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# Russia: Modern Problems of Arbitration in Land Disputes

Aleksey ANISIMOV  
Vladimir GAVRILENKO

**Abstract:** The article is devoted to the issues of the legal regulation of the procedure of dispute resolution in the sphere of land use and protection by arbitral tribunals. The authors prove the need to adjust the Russian legislation on arbitral tribunals, that artificially limits their number and thereby prevent the access of economic activity subjects to justice. Particular attention is paid to the need to strengthen the legal force of arbitral awards on land disputes, including the consolidation of their right to issue writs of execution that are compulsory for the state registration bodies for registration of the rights to real estate without coming to the state courts of General Jurisdiction. The development of the system of arbitral tribunals and their competence will help to strengthen the guarantees of land and other economic rights of Russian entrepreneurs.

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## Introduction

Arbitration is an alternative to state justice and it is carried out by a non-state independent organization. The possibility of the influence of public authorities on the disputes resolution is insignificant. Arbitral tribunals are not the judicial authorities and therefore are not included in the judicial system of the Russian Federation.

The objective of the arbitration is to settle legal conflicts and ensure the voluntary ex-

execution of obligations. This objective is represented in the fact that arbitration is chosen by the disputing parties themselves who voluntarily entrust the decision making on their case to a certain arbitration institution and undertake to follow this decision in advance. The power of the arbitral tribunal is based not on the General law but on the contractual principle and the will of individuals. Arbitration trial of disputes and international commercial arbitration are sometimes called "private justice" not accidentally (Lebedev, 1999, p. 62).

Arbitration is one of the most appropriate forms of jurisdiction for the market economy, as it involves the possibility of choosing arbitrators from the amount of qualified independent specialists on the initiative of the parties of the conflict and, therefore, implies an individual approach to every particular dispute. The existing opportunity for the parties to choose a judge on their own is one of the basic principles of the organization of the arbitration proceedings and an important factor in protecting the rights and interests of the parties.

The most significant aspect of the legal nature of the Institute of arbitration is its non-state pattern that makes it possible to distinguish it from the state court. The arbitral tribunal has the competence to consider a dispute only in case if there is an arbitration agreement between the parties that confirms the existence of a clear consent of both parties. The state court is a body of the judicial power that has competence due to the direct reference of the national law, not by agreement of the parties. Therefore, the state court and arbitration tribunal are independent legal institutions of different legal nature. It seems that the arbitration trial of disputes is an important part of the legal sphere of non-state economic justice.

There is no doubt that each type of the economic activity has its own specific features that must be taken into account and this leaves its mark both on the choice of arbitrators and on the cases considered. Therefore, further we will try to examine the existing types of arbitral tribunals, their advantages and competence, and also we will try to prove the advantages of non-state justice by the example of land disputes resolution.

## **1. Competence and types of arbitral tribunals in the legislation of Russia**

### ***1.1. Competence of arbitral tribunals***

The mandatory condition for the dispute to be redirected to the arbitral tribunal is the existence of a valid arbitration agreement between the parties. "*The conditions of validity of the arbitration agreement are determined in accordance with the civil law applicable to civil transactions*" (Vladimirova, 2007, p. 14). The parties conclude this agreement voluntarily and independently determine what elements it will consist of. They voluntarily agree on the arbitrators who will consider the dispute and on the compulsory and voluntary execution of the decision of the stated arbitrator.

The interest of the parties in the proceedings is in the arbitration trial of disputes and in the judgment delivered by a third party not interested in the matter of the dispute. As a result, the dispute is finally resolved. The arbitration agreement shall be in writing and it shall constitute a separate document or be contained in another document signed by the parties or shall be concluded by an exchange of letters or other communications fixing such agreement. The rules on compliance with the written form of the arbitration agreement almost completely coincide with the procedure for concluding the contract in writing. There is an interesting situation with a contract that has not entered into force, but contains an arbitration clause, which took place in the award of the American arbitration in the case of Republic of Nicaragua v. Standard Fruit Co. The contract contained a clause on the consideration of the dispute in arbitration, but negotiations regarding the main contract were not completed. However, the above dispute was referred to arbitration (Kanashevsky, 2006, pp. 646-647).

Arbitration tribunals are subject to disputes between the parties to civil law relations, including individuals and legal entities, unless otherwise provided by law. Some types of disputes cannot be considered by arbitration courts because they are public-legal. It is necessary to specify the main types of these disputes, including disputes on consumer protection, disputes on contracts in the field of public procurement, disputes in the field of antitrust regulation, disputes on the privatization of state and municipal property, disputes on bankruptcy, etc.

### **1.2. Types of arbitral tribunals in Russia**

Arbitral tribunals in Russia are now divided into two types: permanent arbitration institutions and single-time (ad hoc), created for consideration of a particular dispute. The rules adopted by these arbitration institutions are applied to the activities of the permanent arbitration institutions. The set of the above rules is called the regulations of the appropriate arbitration institution. Finding resolution to a dispute in an isolated arbitration (ad hoc) established to consider a particular dispute, the arbitrators and the parties of the dispute should determine the procedural rules which they will follow. They may develop such rules themselves or agree that their dispute will be resolved in accordance to the model arbitration rules. It should be noted that *“the courts for the resolution of a particular dispute differ most significantly from the permanently functioning arbitration courts by the fact that they do not have the rules that the arbitration trial has”* (Skvortsov, 2010, p. 11). *“The advantages of ad hoc arbitration are possibly to become apparent when it is used towards a dispute that has already appeared. Knowing the nature of the dispute and having an understanding of the circumstances related with the dispute, the parties may work out their ad hoc rules so that they correspond properly with the requirements of the particular dispute”* (Huleatt-James & Gould, 1999, p. 35).

Further, we will analyze the legal status of permanently functioning arbitration institutions. The current Federal law N 382-FZ dated December 29, 2015 “On arbitration (arbitration tribunal) in the Russian Federation” established new rules for their arrangement. Previously, these institutions could be created under any legal entity; now, only under non-profit organizations (NPOs) that have the right to carry out the functions of a permanently functioning arbitration institution.

The right to carry out the above-stated functions is granted to the NPOs by the government of the Russian Federation on the recommendation of the Council for the improvement of the arbitration that was established under the Ministry of Justice of the Russian Federation. It includes the representatives of the state bodies (no more than 1/3), chambers of Commerce and Industry, public associations of lawyers and entrepreneurs. The Council mentioned above takes into account the reputation and field of activity of the non-profit organization where the arbitration institution is established. Also, the attention is paid to the list of arbitrators and their professional reputation.

The procedure of getting the recommendation of the Council and the subsequent permission of the Government of the Russian Federation is rather strict. This is evidenced by the fact that, at present, only two permanently functioning arbitration institutions have received the right to carry out their activities (the Arbitration Centre at The Russian Union of Industrialists and Entrepreneurs and the Arbitration Centre at the Institute of Modern Arbitration).

Moreover, it is pointed out in the Russian legislation that the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation and the Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation have the right to carry out their functions without the additional right to such activities. The above-mentioned institutions belong to the sphere of international commercial arbitration and they are the oldest arbitration institutions in the Russian Federation. The International Commercial Arbitration Court (ICAC), a former Foreign Trade Arbitration Commission, was founded in 1932. The Maritime Arbitration Commission (MAC) was founded in 1930. The activity of these organizations is regulated by the Federal law N 5338-1 dated July 7, 1993 – On international commercial arbitration.

Thereby, in Russia, arbitration institutions can be divided into international commercial arbitration and “internal” arbitral tribunals that resolve disputes of subjects within the country (Alekseev, 2012, pp. 4-5). International commercial arbitration is an arbitral tribunal, the main purpose of which is to hear an international commercial dispute in accordance with the determined procedural order; that results in the decision making is compulsory for both parties. Let us note that the presence of an extensive international legal framework has great importance for the international commercial arbitration. Its activity is based on a large number of international conventions. International commer-

cial arbitration is created in order to resolve disputes of special category, particularly disputes arising from civil law and mainly trade transactions that include a mandatory “foreign element” in one form or another. The parties of the considered dispute should belong to different legal systems and national jurisdictions.

## **2. Advantages of arbitration**

The arbitral tribunal has a number of advantages over ordinary commercial dispute resolution. The trial is conducted only by the tribunal if there is an agreement of the parties on its mandatory nature. There is a limited number of cases when it can be contested. The arbitral tribunal is a contractual legal institution. It is based on a voluntary agreement between the parties. It is unacceptable to enforce economic entities to arbitration trial without their voluntary consent. As an example, the case of the ICAC № 77/2002, where the claim was filed by a Russian company against a Polish company in connection with non-payment of the goods delivered. The competence of the ICAC was determined directly in clause 11.1 of the contract between the parties to the dispute. This contract provided that dispute resolution falls under the jurisdiction of the ICAC in accordance with its Regulations (Rosenberg, 2004, p. 259).

The parties of the arbitration trial have incomparably broader rights to determine the place of the arbitration trial, the applicable law and/or the dispute resolution procedure. The parties of the dispute can choose the arbitrators on their own, whom they trust more and whose competence is the most suitable to the subject of the dispute.

It is obvious that the ability to choose the arbitrator on your own is the most important principle of the arbitral proceeding and also it is an important factor in protecting the rights and interests of the parties in the arbitration trial. The ability to choose the arbitration allows the parties not to be limited by the place of residence of the citizen or the location of the legal entity.

The choice of applicable law in arbitration allows the parties of the dispute to determine the most appropriate legal system for resolving possible conflicts. Accordingly, this allows the representatives of the parties to avoid the work in an unfamiliar legal system where the interests of the parties cannot be protected effectively. We consider as an example the case of the ICAC № 58/2005 about the cancellation of the contract of sale of petroleum products. Russian law was recognized as applicable to the substance of the dispute, since clause 12 of the Contract contained the following provision. This provision says that “The parties to this contract have agreed that the applicable law in the resolution of disputes arising during the execution of the contract is the civil law of the Russian Federation” (Archive of ICAC, case № 58/2005). There is also the interesting case of ICAC № 95/2002. The claim was filed by a Russian company against a Swiss company in connection with the incomplete payment of the goods delivered under the contract. The claimant demanded repayment of the amount of the debt and also reimbursement of

expenses connected with the proceedings. At the time of contacting the ICAC, there was no agreement on applicable law between the parties. But, during arbitration, the parties agreed to apply Russian law to relations under this contract (Rosenberg, 2004, p. 62).

It should be noted that “*one of the generally recognized undeniable advantage of case consideration by the arbitral tribunal instead of by the state courts at all times and in all states was its efficiency*” (Zaitsev, 2017, p. 176). The efficiency of dispute resolution by the arbitral tribunal is connected with the fact that its regulations or the rules negotiated by the parties themselves in the arbitration agreement may not provide the use of a number of procedures that entail an increase in the period of the case consideration. Arbitration is less formalized in comparison with the state proceedings that leads to the rapid dispute resolution which, in turn, causes the costs reduction.

