

Policy brief: Land rights violations in Uganda during Covid19 Lockdown

November 2020

Executive statement

This policy brief provides major highlights on land rights violations in Uganda during covid19 lockdown. As such it is an abstract showing evidence of land rights violations, the drivers, how Ugandans responded to land violations amongst covid19 restrictions. Key messages are herein summarized; after a brief introduction is given. Details on occurrence of land rights violations, community response to the violations and what needs to be done in the administration of land during a pandemic are listed. The final section provides an Outlook on the remaining gaps in land rights administration and violations and strategizes on how best to fill in these gaps in Uganda.

Key Messages

1. 32.9% of the surveyed Enumeration Areas reported to have experienced land rights violations in their communities during covid19 lockdown. This indicates that even in light of the ministry of land guidelines, a third of community members were faced with land rights violations.
2. Communities experienced both large scale and small scale land evictions, with main perpetrators of land rights violations being neighbors (34%), family members (24%) and investors (9%).
3. Covid19 lockdown exacerbated Social norms that undercut women's Land rights. Inheritance challenges especially on boundaries and the right of the girl child to own land amplified land violations during the lockdown. Decisions of who is to use what portion of land were predominately made by clan leaders who are predominately male.
4. Large scale Agro investments, infrastructure development, response to effects of climate change, conflict of ministry of land guidelines on land management and the law were the main drivers of land rights violations during the lockdown.
5. Reporting of land rights violations to land administrative units was a challenge, with mobility limitations. Referrals were made only to offices that were nearer to the victims; for example, 36% referred land matters to the Local Council I, 20% reported to the Police while 8% managed to refer to court.
6. Ugandans preferred their cultural institutions (42.84%) as the main authority that would protect them from land rights violations during covid19, followed by the courts of judicature (8.79%) and the office of the president (8.23%). Cultural institutions' interests are to have harmonious communities and hence the people trust these institutions even in a pandemic.

Introduction

In March 2020 when the first case of Covid19 was first announced in Uganda, a number of actions geared towards reducing the spread of the deadly virus namely; closure of schools, suspension of public and private transports, and ban on large gatherings, curfews and social distancing were announced and executed by government. Specific ministries made a number of

pronouncements and guidelines to respond to pressures caused by the pandemic. As people pondered on how the disease spreads, what destruction it makes to the body, how to prevent the spread, little attention was given to production, trade and public administration of factors of production such as land. As most businesses closed, people returned to their villages and focused on agriculture or crop production to buffer their incomes and secure food. While the Covid 19 lockdown raged on, some opportunistic actors such as government, land owners and wealthy investors used the crisis to evict people from houses, land and informal settlements without prior notice and sometimes with the aid of security institutions. Service delivery all over the economy was greatly disrupted; majority of the informal workers are involved in small-scale businesses such as weekly roadside and rotational markets, small retail shops, street hawking/vending, casual labour resorted to subsistence agriculture to support their livelihoods.

Key findings

I. One out of three Enumeration areas faced land rights violations during covid19 lock down

Incidences of Land rights violations continued to rise during covid19 lockdown mainly due to inability of complainants and defendants to access court or land administration offices and protection of large scale and small scale perpetrators by well placed individuals and offices. According to this study, 32.9% of respondents reported to have had land rights violations in their community and these violations mainly occurred as evictions, restrictions to access land, destruction of food and encroachment on land. Whereas communities occupying lake and river shores undertaking businesses and residence thereon were evicted following the Government of Uganda announcement of forceful evicting of all settlers at the shores of lakes, rivers and forests. An estimated population of 170,000 peopleⁱ who government called 'encroachers' and 'conscious liars' occupying the legally decreed protection zones of wetlands, shorelines and forest reserves were evicted to allow government do the necessary boundaries clearanceⁱⁱ stemming from a presidential directive of April 21st.

A total of 44.34% of the communities in Kiryandongo district noted that they had different kinds of violations on land during Covid-19 namely; food destruction, land evictions, encroachments and lack of access to land among others. The same was reported in many other districts as land rights violations led to loss of property, life and food. As shown in Figure 1 below, Investors, Police and Landlords were said to be the main perpetrators of land rights violations in Kiryandongo district. Large scale agro investments, infrastructure development, response to the effects of climate change like raising water levels, conflict of guidelines and the law and need for increased agricultural outputs by families are the main drivers of land rights violations in Uganda.

