer should be paid. In addition, the judge ruled that UIA should pay interest on this amount, fixed at 25 percent, until it paid compensation. Judgment was given in September 1999.

After the judgment, UIA did not pay promptly. Neither did it indicate that it would appeal against the judgment. Instead, it went to the same High Court between September and November 1999 to have judgment reviewed, but the Court ruled that no review was necessary. The farmers were declared judgment creditors (owed money) and UIA was declared judgment debtor (owing money).

Subsequently, the counsel for the plaintiff (the farmers) was allowed by the High Court to attach (seize) the property of UIA to recover compensation. UIA's vehicles, for instance, could not be moved as they were pending auction. In the meantime, UIA stated that it would not pay compensation as directed by the court unless it obtained the land title first. It made another effort to appeal. It was not until March 2000 that the High Court of Appeal ruled that the farmers be paid. But it allowed UIA to appeal over the amount of interest.

Through adjudication, the conflict between the woodfarmers and UIA was finally resolved. However, it passed through several processes before resolution, namely: avoidance, negotiation, mediation and finally adjudication.

Subsequent to the ruling in March 2000, UIA obtained a title to the land and has since commissioned an EIA study, as required under National Environment Statute 1995 for industrial projects.

LESSONS LEARNED

In this case the processes that led to final conflict resolution were avoidance, negotiation, mediation and adjudication, in that order. Consultations were also held by UIA with the Solicitor General. Within each phase of the conflict new lessons were learned.

For example, during the consultations, the Solicitor General relied on the provisions of the Forest Act and Rules to give his opinion on the amount for compensation. On the other hand, at the adjudication level, the judge stated that the provisions of the Constitution were supreme.

All in all, the case highlights the important lesson that conflict resolution begins with providing for, and integrating, conflict management in the forest law or other laws.

The strategies adopted by the farmers are also of interest in this case. First, the farmers formed an association to have a more powerful voice in negotiations. Second, they registered it with the Registrar of Companies to allow it to draw up contracts, and to sue and be sued. Third, they sought the services of a lawyer when negotiations failed to resolve the conflict. Finally, they threatened UIA by attaching its property for auction after the court ruled in their favour.

There is another lesson to add to the above. If these had not been well-to-do farmers of high socio-economic and academic standing in society, they would have lacked either the confidence (empowerment) to pursue the case in the face of government hostility or the financial resources to hire the services of a lawyer. They would probably have failed to reach the adjudication level, and therefore would not have received full compensation. Thus, there may be many situations in society and elsewhere where communities' rights are violated in forest management.

The case also emphasizes the importance of property rights and property rules. The permits given in accordance with the Forest Act of 1964 constituted a contract. The farmers' case would not have been listened to if they had not had the permits because they would have been called illegal encroachers. The case also underlines the weaknesses of the Forest Rules that formed the conditions under the permits. They were one-sided, favouring the government. The Forest Act of 1964 and Rules need to be changed to reflect the current conservation philosophies, which emphasize empowerment, participation and collaboration.

The kind of language used in the Forest Act (which could be described as "command and control" language) is no longer acceptable. The government is currently revising the Forest Act of 1964, and the Namanve case will influence the way the new law will be framed.

The case is unique and interesting. It shows the Forest Department to be very conservative in its approach to contracting, relying on old, standard permit rules and Forest Rules without taking into account the specific nature of transactions and without making reference to this in contractual relations. Such a culture in the Forest Department is not conducive to building sustainable partnerships for forest management with communities and the private sector.

The case also shows the inability of the farmers, some of whom were retired senior civil servants (including foresters), to interpret the conditions under which they obtained the permits. Perhaps many areas of potential risk would have been identified if an open and participatory process had been gone through before granting the permits. It may be worthwhile having future agreements for community involvement in forestry management reviewed independently, and assessed for their feasibility in conflict management situations.

One benefit of the case is that it was a warning to those who were planning to plant trees in similar reserves. The author has been involved in a consultancy to

establish the feasibility of creating a forest fund for use by the private sector to plant long-rotation trees (for periods of more than 20 years).

The reaction of the would-be beneficiaries of the fund is that the terms for using forest reserves to plant such trees must be clear from the beginning, and the basis for compensation must be set out in the permits. They all cite the Namanve case.

There was a possibility that the judge could have rejected the valuation of the Government Valuer and requested an independent valuation instead. But in most government undertakings, it is common practice to refer technical issues to their own technical departments. It is also likely that if UIA and the farmers had used a valuer acceptable to both sides (other than the Government Valuer), the Government Valuer would in any case have been called upon to give his opinion.

It is also likely that if the country had not returned to the rule of law, the government would have used coercion to impose its will. Most forest reserves in Uganda were heavily encroached during the years of bad governance (1971–1985).

The analysis in the case study raises some interesting practical policy questions and issues. One of them relates to the involvement of poor and illiterate communities. The question that arises is: What mechanisms or institutions can protect such people in the event of conflict, when they may have no power to organize themselves?

The second issue relates to policy formulation. Forest resources have different attributes, e.g. growth rate, use values, location. In drawing up good policy instruments, one of the questions that must be answered is: What is the nature and what are the attributes of the forest resource in which many potential stakeholders are being invited to participate?

The final question is: What should be the design considerations in the property rights regimes for forest management?

REFERENCES

Bromley, D.W. 1991. *Environment and economy: property rights and public policy*. Oxford, UK, Basil Blackwell.

Kazoora, C. 2000. Opportunities for using economic instruments in sustainable use of forests in Uganda. A research report to the World Conservation Union (IUCN).