It seems that justice, that has to deal with a huge number of claims in short procedural terms with a limited number of judges, is frequently able to cope with the set task at the expense of the quality of the trial. The dissatisfaction of the parties because of the quality of the court decision gives rise to a long process of appeals at higher authorities that can last for years. We also should note the aspect of confidentiality. Hearings in the arbitral tribunal are not public, are held in private, unauthorized people are not allowed to attend, its decisions are not published in the media and on the Internet and only the parties receive copies of the decisions (Bryzhinsky, 2005, p. 26).

Any information that becomes known during the dispute resolution process is kept confidential. Current legislation codifies the above principle. It provides the witness immunity of arbitrators who are relieved of the obligation to give evidence on circumstances that have become known to them during the execution of their obligations.

The requirement on confidentiality of the arbitration trial should be applied not only to the arbitrators but also to people executing the functions of principals (chairman, vice-chairman) and to the staff of the permanently functioning arbitral tribunal (executive secretary, secretary, typists, other employees).

### **3. Arbitral award and its execution**

Some legal scholars point out the principle of the arbitral award finality (Tarasov, 2002; Chupakhin, 2015). This opinion is debatable because, in the current legislation, there is a possibility of challenge and even cancellation of the arbitral award on a number of established bases. Also, there is a possibility to appeal the decision of the state court for the issuance of a writ of execution on the arbitral award. It seems that unfair party may, at least, delay the execution of the decision of the arbitration tribunal using the regulations of the current legislation. Positive experience in execution of arbitral awards has already been accumulated in a number of world countries. In order to carry out its dispute resolution function, the judicial system needs a mechanism that ensures the end



of the dispute. The courts have worked out a doctrine of prevention in order to ensure the finality of decisions. Preventing a claim prevents a party from filing a claim with the same subject with which it was previously filed to another court.

The doctrine of prevention a lawsuit interferes disputes consideration that was determined to the required extent in the previous case, even though the following claim may concern another subject. Prevention rules help to preserve judicial resources, interferes inconsequent decisions, eliminate unnecessary litigation delivering anxiety and promote public confidence in justice. Prevention is not provided when the opposing party can prove that it didn't have an opportunity to fully state its position in a previous case towards the dispute under consideration (Cound, Friedenthal, Miller, Sexton, 1989, p. 1084). The above-mentioned doctrine of prevention applies to both state courts and non-state arbitrations.

At the same time, the grounds for challenging arbitral awards are much less than towards the decisions of state courts. However, in the later case, it may take a long time before a final decision is made in the case. The inadmissibility of appealing an arbitral award on the matter of the dispute is an important factor in speeding its consideration and making a final decision. Considering the principle of finality of the arbitral award, let's note that *"it is possible to talk about the existence of this principle only in cases when the rules of permanently functioning arbitral tribunals fixed the rule on finality of the decision and the parties have not agreed on other rules of the case"* (Kurochkin, 2007, p. 156).

From those above, it can be concluded that the principle of finality of arbitral awards works in practice, but at the same time, the finality of the arbitral award is relative. In case of non-execution of the arbitral award voluntarily, the parties have the opportunity to use the mechanism of state coercion and have the right to apply to the state court for the issuance of a writ of execution for the enforcement of the arbitral award. The grounds on which a state court may refuse to enforce an arbitral award are limited. The grounds that allow state courts to refuse in the enforcement of arbitral awards are issues of applicable law, issues of compliance of the dispute procedure with the arbitration agreement, etc.

Even though state courts don't formally have the opportunity to review the acts of arbitral tribunals, in fact, however, they often act, essentially, as an appellate instance in relation to the system of arbitral tribunals and international commercial arbitration. The decision of the arbitral trial towards which there was received a writ of execution for its enforcement, in its legal force it is equivalent to the judicial acts of the courts of general jurisdiction and state economy courts that have come into legal force. Possibly, in the future, the use of various measures to encourage enforcement, similar to those applied towards the decisions of state courts. The possibility of mandatory enforcement and international recognition of the arbitration award take place almost everywhere in the world. Arbitral awards achieve international recognition not rare than decisions

of state courts. The United Nations Convention «On the recognition and enforcement of foreign arbitral awards» of June, 10 1958, known as the “New York Convention”, has been ratified by a majority of the world countries. Besides this, the «European concept of foreign trade arbitration» of April, 21 1961 is in force. The above-mentioned conventions provide a single mechanism for all the member countries to recognise and enforce decisions with the help of certain state courts, in due course.

In the legal literature, proposals are made to give, as an experiment, to one or more arbitral tribunals the authority to issue a writ of execution on their own decision, similar to the writ of execution of the state court (Gavrilenko, 2007, p. 154).

If the results of this practice are positive it is necessary to use it everywhere and make appropriate changes to the legislation. In our opinion, this idea is attractive because the state court that issues the writ of execution for the decision of the arbitration tribunal did not consider the case on the merits, and has a worse idea about it than the corresponding arbitration tribunal. Therefore, the issuance of the writs of execution by arbitral tribunals will make the process of the decisions execution faster and less bureaucratic. The proposal mentioned above does not apply to the decisions of the international commercial arbitrations, as the named organizations are usually located in a different state than the one where their orders are to be enforced. Therefore, it is advisable to the participation of the state courts.

#### **4. Land disputes resolution by the arbitral tribunal**

The land is the essential component of the natural environment. Its value also is in the fact that it is the means of production in agriculture and forestry, the spatial basis of economic and other activities, the object of civil turnover. This value of land assumes the concentration of the interests of different stakeholders around it and the occurrence of contentious relationships due to violations of the rights of land owners and land users by the other person. And if one party supposes that the rights have been violated, there a land dispute takes place (Perozhok, 2017).

Under the “resolution of land disputes”, legal science usually means the activity of courts of general jurisdiction, state arbitration courts and arbitral tribunals regulated by the rules of land, civil, civil procedure and arbitration law, aimed at the elimination of the disagreements between the disputing parties, the prevention of the subjective land rights and interests realization, as well as determination and restoration of the violated rights or understanding of the rights and obligations of the dispute parties. Land disputes are considered by the courts in accordance with the rules on cognizance and jurisdiction of disputes established by the procedural legislation of the Russian Federation” (Harlamova, 2009, p. 208). To distinguish land disputes from other categories of cases in the scientific literature, it is proposed to allocate the procedural criterion. This criterion is the nature of the claims of the parties, their relationship

with the protection of land rights and interests. Thus, if the claim of the parties of the dispute is aimed at elimination, suppression of violations of land rights and interests, the dispute can be declared as land, if the elimination of violations of other rights is primary, for example, in the field of water use, it is impossible to talk about the existence of a land dispute (Emaltynov, 2012).

There are several classifications of land disputes. Thus, some authors distinguish land, land and property and property disputes (Krapan, 2009, p. 20). Other authors suppose that land disputes can be differentiated on the following criteria: reasons of occurrence, subject composition, the affiliation of the object of the dispute (the land) to certain categories of the land fund, the status of the object (the earth as a natural object or an object of immovable property), the subject, the parties of dispute, the groups (pure land; land and property, property disputes arising from land relations, complaints about the actions of the public authorities, administrations of enterprises, institutions, organizations) (Fedorova, 2004, P. 16). Meanwhile, let us note that despite their undoubted advantages, these classifications are debatable for the following reasons.

In our opinion, the generic classification of land disputes includes two groups: on the use and on the protection of land, as these two groups of public relations makes the subject of land law as a branch of law. Within each of them, several species of varieties can be identified. Therefore, within the group of disputes on the use of land, it is possible to distinguish disputes on the right of ownership (other real rights to land), contractual disputes (related to the occurrence, execution or termination of lease rights to land), disputes arising from the relations on the management of the land fund (on the boundaries of the area, the parameters of its development, cadastral registration of the area, registration of ownership, etc.), disputes on the validity of legal liability, etc. Disputes related to the protection of land arise when the land as a natural object is harmed, for example, due to the destruction of the fertile soil layer, violation of the regime of lands of specially protected natural areas (reserves, national parks, etc.).

It follows that arbitral tribunals don't have the right to consider all the categories of land disputes. Thus, they do not resolve disputes on the recognition of ownership on ownerless of real estate or towards a land area on which a person has a right as a result of acquisitive prescription<sup>1</sup>, as in these cases the claims are not related to a dispute arising from specific legal relations in which the parties are entitled to carry out administrative actions (Sevastyanov, 2013). Similarly, most of the land disputes related to appeals against management decisions or damage to land as a natural object in public ownership are outside their competence.

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1 In the Russian civil law, the term acquisitive prescription means that a citizen or legal entity faithfully, openly and continuously have owned "as his" the land area not belonging to him for 15 years, he has the right to demand the transfer of this area to private ownership.

However, a significant part of property land disputes can still be considered by the arbitral tribunals. The basis for consideration of land disputes by the arbitral tribunal is the article 64 of the Land Code of the Russian Federation, according to which land disputes are considered in court. Also, before taking the case to the court, the land dispute can be sent by the parties to the arbitral tribunal. The Constitutional Court of the Russian Federation pointed out on this issue that the provisions of laws allowing arbitral tribunals to consider civil disputes relating to real estate, and the state registration of relevant rights based on the arbitral award, do not contradict the Constitution of Russia. This conclusion applies to the land property.

Meanwhile, despite the importance of these explanations, they do not remove all the problems arising during the resolution of land disputes by the arbitral tribunals. One of such controversial issues concludes that in the scientific literature the idea that arbitral tribunals cannot make decisions on the rights of land property, compulsory for the authorities carrying out state registration of rights to real estate (including land) is widespread as the dispute can not affect the interests of third parties (Shekunova, 2018).

The court practice confirms that the absence of a writ of execution issued by the state court for the enforcement of the decision of the arbitration court on the recognition of ownership of real estate is the basis for the refusal in the state registration (Petrenko, 2016).

Meanwhile, it is difficult to agree with such theory and practice, because of the following:

1. one of the principles of the arbitral tribunal work is really confidentiality. However, consideration of the dispute in the arbitral tribunal regarding the land area that is owned (or otherwise) by a third party (or affecting its interests protected by law) without its proper notification will mean that the latter has the opportunity to challenge the arbitral award or apply to the state court with an independent claim to protect the rights.
2. the need to get a writ of execution in the state court undermines the credibility to the arbitral awards and impugns one of the principles of its work related to the prompt and effective consideration of cases and making decisions. In this regard, it seems that the legislation on the state registration of rights to real estate should be supplemented by the regulations establishing the obligation to register the rights to real estate directly by the arbitral award. Accordingly, it is impossible to agree with the proposal to restrict artificially the right of citizens and legal entities to choose the form of protection of subjective land rights by prohibiting arbitration trial.

It seems that arbitral tribunals have the right to consider any disputes, except the cases of direct legislative restrictions. The development of the system of arbitral tribunals is also important and necessary because, at the present moment, in the scientific literature, there is a discussion about the practicability of the specialized land courts creation

within the system of general jurisdiction courts, as it will improve the protection of the rights and legitimate interests of land disputes (Melnikov, 2017).

There is a necessity to create constantly functioning specialized arbitral tribunals that resolve only land disputes. They need to develop practical experience of specialized land courts, which is then, will be extended to the state courts.