Figure 1: Showing who violated Land rights in Kiryandondodistrict during Lockdown

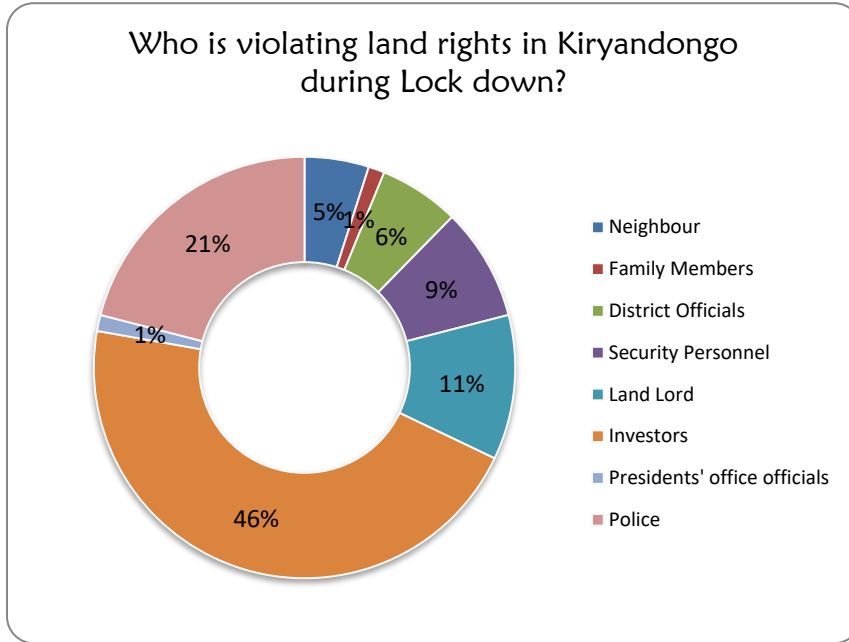
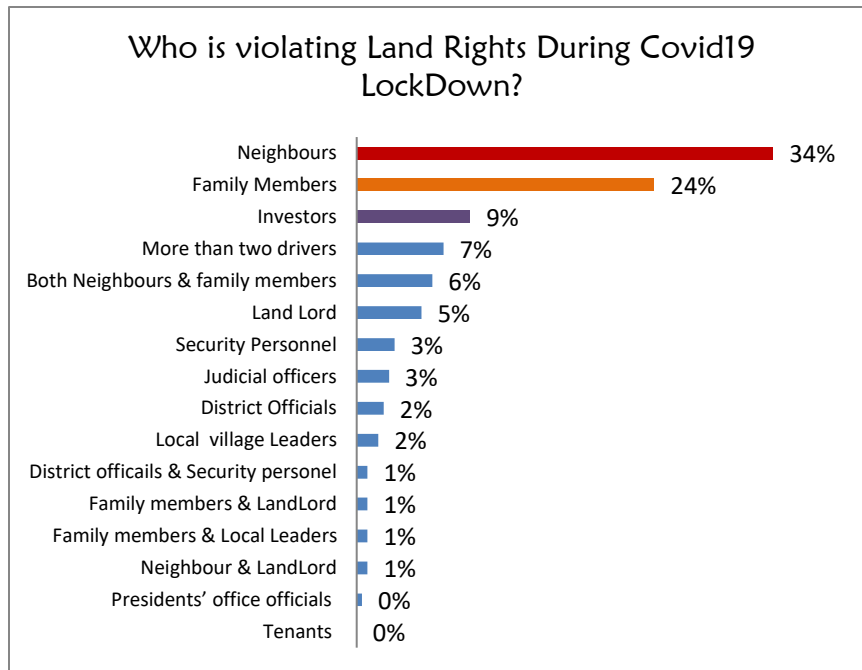


Figure 2: Showing who violated land rights in Communities



Communities had mixed approaches in responding to land rights violations during lockdown, some resorted to violent means of destruction of property and loss of life while others sought peaceful means of dialogue and compromise.