## **Conclusion**

At present moment after the next stage of the arbitral tribunals reform, connected with the fact that the Federal law № 382-FZ dated December, 29 2015 "On arbitration (arbitration tribunal) in the Russian Federation" came into force, significant changes in the legal regulation of the jurisdiction of the arbitral tribunals have been made. The main novelties of the current law are in the toughening of the rules for the establishment and registration of permanently functioning arbitral tribunals that is carried out by the Russian Government on the recommendation of the Council for the improvement of arbitration, created under the Ministry of Justice of the Russian Federation. This procedure is quite strict and formalized, it resulted in a significant reduction in the number of permanently functioning arbitral tribunals. There is a practice when the Council refuses to give in its recommendations the right to the realization of activities by a permanently functioning arbitral tribunal on formal and contrived grounds. This situation causes a serious problem of the actual lack of the possibility of dispute resolution in the arbitral tribunals for the majority of business entities, as in fact arbitration trial has become an elite way of dispute resolution.

It seems sensible to change the policy of the Ministry of Justice of the Russian Federation and the Council for the improvement of arbitration in order to reduce the formalities that prevent the resolution of the activities of permanently functioning arbitral tribunals. This is especially important for the consideration of land disputes by the arbitral tribunals as their advantages are obvious: the complexity of this category of cases; the high cost of land property; the need for prompt and confidential resolution of the dispute; the ability to maintain business relations between the parties of the dispute, etc.

The strengthening of the legal force of the arbitral awards (in particular, in the field of state registration of rights to land property) will increase the confidence in the system of arbitral tribunals by the business community and will discharge the state courts.

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# BATNA: Perceived Leverage through Positive Illusion in Conflicts

Prachi BHATT

**Abstract:** The paper explores the influence of a positive illusion of power (to control) in resolving a buyer-seller conflict. Here, the positive illusion is the negotiator's perception about the best alternative to a negotiated agreement (BATNA) as attractive, when it is not really so. The paper explores a buyer-seller conflict and explores the impact of positive illusion on buyers and sellers, behavior and their negotiation outcome. Postgraduates took part in a negotiation role-play and their responses were collected and analyzed. The findings revealed that the presence of the perceived positive illusion about BATNA could benefit negotiators to overcome a stressful conflict situation of having a weaker BATNA, and strike a final deal which is better than otherwise. It held true for both buyers and sellers, whether they offer first or not, in their negotiation. Findings, in the case of Indian negotiators, present that positive illusion of power influenced negotiators' perceived leverage using BATNA, anchor points, reference points, outcome (agreement), along with their satisfaction with the outcome. The paper supports that positive illusion can prove to be more advantageous. It also attempts to fill the gap owing to the lack of empirical evidence regarding positive illusion about one of the most important sources of power i.e., strong BATNA. The paper also discusses the implications of this research for other conflict studies such as diplomatic conflicts, WTO disputes, and other organizational and social conflicts, etc., and discusses future research implications.

**Keywords:** Conflict, Positive illusion of power, Illusion, Attractiveness of BATNA, Negotiations, Conflict management, Conflict outcome.

## Introduction

In Wing's (2000) translation of Sun Tzu's insight, "To a real warrior, power perceived may be power achieved" (p. 18). Positive psychology has become interesting for many. Perceived power has been an important area of research for both socio-psy-

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chological and behavioral researchers. Conflict handling through negotiation is a very common social interaction, where outcomes tend to be more favorable to a powerful party. According to Emerson (1962), power imbalance stems from the asymmetry in dependence between the parties, leading to asymmetry in influencing each-other. The management of a conflict involves dealing with this asymmetry, which helps power holders to influence others on account of experiencing control over others, and their outcomes that are linked to their power. In negotiations, an approach of managing conflicts, power emerges from asymmetric control over valuable resources as compared to the other party (e.g., Keltner, Gruenfeld, & Anderson, 2003; Magee, Galinsky & Gruenfeld, 2007). Conflict management in conflict situations, such as buyer and seller negotiations, trade negotiations, WTO disputes, social conflicts, etc., are greatly influenced by power.

Power is a psychological state. It has been known that perceptions of control in response to power are both illusory, as well as realistic (Fast, Gruenfeld, Sivanathan, & Galinsky, 2009). The best alternative to a negotiated agreement (BATNA) is the best source of power in negotiation (Fisher & Ury, 1981). Thus, perceiving BATNA attractive when objectively it is not, i.e., perceived illusion of power, can also be leveraged by a negotiator and that it would consequently serve the negotiator to influence others. Power is an essential element in conflicts involving the parties to behave in order to affect the other party's ability/behavior. Power is a psychological state – has been explained as the influencing capability (Bugental & Lewis, 1999; Galinsky, Gruenfeld, & Magee, 2003), and it is the capacity to control one's own and others' resources and outcomes (Fiske, 1993; Keltner *et al.*, 2003; Thibaut & Kelley, 1959). It has been understood that a negotiator who has an attractive BATNA, experiences greater power than the counterparty, and is less dependent on the focal negotiation, which can be instrumental in obtaining better outcomes from negotiations (Pinkley, Neale, & Bennett, 1994). Empirical studies have also provided evidence on the effects of BATNA to generate power asymmetries in negotiation situations (Wolfe & McGinn, 2005; Mannix & Neale, 1993). BATNA has been highlighted as a source of power in diplomatic or social conflicts. Nyomakwa-Obimpeh (2017), has discussed the role of BATNA in the negotiation processes and outcomes, as analyzed in this study, has been found to be important in explaining the EPA negotiation outcomes. The literature on conflict studies is replete with recommendations to improve one's power position. However, the influence of considering BATNA attractive when it is objectively not attractive is an interesting question in the conflict management research.

### **The positive illusion of power**

Illusion is defined (Stein, 1982 pp. 662 as cited in Taylor & Brown, 1988) as a perception that represents what is perceived in a way is different from the way it is in reality. An illusion is a false mental image or conception which may be a misinterpretation of a real appearance or may be something imagined. Illusion may be pleasing, harmless, or even useful (Stein, 1982). According to Bunderson & Sutcliffe (1995), it's perfectly

alright cognitively if a person gets biased information that subsequently affects his/her behavior or actions. It would hold true more so in an uncertain situation that leads to room for misinterpretations of a situation and information.

Power exists in every relationship, personal or professional. Aspects of the conflict, such as power, adds to the depth and breadth of the conflict and its resolution. To experience power mean the ability to influence our environment and others (Lancer, 2014). Studies have shown that power activates the behavioral approach system (Keltner *et al.*, 2003) and the action orientation of a negotiator (Galinsky *et al.*, 2003; Magee *et al.*, 2007). In the prisoners' dilemma games, research (Shafir & Tversky, 1992; Morris, Sim & Giroto, 1998) have shown that negotiators behave as their decisions can control along with theirs', counter party's decisions simultaneously, even when keeping expectations that are logically impossible. In this support, studies (Bazerman, 1998; Busenitz & Barney, 1997; Dutton, 1993) have highlighted that when entrepreneurs believe in their abilities and perceive an uncertain environment unrealistically positive, it can lead to successful results. The evidence shows that, in stressful circumstances, positive illusion is associated with good adjustment (Spacapan & Thompson, 1991; Taylor, 1991). It has been acknowledged that illusions, biases, and other cognitive errors are much more common in human cognition (Nadelhoffer & Matveeva, 2009). Illusion is not new to other conflict or peace studies. Fernbach, Rogers, Fox and Sloman (2013) have presented the illusion of explanatory depth in the context of extreme political attitudes of people about complex policies. Mbah's (2011) work highlights the case of Nigeria and discusses the politics and the illusion of peace. Marks (2003), in her book "Illusion of peace", also examines the emotional, ethnic, and economic factors responsible for international instability. In any dispute, power plays an important role. Pop & Brînză (2017) suggests that, in order to adequately comprehend the power dynamics of the 21st century, one might selectively adopt aspects of the power transition theory; however, the work suggests not doing away with the notion of power balance. There is never an equal playing field; however, the assertion of power, whether real or perceived, in various situations, is used to create a level playing field. In this context, the paper presents the dynamics of power illusion in conflict between buyers and sellers. It further discusses the ways in which power illusion may be applicable in various conflict and peace studies.

Power is one of the important ingredients of various conflict situations like trade wars, trade negotiations, political and geo-political disputes. The present research explores the influence of positive illusion of power i.e., perceived leverage of power in a conflict management between buyer-seller negotiation situation. It deals with a conflict situation which is difficult and stressful for negotiators when their BATNA is not great or unattractive. Situation is stressful and unfavourable for a negotiator if he/she has less power (when objectively BATNA is not attractive) to influence or to control others. Also, the set of uncertainties attached with conflict resolution, accurate assessment of the information about the situations (relative power, counter-party, environment, etc.) is

not easy. The paper suggests that when a negotiator perceives BATNA as attractive when it is objectively not attractive (i.e., unfavourable or stressful situation), brings about positively biased opinion regarding negotiator's power to be leveraged through BATNA. There is a lack of empirical evidence regarding research dealing with positive illusion about one of the important sources of power, i.e., BATNA. Here, the paper attempts to understand, how positive illusion and no illusion about the attractiveness of the BATNA would impact the dynamics of conflict resolution? Also, the influence of positive illusion on negotiations and negotiators' first offers, last offers, targets, outcome (agreement) along with their satisfaction with the outcome has not been previously addressed.

### **The present study**

The paper attempts to address questions about how the presence of positive illusion of power, i.e., the attractiveness of BATNA (which is logically not attractive) would affect the dynamics of handling conflicts using a buyer-seller negotiation situation.

Some easy short-forms used in the paper are positive illusion (PI); first offer (FO); last offer (LO); target (Tgt); perceived leverage through BATNA (Perceived\_Lev); satisfaction with outcome (SwO); B=Buyer, S=Seller; i=illusion of power owing to attractiveness of BATNA and ni= no illusion. It's important to note that to avoid confusion and for easy comprehension, a negotiator who offered first is denoted as '1', and who did not open the negotiation (i.e., who gave first counter offer) as '2'. For example, B2i are buyers who offered second (who did not give the first offer) and perceived positive illusion about leveraging power through BATNA.

### **Objectives**

1. Assessing perceived leverage through BATNA:
  - a. Whether the presence or absence of positive illusion (about the attractiveness of BATNA) of the negotiators influenced their perceived leverage through BATNA.
  - b. To understand whether the role of the negotiators, i.e., buyer or seller, influenced their perceived leverage through BATNA.
2. Comparing negotiations (separately for Buyers and Sellers) in terms of first offers, last offers, targets, perceived leverage through BATNA, and satisfaction with the outcome:
  - a. Comparing negotiations of buyers- Bi with Bni & negotiations of sellers- Si with Sni
  - b. Comparing negotiations of buyers- B1i with B1ni & negotiations of sellers- S1i with S1ni
  - c. Comparing negotiations of buyers- B2i with B2ni & negotiations of sellers- S2i with S2ni
3. Comparing negotiations between B1ni and S2i & Comparing negotiations between S1ni and B2i, in terms of first offers, last offers, targets, perceived leverage through BATNA, and satisfaction with the outcome.

## **Method**

### *Participants and Procedure*

Ninety-six post-graduate students in India (28.5% female and 71.5% male participants) volunteered for this study. Participants averaged 22.25 years of age. Participants read their roles and then were told to negotiate for a price negotiation between buyer and seller over a manufacturing plant. Ninety-six participants were randomly assigned the roles of buyers and sellers. Two dyads could not reach to a mutually agreed deal. The positive illusion was manipulated by asking participants to recall an experience and writing about it. Those in the illusion of power condition were instructed to recall and write about an incident in which they had power over other people, whereas others were instructed to write about their last experience at the supermarket (Gruenfeld, Inesi, Magee, & Galinsky, 2008). Positive illusion about power was assessed by asking a pre-negotiation question about the attractiveness of the BATNA; a higher score reflects and served as our measure of positive illusion, that he or she can personally influence the outcome of the negotiation. It was predicted that participants with positive illusion (illusion, *i*) would be more likely to set favorable reference points and will reach to better deals in the negotiation than the others (no illusion, *ni*).

An information sheet was requested during both pre- and post-negotiation stages. Pre-negotiation sheet asked negotiators about their perception about attractive or unattractive BATNA (manipulation for the positive illusion of power, as mentioned above), information such as their plan to offer first (or not), planned first offer, planned last offer, target, and their perceived leverage through BATNA. The study did not manipulate for negotiators' responses regarding who offered first (or not). Manipulation check, as mentioned above, was done using a pre-negotiation single-item question (commonly used in negotiation research), a forced choice (yes or no) item, i.e., 'Do you think the alternative you have (outside this negotiation) is- Attractive (strong)?' Negotiators' perceived leverage through BATNA (Perceived\_Lev) was captured using a forced choice item, i.e., 'Do you think that the alternative which you have outside this negotiation can be useful/help you to negotiate a good deal for yourself in this current negotiation?' Respondents were to respond on a five-point scale, i.e., 1 (Strongly agree) to 5 (Strongly disagree) for the questions asked to the respondents both during pre- and post-negotiation. Post the negotiation; each dyad was asked to report the first offer (the amount and who offered), first counter offer (the amount and who offered), and final agreement value. Also, they rated their satisfaction with the outcome (SwO) on a five-point Likert scale.

## Results

### Demographics

54.2 % of the negotiators who perceived BATNA attractive (i.e., PI), offered first. For manipulation check, t-test revealed that there is a significant difference between negotiator with positive illusion and negotiator with no illusion ( $t(90) = -5.91, p < .01$ ), where mean value of negotiators' response as 'yes' is 1.04, and for 'No' response mean value is 1.50. The following section summarises the results in the order of objectives (as mentioned above) of the paper.

1. Assessing perceived leverage through BATNA:
  - a. Whether the presence or absence of positive illusion (about the attractiveness of BATNA) of the negotiators influenced their perceived leverage through BATNA.
  - b. To understand whether the role of the negotiators, i.e., buyer or seller, influenced their perceived leverage through BATNA.

Positive illusion about having an attractive BATNA had a bearing on negotiator's perceived leverage through BATNA (Perceived\_Lev) ( $t(90) = 7.24, p < .01$ ); mean value of perceived leverage in case of positive illusion is 3.2 and in case of no illusion it is 2.2. However, the role of the negotiator had no influence on the negotiators' perceived leverage through BATNA (Perceived\_Lev) ( $t(90) = .148, p > .05$ ).

2. Comparing negotiations (separately for Buyers and Sellers) in terms of first offers, last offers, targets, perceived leverage through BATNA and satisfaction with the outcome:

- a. *Comparing negotiations of buyers- Bi with Bni & negotiations of sellers- Si with Sni*

For Bi-Bni, the results illustrate those buyers with positive illusion (PI), i.e., who perceived BATNA attractive, did set lower LO, had a higher level of Perceived\_Lev and reached to better deals than those buyers with no illusion. But there is no significant difference in the Tgt set and SwO of the buyers with and without positive illusion. In the case of Si-Sni, both LO and Tgt set by sellers are significantly higher in the case of the sellers with PI. Also, sellers with PI had a higher level of Perceived\_Lev and obtained significantly better deal (high agreement value) as compared to those with no PI. However, the positive illusion of sellers had no bearing on their level of SwO.

TABLE 1. Comparing negotiations of buyers- Bi with Bni & of sellers- Si with Sni

DV	Role & Mean (M)	t (44)	Sig.	Role & Mean (M)	t(44)	Sig.
Target	Bi=228.41, Bni=252.80	-1.53	0.133	Si=254.17, Sni=214.77	2.322	.025*
LO	Bi=278.22, Bni=359.25	-4.02	.000**	Si=215.38, Sni=187.59	2.474	.017*
Agreement	Bi=212.26, Bni=262.60	-3.14	.003**	Si=261.13, Sni=205.73	3.522	.001**
SwO	Bi=4.15, Bni=4.35	-0.94	0.353	Si=4.25, Sni=3.95	1.316	0.195
Perceived_Lev	Bi=3.22, Bni=2.25	4.47	.000**	Si=3.29, Sni=2.23	5.832	.000**

Note: B=Buyer, S=Seller; 1=Offered First; 2= did not offered first; i & ni i.e., positive illusion and no illusion, respectively; \* = p<.05; \*\*= p<.01

b. Comparing negotiations of buyers- B1i with B1ni & negotiations of sellers- S1i with S1ni

In the case of buyers (Table 2), who made the first offer and who perceived positive illusion (B1i) experienced higher Perceived\_Lev, set lower LO, and Tgt. They also managed to reach to a better deal (low agreement value) than those buyers with no PI (B1ni). But the perception of buyers' PI did not impact their SwO. In case of sellers who made the first offer and perceived positive illusion, experienced a higher level of Perceived\_Lev, set higher LO, FO, and reached to better deal (high agreement value) than S1ni. Also, here, PI did not impact their SwO.

TABLE 2. Comparing negotiations buyers B1i with B1ni & of sellers- S1i with S1ni

	Role& Mean (M)	t (12)	Sig.	Role& Mean (M)	t (30)	Sig.
Target	B1i=214.73 B1ni=287.50	-3.445	.004**	S1i=255.31 S1ni=218.75	1.68	0.103
LO	B1i=246.55 B1ni=397.50	-6.052	.000**	S1i=218.38 S1ni=186.75	2.05	.049*
First Offer	B1i=201.64 B1ni=235.00	-1.316	0.211	S1i=309.06 S1ni=228.75	2.21	.035*
Agreement	B1i=212.27 B1ni=335.00	-5.612	.000**	S1i=251.56 S1ni=205.19	2.54	.016*
SwO	B1i=4.45 B1ni=4.50	-0.145	0.887	S1i=4.25 S1ni=3.88	1.77	0.087
Perceived_Lev	S1i=3.19 S1ni=2.25	3.96	.000**	B1i=3.18 B1ni=2.00	3.074	.009**

Note: B=Buyer, S=Seller; 1=Offered First; 2= did not offered first; i & ni i.e., positive illusion and no illusion, respectively; \* = p<.05; \*\*= p<.01

c. Comparing negotiations of buyers- B2i with B2ni & negotiations of sellers- S2i with S2ni

In case of buyers (Table 3) who did not make the first offer, but with PI (B2i) experienced higher perceived leverage through BATNA, and gave lower counter offers as compared to those with no PI (B2ni). However, the perception of PI did not differentiate SwO of these buyers. In case of comparison between sellers who did not make the first offer but with PI (S2i) and without PI (S2ni), those with PI (S2i) experienced higher perceived leverage through BATNA and gave a higher counter offer, and a significantly different and better deal than S2ni. Also, PI did not differentiate sellers in terms of their SwO.

TABLE 3. Comparing negotiations of buyers B2i with B2ni & of sellers- S2i with S2ni

	Role & Mean (M)	t (30)	Sig.	Role & Mean (M)	t (12)	Sig.
Target	B2i=237.8; B2ni=244.1	-0.302	0.765	S2i=251.88 S2ni=204.17	1.729	0.109
LO	B2i=300.00 B2ni=349.69	-1.924	0.064	S2i=209.38 S2ni=189.83	1.602	0.135
First counter offer	B2i=167.00 B2ni=212.19	-1.985	.05*	S2i=325.63 S2ni=145.00	3.014	.01*
Agreement	B2i=212.25 B2ni=244.50	-1.679	0.104	S2i=280.25 S2ni=207.17	2.319	.039*
SwO	B2i=3.94; B2ni=4.31	-1.355	0.185	S2i=4.25 S2ni=4.17	0.141	0.89
Perceived_Lev	B2i=3.25 B2ni=2.31	3.382	.002 **	S2i=3.50 S2ni=2.17	5.081	.000 **

Note: B=Buyer, S=Seller; 1=Offered First; 2= did not offered first; i & ni i.e., positive illusion and no illusion, respectively \* = p<.05; \*\*= p<.01

3. Comparing negotiations between B1ni and S2i & Comparing negotiations between S1ni and B2i, in terms of first offers, last offers, targets, perceived leverage through BATNA, and satisfaction with the outcome.

Sellers who made the first offer but had no illusion (S1ni) significantly affected their Perceived\_Lev, which was significantly different (Table 4) from that of the buyers with PI (B2i). And the same is true for Perceived\_Lev of the sellers with PI (S2i) who negotiated with buyers who made the first offer but had no illusion (B1ni).

TABLE 4. Comparing negotiations between B2i and S1ni & negotiations between B1ni and S2i

	Dyads & Mean (M)	t (30)	Sig.	Dyads & Mean (M)	t (10)	Sig.
Perceived_Lev	B2i=3.25 S1ni=2.25;	4.47	.00**	B1ni=2.00 S2i=3.50;	-3.87	.00**

Note: B=Buyer, S=Seller; 1=Offered First; 2= did not offered first; i & ni i.e., positive illusion and no illusion, respectively; \* = p<.05; \*\*= p<.01

TABLE 5. Correlation of the variables with the agreement value

	<b>Perceived_Lev</b>	<b>LO</b>	<b>TGT</b>	<b>FO</b>
<b>Buyers</b>	-.475**	.523**	.607**	.673**
Control for presence/absence of illusion	-.319*	.393*	.581*	.629*
<b>Sellers</b>	.718**	.549**	.613**	.673**
Control for presence/absence of illusion	.616*	.465*	.550*	.624*

Note. \* =  $p < .05$ ; \*\* =  $p < .01$

Table 5 reports the correlation results revealing the relationship of values of the deals with the perceived leverage through BATNA, last offer value, target value, and first offer values. The table also reports the relationship between the variables even on controlling the presence and absence of positive illusion, revealing a significant contribution of positive illusion.

### **Discussion and Conclusion**

Every kind of conflict that exists between two or more parties has an element of power playing an important role in it. The illusion of power shapes the behavior of the conflicting parties; thus, conflict is a process where power and illusion of power would play its role. Not only does the illusion of power play a role in a personal or professional conflict situation, but also it is an important factor affect parties dealing with cross-cultural conflicts. Human beings tend to see themselves, and the future in a much more positive way than more realistic consideration would justify (Taylor, 1989).