2. Access to Land Justice remained a challenge during the lockdown

On March 31st 2020, more stringent measures by the executive were set, the administration of justice was not listed among the essential services, yet the consequences of the public

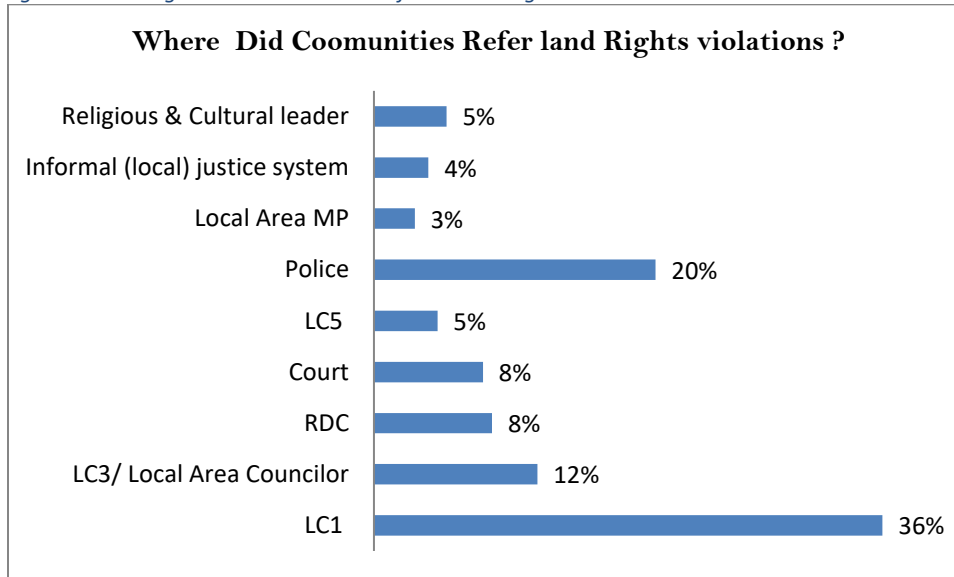
disobedience of the measures meant that violators were sanctionable by law. The accessibility of judicial processes, such as arraignments, the taking of pleas, and the right to apply for bail were given little or no thought. This made the legally provided timeline for the filing of civil matters and the required efficiency in the judicial ethical code difficult to maintain¹. With time these measures were renewed, in the Uganda Chief Justice's "Guidelines for online hearings in the Judiciary of Uganda" (29th April 2020), an online hearing of cases was enabled with technological and logistical challenges. The Judiciary was operating during lockdown albeit with a lot of restrictions such as; suspension of all court hearings and appearances for the period of 32 days in late March. Prisoners and remandees were not presented to court; there was suspension of all execution proceedings, except where attachment had already taken place. Courts continued to handle certificates of urgency and taking plea for serious cases and bail applications however, only the applicant and his/her lawyer, or in the case of bail application, the sureties were allowed in court. Still in this period land matters were not handled.

Communities by and large referred land violations cases to available offices with proximity to their dwellings. 36% referred land matters to the LCI while 20% reported to the Police². The local politicians like area councilors and the LC3 chairpersons were also contacted to intervene. As shown in the figure 3 below, police and the LCIs received more complaints from communities, the police opened files and interrogated the matters; charges of criminal trespass, assault and malicious damage were preferred since they could be heard in court. The main issue of contention; Land rights in many incidences were left at the investigation stage limiting the access to land justice generally. During the pandemic, selective justice surfaced as few well connected individuals or communities had their issues hard for example in Kassanda, tycoon Abid Alamⁱⁱⁱ was only arrested and charged before Court after the intervention of the State House Anti-Corruption Unit that reports directly to the President. In fact, it is reported that he was only arrested after a Presidential call for arrest. This is largely because his attack on Mugenyi particularly, a serving military personnel, was seen as crossing the yard of those he can trample upon with the help of the police. The concept of the poor suffering land injustice due to lack of money to facilitate Court process to protect their land comes alive in this case like Abid Amin's.

¹COVID-19 and the Administration of Justice: A Reflection on Ethical Judicial Conduct By: Justice Henry Peter Adonyo

²Amuru, Mooroto and Luuka used the police more among other referrals

Figure 3: Showing where communities referred land rights violations



As regards which authority can strongly protect Ugandans from possible land rights violations during covid 19 Lockdown; many preferred their cultural institutions (42.84%) followed by the courts of judicature (8.79%) then the office of the president (8.23%). The lock down presented an opportunity to the cultural establishments at the village or community levels to address land related matters since they were closer to the community and could understand the land issues on ground better. The Land Act recognizes Ward Executive Committee Courts as courts of first instance in respect of land disputes; these structures remain non-existent due to financing challenges. However, the pandemic exposes the crucial need to have such structures nearer the communities. Even with courts of judicature remaining closed to handling land related matters, Ugandans still believe they are crucial in protecting their land rights hence a need to create an environment where they remain open at all costs.