The study presents evidence that the positive illusion of BATNA as attractive can prove helpful to the negotiators. The presence of positive illusion about BATNA influenced negotiators to overcome a stressful or unfavorable situation of a weaker BATNA. The results demonstrate that negotiators who perceived a tough situation more positively than what reality is, saw the outcome of the negotiation more positively than otherwise. It is an expectancy of a personal success probability inappropriately higher than the objective probability would warrant (Langer, 1975). Sometimes misperceptions of control may prove constructive or successful (Taylor & Brown, 1988), especially with the extent of uncertainties associated with conflict resolution process and perception of the situation (counter-party, environment, etc.), correct assessment of the information is tough. According to Bunderson & Sutcliffe (1995), it's perfectly alright cognitively if a person gets biased information that subsequently affects his/her behavior or actions. It would hold true more so in uncertain situations like negotiations in conflict resolution. Also, in the cases of social conflicts, revolutionary idealism (Plekhanov, 1894, 1974) or "revolutionary utopianism" (Gurr, 1970, p. 216) have played a great role.

Results reveal that positive illusion about having an attractive BATNA had a bearing on negotiator's perceived leverage through BATNA. Results highlight the action orientation



of a negotiator (Galinsky *et al.*, 2003; Magee *et al.*, 2007) is driven by an inflated sense of control which is activated by the positive illusion of the power of attractive BATNA. It has already been acknowledged that BATNA influences the behavior of negotiators in terms of identifying reference points in negotiation (Pinkley *et al.*, 1994). Similarly, the perceived leverage using BATNA (illusion) can influence negotiator's behaviors in terms of identifying first offers, targets, and last offers which play a significant role in negotiation (Tversky & Kahneman, 1992). The present study shows that positive illusion influenced negotiators in setting favorable (i.e., in their own favor) last offers. Sellers who perceived positive illusion had set higher targets for themselves as compared to the ones with no positive illusion. As buyers could be considered having higher power than the sellers by virtue of the role, however, positive illusion proved advantageous to the sellers (more than the buyers) who offered first than who did not in getting a better outcome. Sellers with positive illusion set higher first offers which reflect their manifestations of power perceived (Galinsky, 2004). Positive illusion served as a stimulus for negotiators to evaluate and selectively perceive information that improved their strength of intent to engage in a behavior (by virtue of perceived leverage through BATNA) which is directly related to good performance (Ajzen, 1991). When negotiators perceived positive illusion, they set last offer and target price favoring them, which is associated with power (Galinsky & Mussweiler, 2001; Kelley, 1966; White & Neale, 1994). Thus, it was seen that positive illusion proved to be significantly advantageous for sellers as compared to buyers. According to Galinsky & Mussweiler (2001), the attractiveness of BATNA kept as a reference point leads to good outcomes. Correlation results reveal the relationship of values of the deals of with perceived leverage through BATNA and other study-variables factors (refer Table 5). The findings support that the perception of power leads to proactive and effective behavioral ways that increases negotiator's actual power (Bandura, 1997; Bugental & Lewis, 1999; Mowday, 1978) and that perceived power directs negotiators to take actions consistent with their goals (Galinsky *et al.*, 2003) comparison to low-power (in negotiation) individuals. Results show that perceived leverage through BATNA is not affected by negotiator's roles, i.e., buyer or seller. The results showed that even when negotiators (buyer and sellers) do not offer first (behavioral manifestation of having power), positive illusion plays an important role in helping negotiators to gain perceived leverage through BATNA. They were able to recover and obtain reasonably good deals as against those negotiators who offered first but did not perceive positive illusion. Illusory control is associated with better adjustment, especially under stressful circumstances (Spacapan & Thompson, 1991).

The finding is also applicable beyond buyer and seller negotiations, to other conflict situations in general, such as workplace conflict situation in organizations and social conflicts. Positive illusion can be beneficial for parties in conflict in overcoming and reducing the impact of being superseded or dominated. Researches have highlighted that illusory sense of control is a basic response to the psychological experience of power

(Fast *et al.*, 2009), and that perceived illusory control is often adaptive and can enhance performance (e.g., Langer, 1983; Taylor & Brown, 1988). Thus, in the context of WTO dispute issues raised by poor complainants and/or least developed countries, which are threatened by high-income countries, the role of illusory control seems to play a role. Dispute Settlement System (DSS) in WTO is dominated by high-income countries. As ultimate enforcement threat of the system is based on retaliation, countries use the economic size, bilateral retaliatory capacity, etc. in the decision of filing a costly complaint to a detrimental infringement of trade agreement. According to Bown's work (2004), a successful economic resolution to disputes is influenced by the concern for retaliation, although the WTO legal system is characterized by procedural legalism, for enforcement, it retains a power-oriented bottom line. Guzman and Simmons's (2005) paper seeks to contribute to understand the role of the Dispute Settlement Understanding (DSU) and the role of power within that system. The illusory control also finds its application in conflict studies related to trade disputes and influence of perceived leverage. In the context of WTO dispute settlements, Guzman & Simmons's (2005) results are encouraging for developing countries. Their work proposes that poorer complainants have tended to focus on the big targets, a strategy that is consistent with a tight capacity constraint rather than a fear of retaliation. They explained that because accessing smaller countries is not worth the costs to any but the highest capacity complainants. Thus, present implications for low-income or least developed countries, and for the developing countries as well, in order to improve their stance in a given conflict focusing on things that provide (or can provide) leverage to them. Owing to the real or perceived symmetry or asymmetry of power between conflicting parties, according to (2011), it is not necessarily a disadvantageous position for a weaker country. However, the weaker wants to equalize its weakness, and thus negotiate on the basis of symmetry.

Further research exploring the benefits and costs associated with positive illusion in conflict related to trade disputes is pertinent. Also, at the country-level conflicts, there are various factors such as economic resources, favorable geographic and geopolitical positions, skilled labour, etc., along with size, resources, wealth, reputation, status or power, military potential, etc. A country is measured as "strong" and "weak" basis such factors. Also, BATNA is another source of power in diplomatic or social conflicts. Nyomakwa-Obimpeh (2017), has discussed the role of BATNA in the negotiation processes and outcomes as analyzed in this study has been found to be important in explaining the EPA negotiation outcomes. Bagwell & Staiger (2015) discussed the relative bargaining power of the two governments. Dur (2008) discussed the change in bargaining power in relation with international trade negotiations. Taliaferro (2004) discussed how risky diplomatic and military interventions are driven by leaders' while having relatively lower power than the counterparts. Such interventions are taken despite of huge incurred cost to avoid losses of relative power or international status. But, there is a dearth of research in the area of perceived power by the parties in conflict situations

related to trade negotiations, which would help in understanding such negotiations at the individual and behavioral level and provide insights.

Power plays an important role in other social conflict situations as well. In the context of conflicts that arise out of unequal treatment or outright discrimination of ethnic groups, Bormann, Cederman, Gates, Graham, Hug, Strøm and Wucherpfennig (2015), suggest that ethnic equality, e.g., in the form of power-sharing, is important to prevent violence. In the similar contexts, Pospieszna and Schneider (2013) focused on inter-related manifestations of power-sharing, i.e., de jure and de facto power-sharing. Also, in other contexts of conflict researches, the illusion of controlling a present situation has played an important role. According to Vahabi (2009), in every revolution, it is the illusion of having the ability to end all the inequality, oppression and misery in one stroke and to create a harmonious fraternal society just on the morrow of revolution. For a collective effort of change, revolutionary utopianism is a necessary condition for changing existing socio-political rules with the least costs. Referring to the work of Overbecki, Tiedens & Brion (2006), actions of negotiating parties who perceive illusory control, i.e., powerfulness, may be dispositionally motivated as compared to those with no illusion who may be more situationally motivated.

The present findings on buyer-sellers study-sample further pose future research implications and avenues of research in the area. Conflict resolution approach of an individual would vary across culture; further study in different cultures may provide interesting insights about the role of positive illusion in conflict handling across different nations and cultures. People have tendencies to believe that they can control even the uncontrollable (Crocker, 1982) and to overestimate the extent to which their actions can guarantee a certain outcome (Miller & Ross, 1975). Some researchers have shown that (Correll, Spencer & Zanna, 2004; Petty & Cacioppo 1986; Petty & Wegener, 1998) positive affirmations impact insightful thinking rather than peripheral thinking. People are motivated to control their environment and being able to control the uncontrollable leads to a feeling of competence (Langer, 1975). It would be interesting to explore the motivating factors that would lead to negotiators' perceived leverage to use power in negotiation. Studies have shown that power activates the behavioral approach system (Keltner *et al.*, 2003) and the action orientation of a negotiator (Magee *et al.*, 2007).

Further research can also focus on perceived illusion on negotiators' verbal and non-verbal behavior on the negotiation table. Exploring the impact of positive illusion on the way information is processed in the negotiation would further explain the phenomenon. It would be interesting to explore how positive illusion might impact negotiator's processing flexibility in negotiation settings, given that high-power individuals display greater processing flexibility as compared to individuals with less power (Guinote, 2006).

At the same time, there are researches which have highlighted that positive illusion may also have an adverse impact. Taylor & Shepperd (1998) have emphasized that people also get pessimistic occasionally when they feel that their optimistic outlook may be contested. Makridakis & Moleskis (2015) in their work along with benefits have also discussed the potential costs associated with PI in the fields of stock and other markets, new firms and start-ups, preventive medicine and wars. Also, (Heine & Hamamura, 2007) in their cultural psychology research revealed that positive illusions may not exist in certain cultures and may be of a different nature (Endo, Heine & Lehman, 2000). It is equally important to critically analyze the effects of unrealistic expectations or the tendency to have illusory control. Hence, more work is needed to be able to evaluate and empirically test the benefits and the costs of positive illusions, overestimate one's ability to control events with other aspects of conflict, than the one covered in this paper.

Conflict is a multidimensional construct, and the illusion of power is applicable in most of the conflict situations. Bargaining power is not only important for buyer and seller conflicts, but also in other conflict situations. Regarding the actual and perceived power, there exists a symmetry or asymmetry of power between conflicting parties (Pfetsch, 2011). In the organizational settings as well, positive expectations from a potential conflict or the conflicting party is an important aspect of conflict handling. Polzer, Kramer & Neale (1997), studied the impact of positive illusion on conflict and performance at the workplace. They revealed that threats to self-esteem affected the magnitude of illusions more than rewards, and these illusions affected group conflict and performance, and that self and group-enhancing illusions were positively related. At work, people perceive the cost and benefits and appropriately respond to handle the conflict. Zhang & Wei (2017), revealed the role of superficial harmony in conflict avoidance (not confrontation) approach of people to prevent disruption in relationships. Thus, superficial harmony i.e., not the reality influences managing conflict in the workplace.

In conclusion, the result highlights that the reality may not always be desirable, i.e., in Sun Tzu's words- "To a real warrior, power perceived may be power achieved". In any conflict situations, i.e., personal, social or professional, positive illusion and perceived leverage to use power in a situation isn't harmful and it can help to obtain better outcomes. Specifically perceiving BATNA (source of power) attractive too can help negotiators to gain an edge by having a sense of control over the situation/ resources available to them. The perceived illusion functions as a buffer against unfavorable or stressful situations. When negotiators experience positive illusion regarding BATNA, it yields perceived power to control and leverage power in the situation and thus generates better outcomes even when the situation may not be so favourable. Also, accounting for the benefits and costs is associated with positive illusion about control or power is crucial for its application. Addressing further research implications as discussed above would provide more insights into the mind and heart of parties involved in conflict resolution.