3. Land administration units remain uncoordinated a recipe of more land rights violations

Covid19 Pandemic has exposed a need to have all institutions, Ministries and government departments that are involved in the administration and use of Land to coordinate so as land rights are not disregarded because of the confusion. During the lockdown, Uganda has witnessed uncoordinated actions and decisions from various government entities that live a lot to be desired. These uncoordinated actions led to the violations of land rights in some areas across the country for example; Evictions of “encroachers” by NEMA from water body boundaries as directed by the minister of Water and Environment under the president’s directives; firstly conflict with the guidelines set by the Ministry of Lands that halted any kinds of evictions, but secondly, acts against the NEMA act Regulation 52 and onwards where the Authority must work in collaboration with Ministry, department, parastatal agency, local government system, or public officer in which the law vests functions of control or management of any section of the environment. What is seen the pandemic created short cuts to these provisions. For example the evictions in Mutuungo, Kampala were done by KCCA and NEMA with no consultations made and involvement of the Division leadership at Makindye and the people that had vested interests in the said land either as tenants or leasee.

In Kiryandongodistrict Evictions happened against the Minister of Lands directives but also in dis-regard of the preparatory visit of the minister that was slated for 14th April 2020 to facilitate discussion between the investors and the communities. Security agencies provided security to the investors to continue with evictions yet the ministry of internal affairs participated in the development of the said Ministry of Lands guidelines during the cabinet meeting sessions.

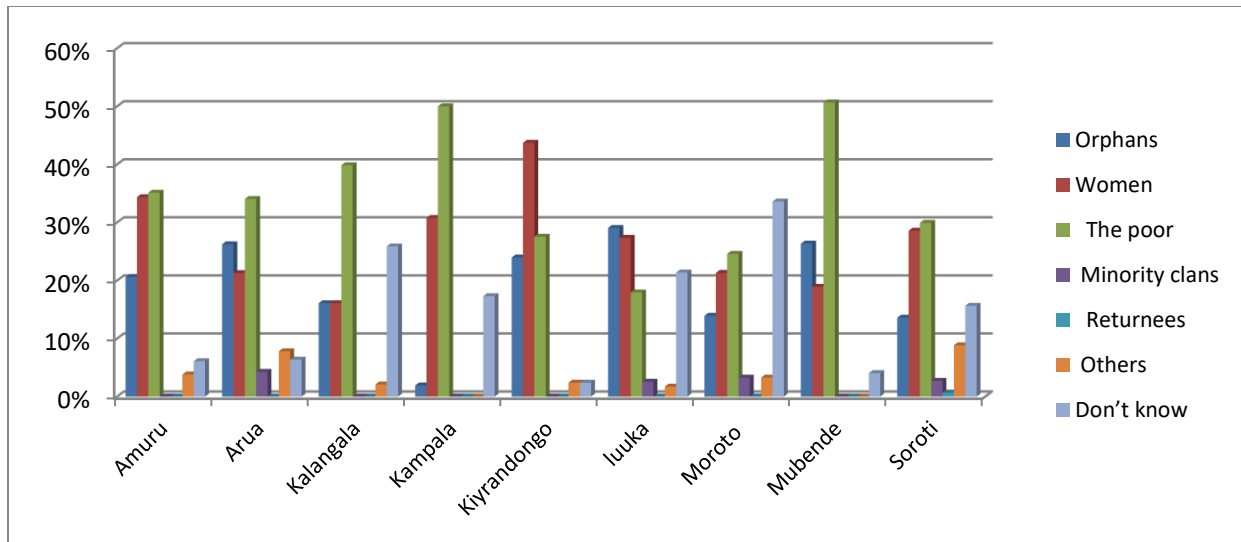
In July, 2020, over 1,600 households were evicted by the Office of the Prime Minister (OPM) from the land hosting the expansive Kyangwali refugee settlement in Bukinda-made of 28 villages, Kyangwali sub-county in Kikuube district.^{iv} The government, interestingly, averred that this was a mere relocation and not an eviction.³These mixed actions of evictions or relocations by OPM versus call for no evictions by MoLHUDnot only places the people at crossroads as far as land rights are required especially during a pandemic but also leave them in distress hence resort to actions of survival. For instance, in a counter to resist the evictions, many communities in Kyamgwali Sub County ran away from the settlement and sought temporary shelter in wetlands and forests nearby.These examples therefore illuminate the dire need to have all MDAs work together in protecting land rights to land users and owners even in a pandemic.