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# **NIGERIA: Democracy and Security. The Role of the Military, 1999–2018**

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**Abstract:** The prolonged military incursion in Nigerian politics in favour of the oligarchy brought agitation for the democratic rule; it exacerbated ethnicity and created the fear of domination of the minority by the majority. The advent of democracy ushered in a new breath of life and took Nigerians away from the shackle of military oppression to civilian rule. The democratic rule became a mirage as a result of prevalent insecurity in Nigeria. Unfortunately, efforts to bring lasting peace to all sections of the country have not yielded positive result till date. The failure has resulted in general insecurity among ethnic groups consequent upon which ethnic militia emerged among groups for the defence of their members or individual groups. The phenomenon also resulted from the unequal distribution of wealth by the military Junta. This trend resulted in general perennial crises. Even the democracy was instituted, the warlords of the various militia groups constituted themselves into obstacles to democratic institutions. Even the democratic institutions deviated from using security agencies for the security of other citizens. Instead, security agencies became politicised, which has remained the dominant factor hindering the actualisation of dividends of democracy. And today, needless to even say that insecurity or unrest has crippled socio-political and economic spheres of life of the nation. This paper examines democracy and security in Nigeria, the security challenges in various regions of Nigeria and the contributions made by the military institutions in maintaining peace and security under democratic rule since 1999 up to 2017.

**Keywords:** Democracy, Security, Military and Development.

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## **Introduction**

There are many systems of government in the world today aside democracy which many people regard as the most popular system of government. Democracy entrenches the rule of law as the pillar of ideal society in any democratic setting (Schlosberg, 2013).

However, the capacity to effective democratic system that will translate to development lies with the operators in any society. That is why democracy is not regarded as the only credible means of bringing development to the society.

It has been argued that, there are many countries of the world that are not practicing democracy. Yet, development is visible in those areas. The examples of the areas include Saudi Arabia, United Arab Emirate, Morocco, etc. The upsurge in democracy began in the 1970s. For instance, only 45 of the world's 151 countries could be counted as democratic nations up to 1973 (Fukuyama, 2012, p. 1). As of the end of 2016, 97 out of 167 notable countries were democracies and only 21 were autocracies. The analysis shows that democracy spread rapidly as the Soviet Union crumbled in 1989 (Desilver, 2017, p. 1).

Since the beginning of the democratic rule in 1999, the country has witnessed a series of security problems. These problems, no doubt, posed serious challenges to stability in policy direction in the country, which political analysts called policy summer-sault (Dahl, 2018). The phenomenon has also brought about politics of security to the land. Consequently, members of security agencies, such as the police, immigration, Department of State Security (DSS), Customs and the army who are saddled with the responsibility of defending the territorial integrity of the nation, have become culpable of breaching the security protocol. This has remained a herculean task in Nigerian politics, especially in protecting the popular wish of the electorate.

The paper adopts a critical analysis of the role of the military in the democratic process in Nigeria since 1999. Among the issues analysed are the role of the role of the military in crises such as Militants in Niger-Delta, Odua Peoples' Congress in the South West, Bakassi Boys in the South East, and the Egbesu boys in the South-South. While the use of political goons eventually translated to the monster of Boko Haram has ravaged the Northern part of the country.

The democracy, which is seen as the main driver of the developmental process in advance countries of the world, is becoming a monster in Nigeria. The politics is no longer guarantee security in the society; security has become an instrument of settling political scores in every part of the country. It has become a campaign slogan of political leaders to secure power. Politics of security has taken relegated developmental issues to the background in Nigeria.

In of this, is military as an institution devoid of political bias in its daily activities under democratic government since the beginning of democracy in 1999? Moreso, has democracy brought Nigerians together for the purpose of sincerity that could drive genuine required development and guarantee lasting peace? These are germane issues in this study. In order to have a clear understanding of the democratic process in Nigeria, few keywords are well analyzed below.

## Conceptual Clarification

**Democracy:** The word democracy is very central in the analysis of the subject matter. Democracy is literally known as rule by the people. The term is derived from the Greek word *demokratia* which was coined from *dêmos*, meaning people and *Kratias* means (rule) in the middle of the 5th century BCE which connotes the political system in some Greek city-states, particularly Athens (Mariam-Webster 2018, p. 10).

Democracy is the acceptable system of government by the majority. This is essentially a definition coined by Abraham Lincoln who defined democracy as the government of people by the people and for the people (Appadorai, 2004). It is known as the rule of majority protecting the interest of minority in the society. In other words, it is a system of government by the whole population or all the eligible members of state. In the light of this, the Mariam-Webster dictionary defines democracy as a government of the people by the people. A government in which the supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodically held free elections.

**Security:** The term security simply means freedom from worries of loss. Security connotes defence against internal and external aggression, malicious and accidental threats (Collins, 2018). Defence comprises detection, prevention and response to threats through the use of security policies. Security also serves as a guarantee for the protection of lives and property within the confine of legal segmented territories. The military is the institution constitutionally established for the purpose of providing peace and security to citizens.

**The Military:** the Military or armed force is a professional institution formally authorised by a sovereign state to use lethal or deadly force and weapons to the interests of the state. The army is divided into three segments namely: Army, Navy and Air force (Prasuhn, 2018). The people recruited into the institution are given power to defend the sovereignty of a state. The military protects and defend the territorial integrity of its country by defending it from internal and external aggression, terrorists, anarchists, arsonists, etc. Adequate security in any society brings about development.

**Electioneering:** Electioneering is the process of mobilisation and sale of manifestoes by candidates. The process provides an opportunity to political parties to sell their manifestoes to the electorate highlighting what they will achieve if voted into power (*The Punch*, 2018). Having voted into power, the behaviour of politicians in position of authority generates more crises. The action of the politicians shows that they adopt politics of security to keep larger population of society in perpetual penury rather than security of politics which guarantee development. Insecurity in Nigeria had taken minds of people away from a developmental project. Prevalent crises in the land top the agenda of discussion.

**Development:** The word development represents the idea of methods being found to fulfil the aspirations of a nation, group or state, in theoretical terms, the idea of development been closely connected with the idea of progress (Todaro & Smith, 2011). Having analysed the assertion made by Todaro and Smith (2011), the idea of development in Nigeria is totally disconnect with the idea of progress because the security that would bring stability is completely absent in the context of politics in Nigeria. Development for-all creates an enabling environment for the high, middle and low classes to have peaceful and good conduct of life for co-existence. Since the inception of democracy in 1999, Nigeria has been a fractured state divided along religion and ethnic sentiment.

### **Brief Historical Background of Military in Nigeria**

The historical account of the Nigerian Army would throw more light to its present activities under democratic government since 1999 up to 2017. The history of Nigerian Army dates back to 1863 when the Lt. Glover of Royal Navy selected 18 indigenes from the northern part of Nigeria (Tamuno, 2011). Lt. Glover organised people into local force, known as the “Glover Hausas”. This set of people were trained and used by Glover as governor of Lagos to protect British trade routes around Lagos and the annexed hinterland.

In 1885, the name metamorphosed to “Hausa Constabulary”. They were performing dual functions of police and military for the Lagos colonial government. As time went on, the “Hausa Constabulary” became “Lagos Constabulary”. In 1901, this institution was incorporated into West Africa Frontier Force (WAFF) which was known as “Lagos Battalion”. Towards the end of 1901, the Royal Niger Company under Lord Lugard had incorporated all paramilitary units in the other British dependencies into its command.

The establishment of West Africa Frontier Force (WAFF) led to the merger of all units into a regiment in each of the dependencies. The merger in Nigeria produced the Northern Nigerian Regiment and Southern Nigerian Regiment. Both Regiments had commandant respectively. While the Northern commandant was Lt. CHP Carter (1899–1901), Col. J. Wilcox headed the Southern Regiment (1900–1909). The two regiments were later used for the expedition during the annexation of Nigeria by Lord Lugard from 1901–1903.

The amalgamation of Nigeria in 1914 led to the unification of both regiments. Subsequently, the Nigerian Regiment was created. Whereas the Southern became 3rd and 4th Battalions of the Nigerian Regiment, the Northern Regiment became the ordinary infantry Battalion after the Second World War. The Nigerian Regiment was changed to Queen Own Nigerian Regiment (QONR) during the visit of Queen Elizabeth of Britain between 28 January and 15 February, 1956. The QONR eventually became the Nigerian Military Force (NMF) in the same year. On the 1st June, 1958, the British Army Council in London relinquished control of NMF to the Nigerian Government. In 1960, when Nigeria got independence, the NMF was changed to the Royal Nigerian Army (RNA).

In 1963, when Nigeria became a Republic, the RNA became Nigerian Army. That same year, the Army changed its uniform, rank structure and instrument from those of WAFF to new ones including green Khaki uniform.

The above analysis shows the process for the formation of the military we have in Nigeria currently. Every institution is a product of its background. The creation of Nigeria began from a northern enclave with special interest from the British authority to protect their own economic activities against the local indigenes that were to be protected. The nature of transformation in the institution called the Army up to independence in Nigeria was stage managed to protect the interest of the authority in power which is against the ethics of the military which the protection of territorial integrity of the country.

More importantly, the foundation of the Nigerian political system is the architecture of military leaders under colonial and neo-colonial rules. The likes of Cecil Rhodes, Lugard, Richardson, Clifford, Bourdilion, Littleton, and McPherson were all retired Colonels and Generals of the British War Machine. These people were all compensated with posting to British colony now Nigeria either as Governor Generals or LT Governors or Residents. Their styles of governance were a military oriented rule. Consequently, the orientation of people under foreign rulers had been militarized; this orientation was inherited by the civilian rule that was not prepared to accept opposition opinion in a democratic system of government (Ademoyegun, 1981).

The foregoing development escalated security challenge when the Nigerian Government began recruitment of personnel into the rank and file of the military institution. This accounted for why sectionalism was too pronounced in the first and second military coups in Nigeria. This resulted mainly from the lopsidedness within the ranking officers. While Chief Obafemi Awolowo accused the North of taking advantage of their military stronghold on the country, the argument of who succeeds Aguyi Ironsi also became hot debate after the counter-coup of July 29, 1966. In the succession controversy that ensued, Ojukwu argued that if Ogundipe or Adebayo from the Western part of Nigeria could not be allowed to head the government. One of the three senior military officers of Igbo extraction should be made to head the government instead of General Yakubu Gowon who was a low ranking officer to the trio. Clash of interest among the high ranking military officers escalated crises, which constrained Ademola Ademoyegun (1981) to observe that:

... the clash of interest had subsided, the clash of principles had subsided, it was the clash of personalities that remained and led to the civil war and utter defeat of Biafra (p. 34).

The comment raised by Chief Obafemi Awolowo was manifested in the manner in which General Babangida acted on the result of June 12 Presidential election. General Abacha argued that the northern part of the country would not agree for a southern President to

preside over the affairs of the country. And to satisfy the northern oligarchy, Babangida went ahead to annul the popular vote of the majority (Idowu & Oyinlola, 2011). To placate the western part of Nigeria, the military institution under General Abdulsalami Abubakar arranged for a suitable candidate for the 1999 election from the west that could serve and protect the interest of the northern oligarchy. Eventually, Olusegun Obasanjo became the most suitable alternative thereby bringing him to power as a democratically elected President in 1999.

No matter the political manoeuvre by General Abdulsalami Abubakar which brought Obasanjo to power in order to pacify the west, the annulment of the June 12, 1993, election portrayed the military in a serious bad light. Among other effects, the action planted the seed of disunity through political ambition rather than serving and protecting the integrity of the nation which is the core mandate of the military in any society. And since May 29, 1999, security has become a major challenge in Nigeria.

### **The Significances of Military in a Democratic Government**

Democratic institutions and democracy require the assurance that something of value will not be taken away in order to guarantee appropriate development. The feeling of safety is expected by the citizens from security agencies. And the high organs of the security agencies in any society cover the army, air force and Navy.

The Protection of territorial integrity is the main business of the military. Similarly, the importance of the military in a democratic government cannot be overemphasized being the backbone of security in any sovereign state. Its role in a democratic government is in the following areas:

- i. The military guarantees smooth running of government with adequate protection of life and property. This guarantees smooth transaction of business within and outside the country for effective discharge of developmental programmes earmarked made during campaign. In view of this, the military serves as umbrella which provides shelter for democratic government.
- ii. The military defends the territorial integrity of a nation and collective defence of the Alliance of their country.
- iii. The military provides solid humanitarian aid to the host community and other areas where they find themselves for any assignment.
- iv. The search and rescue missions are being carried out by the military to prevent insecurity in the land
- v. The military provides assistance in disasters and also renders assistance whenever accident occurs where necessary
- vi. The military maintains public order by providing administrative assistance, by performing protective functions and assisting the police in emerging situations (Kujat, 2010).

Within the framework of the executive arm of the government, the Armed Forces are subordinate to political leadership which is responsible to parliamentary business as an important organ of the three arms of government in a democratic government. The appointments of Service Chiefs are being made by the executive, the confirmation lies in the hand of the highest body of the legislature which is the Senate, in the case of Nigeria. This singular process has subjected the Armed Forces authority to legislative control.

### **The Advent of Democracy and Security Challenges in Nigeria, 1999–2018**

Since Nigeria has been created as a country, the longest democratic period is between 1999 and 2017. The period was initiated by a man who was regarded as an experienced person with vast knowledge about governance in Nigeria. He was recognised by the international community because he voluntarily relinquished power to a democratically elected government. However, his style of politics internally portrayed him as part of the problem in Nigerian politics. Many have accused him of being directly responsible for the present quagmire through political manipulations in the past.

Many have argued that the election that brought President Olusegun Obasanjo to power was fuelled mainly by the corrupt use of money and the muscling influence of retired generals. Those who have overbearing interest in preserving the present *status quo* seem to have adopted the General as their candidate and decided to sell him to the electorate (Idowu & Oyinlola, 2011: 451). The candidature of Chief Olusegun Obasanjo was seen as a wrong choice for Nigeria at that time. The real principle of democracy was relegated to the background by the Generals who sponsored him. This development continued one of his opponents to declare that the battle him and Chief Olusegun Obasanjo, was like the battle between David and Goliath. In spite of this, their rancour-free electioneering campaigns devoid of reckless mudslinging and violence. After the election, Chief Olu Falae protested against the result of the election like a democrat, who loves his fatherland.

The beginning of little crisis that snowball into different conflicts could not be far-fetched from the experience of Nigerians and their political leaders under President Ibrahim Babangida. The new President Oulsegun Obasanjo failed in two main ways: firstly, his failure to persuade those who felt cheated over the June 12, 1993, election and secondly, his inability to manage the unity government he formed with other political parties like Alliance for Democracy (AD) and All Peoples Party (APP).

Under the watch of President Olusegun Obasanjo, very serious crimes against political opponents were committed. His number one Chief Law Officer (Attorney General), Chief Bola Ige, was assassinated inside his bedroom at Ibadan on 23 December, 2001. Also, a prominent politician Chief Mashal Harry was assassinated (Idowu & Oyinlola, 2011). These were political assassinations which the country never got to their roots throughout the tenure of Obasanjo's government.

The new dispensation also came with the constitutional problem of rigidity as it is been speculated by the political leaders and constitutional laws. For the country to move forward, there must be restructuring of the system through overhauling of the 1999 constitution which ushered in new democratic government. Among the leaders who canvassed this position was Former Senate President, Ken Nnamani. Others include Ben Nwabueze, Olisa Agabkoba, Femi Falana, etc.

It was in respect to the above agitation that, Obasanjo set up a CONFAB in 2005 to review the Nigerian constitution. The Conference came up with a different view which was later collated and forwarded to the Legislative for ratification and approval. The process was marred with selfish opinions which made National Assembly under Ken Nnamani as the President of the 5th Senate reject the whole document.

Between 1999 and 2007, the country witnessed serious crises such as Odua Peoples' Congress (OPC) agitating for recognition and respect for the culture of Yoruba in all the six States of Yorubaland namely: Oyo, Ogun, Ondo, Osun, Ekiti and Lagos. A good example could be traced to Ijebu violence which claimed about fifteen lives (Oni, 2009:7). This agitation also spread to most of the Yoruba speaking groups in Kwara and Kogi States. The question of identity was so pronounced in all parts of the country.

Apart from the OPC agitation in the West, the political unrest in places like Ondo, Oyo, Osun was very visible at that time. A good example could be traced to Ekiti State. Political unrest was as at the peak when legal battle was in progress between Kayode Fayemi of Action Congress of Nigeria and Segun Oni of Peoples Democratic Party. The ACN, tagged Segun Oni's mandate as governor of Ekiti as stolen mandate that must be recovered by all means. The long drawn legal tussle caused serious tension in Ekiti State (Makinde, 2010).

In the northern part of the country, the main focus was the agitation for the adoption and full implementation of the legal system in the North. Zamfara was a good example of the northern states that adopted Sharia in totality. This agitation generated crises all over the nineteen states of northern Nigeria. In Plateau State it generated serious crisis in 2001. The crisis did not spare Kaduna and Kano.

In other parts of Eastern Nigeria, the activity of the Bakassi Boys was at its peak at that time. The long agitation led by Isaac Adaka Boro on 23rd February 1966, resurfaced again with fresh agitation by different militia groups in the South-South under the auspice of leaders such as Asari Dokubo, Ateke Tom, Topolo Government, Henry Okar, the acclaimed leader of MASSOB, etc. These were the people armed by politicians to win elections but who were later abandoned (Peel, 2009). They moved against the Nigeria state. The act of kidnapping the oil workers began with ransom payment. This was followed by pipeline destruction. This development negatively affected oil production in the Niger Delta.



To curtail the development, the federal government set up the Amnesty Programme during which many militants accepted to drop arms against the Nigerian state. The Amnesty programme was followed by six-month training for 20,192 ex-militants. This shows the number of armed youths that were at war with Nigeria from the south-south region alone where the seat of the nation's economy is located (Adebayo 2010).

In North-East Nigeria, the major religious conflict Nigeria is contending with today sprung up in 2002, at Zagi-Biriri village, in Tarmuwa Local Government, about 70 kilometres to the state capital (Abdulsalami & Akombo, 2017). This group later formed a different group in 2004 which became a monster called Boko Haram today. Initially, the second group in Maiduguri was integrated into politics in 2003 but later fell out with the government then. The group went on rampage in 2009 when its leader, Muhammad Yusuf, was killed. As part of insecurity, the General Commanding Officer (GOC) of the Division, Nigerian Army, Major General Ahmadu Mohammed, escaped death as angry soldiers opened fire on his official vehicle when he came to address them at Maimalari Barracks in Maiduguri, the Bornu State capital (Abdulsalami & Akombo, 2017). Up till date Nigeria is still grappling with the Boko Haram activities which the Nigerian government is spending a huge amount of money and human resources to contain.

The North-central states were equally affected. It was reported that in Plateau and Kaduna States, a million Nigerians were displaced as a result of the crises that erupted in the areas. Also, in Plateau State, a Senator, Gyang Dantong, and James Gyang Fulani were killed in the wake of crises rocking Plateau State (Alao, Agbese, & Wakili, 2012:1).

Again, parts of what democracy brought to Nigeria in 1999 are religious and ethnic politics at all levels. The politicians across divides adopted religion and ethnicity as tools for campaigning. This became so pronounced in 2015 presidential election. The battle line of war was drawn between north and south-south regions of the country. While the North felt that it would not allow the incumbent president to seek re-election, the South-South region felt they have the equal right like any other regions in Nigeria. The intervention of former President Goodluck Jonathan saved Nigeria from eminent collapse by officially congratulating Muhammad Buhari even when the results of the Presidential was not officially announced by the INEC, since the ballot papers were still being counted (Adeniyi, 2017).

Since President Muhammad Buhari came to power on May 29, 2015, the economic activities have been in shamble because of mismanagement of the previous administration. The effort to revamp the economy as the cardinal objective of the Buhari's administration has not been felt by the people. Other campaign promises such as fighting corruption has not been fully won by the administration due to hiccup in the judiciary system. Insecurity has taken a new dimension in Nigeria. Herdsman attacks in different states such as Benue, Taraba, Enugu, Oyo and Kaduna is on the high side.

The issue of insecurity in Nigeria took a new dimension towards the end of 2017 in different parts of Nigeria with unimaginable killings in all nooks and crannies of the country. The issue got bad from January, 2018. The wanton destruction of lives and property in Zamfara State has made the Executive Governor, Abdul Azeez Yari, to resign his mandate as the Chief Security Officer of his state because of the activities of cattle rustlers in Zamfara State. Meanwhile, the Minister of Defence, General Dan Ali, is from Zamfara State. The Governor claims that, he is a mere de-facto Governor without legal power to give the order to security agencies under his jurisdiction to stop killings since the Chief Security Officer obey an order from a man in Abuja who has no clear cut understanding of security challenges in his jurisdiction.

### **The Effects of Insecurity on Socio-Economic Activities in Nigeria since 1999–2017**

The above analysis has shown the negative dividends of democracy in Nigeria since 1999. Insecurity has become a major issue because of monetisation of the democratic process which has made it possible for the money bag politicians to dictate the pace in politics. The highest bidders in politics are the people being declared by the electoral umpire as the winners. From 1999 to 2011 voting in Nigeria was mere rubber stamp event. The ruling parties at states and federal level played the politics of winners take all, which is one of the main causes of insecurity we have in the country today.

The election in Nigeria is worse than daylight robbery because the military has militarised democracy. This is done by imposing candidates of their choice. The militaristic nature of Nigeria's political culture which is built on autocratic leadership affects elections in Nigeria (Adeniyi, 2017: 24). The moment people feel that justice would not be served appropriately, they resort to violence as the last option to redress the injustice meted on them.

Nigeria is a country blessed with abundant human and material resources to drive development. Unfortunately, insecurity in the country has disrupted all facets of human life. The spate of insecurity in Nigeria increases the level of illiteracy, which reduces the relevant skills required to manage the economy in all strata of life. The spate of insecurity in the northern part of Nigeria has drastically reduced the level of literacy. It is obvious that whenever a crisis erupts, many schools are destroyed. The kidnapping of school children prevents the parents from sending their children to school. For example, according to United Nations Children's Education Fund (UNICEF), 40 percent of Nigerian children aged 6 to 11 do not attend any primary school with the northern region recording the lowest school attendance rate in the country, particularly for girls (Abubakar 2015:20). The activities of Boko Haram are causing a major setback in student enrollment in both primary and secondary schools.