4. Covid19 lockdown exacerbated Social norms that undercut women's Land rights

Women were the biggest land users during covid19 lock down yet they remain the least land owners; both through ownership or inheritance. It should be noted that women have land rights under some customary tenure arrangements, like in Acholi, Langi and Iteso societies. However, some women did not realize and benefit from these rights during the lockdown because decisions of who is to use what portion of land were predominately made by clan leaders who are predominately male. The inheritance quagmire of women and the girl child needs to be brought forward so as to have them (women& girls) enjoy their rights; land rights inclusive. This study revealed that most small scale land rights violations during covid19 lockdown had family and relatives' interests as drivers of land violations. Inheritance challenges especially on boundaries and the right of the girl child to own land amplified land violations during the lockdown. As many relatives returned home, the contest to use land for food production became eminent. These disparities between the rights of women and men to own and use land arose from violation of customary law. Women returning to their natal families due to the pandemic faced challenges from their own brothers and family members over using their ancestral land; rendering them destitute and isolated. In Amuru, Kampala, Kiryandongo, Soroti and Luuka districts, women and the poor community members were the most affected by land rights violation as shown in the figure below.

³ Ibid.

Figure 4: Who was most affected with Land rights Violations during Covid-19 lock down



5. Economic values on land were advanced more than the Human rights

During the lockdown, Security agencies protected interests of business people than the rights of the communities. This was observed in Kiryandongo, Ndeeba, Hoima, Mubende and Amuru districts. For example, it was reported in Kiryandongo District that multinational companies used the first 35 days of Covid-19 lock-down, which ended on May 5th, 2020, to forcefully dispossess more than two dozens of households to pave way for largescale farming. They demolished houses belonging to the affected communities and hundreds of acres of maize, sweet potatoes, cassava grown and owned by poor communities. They did it under the protection of state police, army, and private security companies. Individual community members whose properties were destroyed, were at the same time blocked by police from opening up criminal cases against companies and their agents and yet the police happily arrested and detained them on trumped charges by the said companies. The state should protect the land rights of citizens in the face of investments, following clear procedures appeals and arbitration but this was not done.

Most people were evicted without compensations during the lockdown. Those who were willing to relocate were given little compensations as little as UGX150,000 for someone who owned more than 5 acres of land. The amount was not determined by a judicial system. The loss of land rights caused further disadvantages e.g. damages to household properties, cost of moving, extra expense to re-start or build a new house in a new location. The legal basis of compensation demand that these consequential damages are additionally compensated. The loss of property ownership rights has to be compensated by market value. Individuals should therefore not be evicted from their homes nor have their homes demolished by public or private parties without judicial oversight.

Policy Recommendations

Implementation of the recommendations below by policy makers and national actors will help address these limitations and Gaps of Land Administration & respect of land rights during a pandemic.

1. *Uganda needs to put in place an Inter-Sectoral Coordination and Cooperation Frameworks of Land administration so as to cure dysfunctions in the land sector;* The pandemic has exposed further how un-coordinated the land sector is. Therefore, as a matter of urgency, there is need for development and make available an inter-sectoral coordination & cooperation framework between the different MDAs across the board to help in ensuring smooth land administration while focusing more on the protection of land rights generally. In times of disasters, the frameworks need to spell out a continuation of land administration by the different MDAs to respond to the challenges of land rights violations.
2. *Land mediation Committees to manage conciliations during pandemics and beyond are of great importance hence need to be considered in the review of the Land Act;* Pandemics confine people in a given locality, which breeds more conflicts. A lot of land Rights matters during covid19 lockdown in communities were settled by mediation. It's important therefore for the law to be amended to incorporate mediation committees at the sub county and lower level which will have quasi judicial powers with mediation element and more friendly in nature. These mediation committees should also incorporate the cultural or traditional systems to tap into their harmony creation and non-adversarial approach to dispense justice and to have as their decisions guided and respected by the judiciary among other entities. These mediation committees will play a vital role of reaching the confined people during pandemics and generally the populace during normal times thus creating harmony on land in most volatile areas and in times of disasters.
3. *Expedite the formation of land acquisition, rehabilitation and resettlement policy and include clauses of land administration during disasters specifically increase the disturbance allowance to 65% in times of pandemics;* To protect people's land rights, Ministry of Lands should finalize the land acquisition bill as well as the rehabilitation and resettlement policy to provide a clear path for communities to complex land challenges that come with displacement/evictions. The policy should clearly address land rights challenges faced in case of pandemics too. For example currently, a disturbance allowance of either 15% or 30% of the total compensation amount depending on the grace period given (minimum 6 months or less than 6 months respectively), is paid to both land owners and tenants. However, during a pandemic the compensation costs of transportation, disturbance, settling-in and transition support need to be considerate since costs skyrocket during a disaster or pandemic just like it was the case with covid19 lockdown. It's proposed that a disturbance allowance of 65% in a pandemic be offered to meet the PAPs' needs and encourage relocations too in such times.
4. *Support MoLHUD and other land administration units to execute their mandate during pandemics;* The Ward and District tribunals are currently nonfunctional because of funding challenges. Settlement of evictees during the pandemic was slow in some areas and nonexistent in other places yet the budget of the MoLHUD remains the same or even worse reducing. There is need to have all ministry of Land and the District Land

Boards to keep all channels of communication open amidst any pandemic because without channels being open it will be hard to detect land rights violations at the grassroots. Budgetary and technological support should be considered to have all the area land communities, parish and district structures capacitated to detect and handle land rights issues during pandemics & calamities. Technology used by the various land administration units should make it easier to share information with other functionaries of land justice like the judiciary and security organs in protecting land rights of people during and after a pandemic and the policies that facilitate the use of such technologies should be harnessed.

5. *Development and realization of a policy on evictions*; guidelines on evictions alone by MoLHUD will not address the root cause of the problem. A comprehensive policy should be set up to address the problems of land evictions and this policy should incorporate a thorough social impact assessment for activities that may result in land eviction. The policy should clearly discourage land evictions during pandemics in order to safeguard land rights. The current guidelines give a lot of powers to the police that necessitates a lot of to and fro engagements with the security apparatus before evictions are made. The policy adjustment should seek to harmonize the various roles of stakeholders while amplifying the need to secure the rights of the land owners and users in a pandemic.
6. *Incorporate land administration guidelines during pandemics into the Law*; Covid19 pandemic has presented a need to manage land administration in a way that is mindful of the land rights of people under confinement. The guidelines set during the pandemic shouldn't stop at being administrative tools only but be incorporated into the law so as they can be of much effect.

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ⁱⁱⁱ See Apollo N. Makubuya and Racheal Kugonza, 'Revisiting the Legality of Evictions on the Shores of Lake Victoria,' 5th/Aug/2020 Accessible at <http://www.mmaks.co.ug/articles/2020/08/05/revisiting-legality-evictions-shores-lake-victoria>; Kenneth Kazibwe, 'Museveni directs encroachers on wetlands, lakeshores, river banks to be evicted immediately,' The Nile Post, 30th/April/2020. Accessible at <https://nilepost.co.ug/2020/04/30/museveni-directs-encroachers-on-wetlands-lakeshores-river-banks-to-be-evicted-immediately/>

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^{iv}Pascal Kwesiga, 'Bunyoro petitions govt over evictions, floods,' The New Vision, 4th August, 2020. Accessible at <https://www.newvision.co.ug/news/1524092/bunyoro-petitions-govt-evictions-floods>; For an exposition of the history of this conflict, see KyomugisaFrankline, 'Second Land Eviction In BukindaKyangwali', The Voice of Bunyoro, 1st/August/2020. Accessible at <https://www.facebook.com/The-voice-of-Bunyoro-166822147367282/videos/second-land-eviction-in-bukinda-kyangwali-1st-august-2020by-kyomugisa-frankline/628123157811489/>

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