Insecurity in Nigeria is causing weak agricultural base, apart from the fact that Nigerians had moved away from agriculture since the oil boom of the 1970s. The few set of peo-

ple who choose farming as their main occupation are not well secured in the village. The incessant attacks by the armed bandits and Fulani herdsmen have reduced the strength of villagers. Self-inflicted communal clashes aided by the political class have turned many villages to ghostlands. This has affected agricultural output. The general spate of insecurity in Nigeria has hindered business activities and at the same time discouraged local and foreign investors, all which prevent and retard Nigeria's socio-economic development.

## **Conclusion**

In conclusion, democracy cannot be wished away as a system of government in the contemporary society. It has been regarded as a system which guarantees the decision of vast majority and at the same respect the voice and opinion of minority. However, security remains an important aspect of good system of government which is the main aspect of democracy. Unfortunately, the Nigeria democracy has not yet found a common ground for security of its citizens.

The politics of security is rooted in the politics of Nigeria. This makes our democracy susceptible to constant attacks by the Western world. The number of casualties since democracy began in 1999 is too much. No ethnic nationality is excluded from the conflicts erupting from the politics of security our politicians play in the country.

The analysis has shown that, the leaders of the ruling party in Nigeria always chooses politics of security as the main item used to divert peoples' attention from developmental issues. The promise of possible infrastructural during the campaign which usually takes centre stage during campaigns is always relegated to the background on assumption of office. Ironically, the main agenda of every political party is supposed to be security and development for citizens. Very worryingly, the military institution and other security agencies are always at the centre of this ugly politics that has no benefit. The government uses them to suppress only the crises it creates. The wait in utmost disappointment the way and manner governments give blind eyes to the crises that yield "positive dividends" to those in power and the groups they represent. Sadly, apart from the mass destruction of lives and property, the government does not give adequate compensation to families of security agents whose lives are taken in such crises.

To put an end to this ugly trend in Nigeria, the political class must play by the rule of law which is the heart of democracy. There must be a clear departure from the rule of force and fragrant disobedience to rule law. People must move away from the politics of religion and ethnicity. Gerontocracy has replaced our democracy; contractocracy should be totally disregarded in our politics.

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# Uganda: Conceptual Limitations within Formal Conflict Resolution Mechanisms in Transboundary Protected Areas

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**Abstract:** This article illustrates the conceptual limitations within conflict resolution attempts in Transboundary protected areas (TBPAs) in Uganda. Using the case of Namatala wetland in Eastern Uganda, this paper analyses the conflict resolution initiatives by government of Uganda to-date; and highlights the conceptual gaps within these initiatives as a reason for the unending conflicts among those using the wetland. Although institutionalized approaches to conflict resolution are given priority by many countries, they often prescribe a public administrative structure model. This article illustrates how such approaches contradict tacit factors that underlie the different dimensions of conflicts in TBPAs. Adopting a retrospective qualitative approach, a review of secondary sources and 7 key informant interviews were conducted. Previous conflict resolution attempts in Namatala have involved resurveying of the contested land, dividing wetland territories based on administrative units; organizing meetings based on districts and providing security to people in conflict zones. Invoking the relative deprivation theory, the article highlights five issues of historical injustices, cultural claims; boundary definition; effects of climate change and language discourse that have been contradicted by this approach. The article demonstrates that all these limitations need to be appreciated and factored into the resolution initiatives in order to yield meaningful and sustainable results.

**Keywords:** conceptual limitations, transboundary protected areas, conflict resolution mechanisms, wetland, and climatic change.

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## Introduction

Environmental conflicts continue to attract a lot of attention in development research because they play a disruptive role in national and international development.<sup>1</sup> Increasingly, a number of countries are experiencing these conflicts because their national income base is derived from natural resources (Brown & Keating, 2015). While these conflicts can occur anywhere, they are more prone in transboundary protected areas<sup>2</sup> (Martin, Rutagarama, Cascao, Gray, & Chhotray, 2011) because of the shared nature of the resources. These transboundary areas range from water bodies, mountains, wildlife, forests and wetlands. However, their use often spark off conflicts (Machini, 2013). Perennial conflicts over transboundary protected areas have been recorded in a number of countries such as Nepal and India over the Ganges river (Kim, 2016), Israel and Jordan over river Jordan (Choudhury & Islam, 2015), and the conflict between Kenya and Uganda over Migingo island in lake Victoria (Rossi, 2016). Despite this, many of these countries do not have comprehensive approaches to manage these conflicts. Narratives on conflict management have posited that such conflicts can be managed by avoidance, coercion, negotiation, mediation, adjudication and conciliation (Alinon, 2010; FAO, 2000; Olowu, 2017). However, more narratives go a step further to categorize these mechanisms into broader approaches.

Broadly, approaches of conflict management in TBPA fall in three categories; the traditional, formal (institutional) and collaborative approaches (Akudugu & Mahama, 2011). Literature indicates that earlier forms of conflict management within the TBPA followed the informal approaches (Olowu, 2017; Sanginga, Kamugisha, & Martin, 2007) where traditional institutions were central to conflict management. These involved use of people of integrity within the communities, clans or families as mediators. But with the waning of traditional political systems, formal institutionalized mechanisms emerged that involve use of formal structures (Petursson, Vedeld, & Vatn, 2013) and legal frameworks to settle disputes in TBPA. These approaches have two dimensions; those which divide the resource, and those which share the resource (Huda, 2017). Those that divide the resource use institutions to streamline governance of the TBPA by establishing agreements on boundaries that separate the resource and provision of security by each competing stakeholder (Huda, 2017). However, those that share the resource ensure that competing stakeholders establish joint institutional structures, treaties and strategies to share the resource. While these approaches may be good, oftentimes, they exclude local users in the management of conflicts in the TBPA

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1 Environmental conflicts refer to any disputes and disagreements over access to, control, use and responsibility of any environmental resource (LeBillon, 2015).

2 The International Union for Conservation of Nature (IUCN) defines Transboundary Protected Areas (TBPA) as preserved land resources that go beyond one sovereign land (Sandwith, Hamilton, & Sheppard, 2001). The sovereign land may be a country, region or community within a country.

(Sanginga *et al.*, 2007). Due to this, some academics have suggested collaborative approaches which intensively engage local users (Ratner *et al.*, 2017). These approaches blend formal approaches and the traditional approaches in conflict management (Gent & Shannon, 2011; Yasmi, Colfer, Yuliani, Indriatmoko, & Heri, 2007). Although these approaches are known, the choice of approach to use during conflict in TBPA depends on resource availability, the urgency in the settlement of the dispute, the need for binding decisions and the nature of conflict. Given that decisions from informal approaches are oftentimes not legally binding, yet collaborative approaches take a lot of time, some countries give priority to institutionalized approaches because they are quicker and follow national and international guidelines (Akudugu & Mahama, 2011). However in Uganda, these institutionalised approaches have followed the formal public administrative structure model. This involves creating new administrative units, surveying of the contested land, redefining administrative borders, dividing contesting ethnicities; talking to district leadership, halting the use of the wetland and providing security to people in the conflict zones. This model negates the historical and cultural claims within in the TBPA; contradicts local perceptions of a boundary and downplays other push factors that underlie conflicts in transboundary wetlands. This article therefore illustrates the conceptual limitations within such institutionalized conflict resolution mechanisms in TBPA; using the case of Namatala wetland in Eastern Uganda. The article will examine the previous conflict resolutions regimes in the area, it will highlight the tacit factors which continue to drive, and contribute to the conflicts; and using the relative deprivation theory, it will illustrate how the attempts negate these tacit factors.

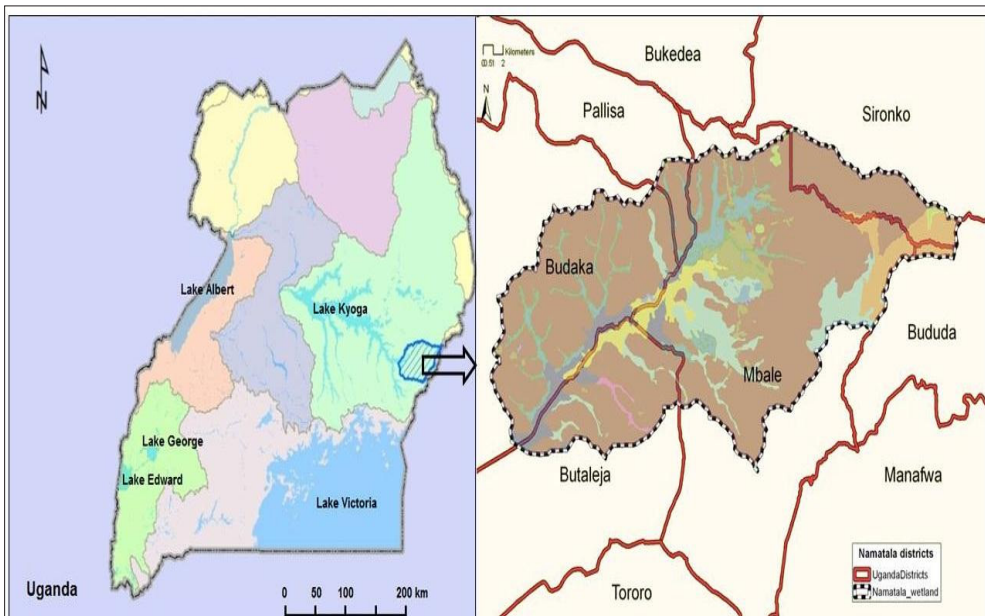
### **The relative deprivation theory as a framework for analysis**

Relative deprivation as defined by Gurr (1971) is a sentiment when a group of people think they have less than what they should have. Salch (2013:167) in agreement with Gurr (1971) postulates that “*relative deprivation refers to any perceived discrepancy between people’s expectations and their capabilities to fulfill those expectations*”. The key idea in the theory is that people will feel deprived if what was initially theirs has been taken away or when they feel they ought to have what their referent group has. The feeling of relative deprivation creates a feeling of inequality between the discontented group and the reference group (Agbibo, 2013). This raises frustration and the accumulated frustration strengthens group identities which lead to group violence (Abdullahi, Seadat-Khan, Saheed, & Abdulrahman, 2016). The dimensions of relative deprivations are varied, some could be political, cultural, social, economic, psychological (Smith & Pettigrew, 2015) or even structural. The more a group feels deprived, the greater the group bond and the intensity of conflict. The conflicts in Namatala therefore is driven by actual or perceived relative deprivation by some groups of people. The theory is used to identify what dimensions of dissatisfaction are created by the conflict resolution and how do these continue to contribute to the conflict in Namatala.



## Area of study

The study adopted a retrospective qualitative approach in order to generate an understanding of the historical attempts in Namatala wetland and why the conflict has persisted. To achieve this, the study followed a case study research design in Namatala area shared by three districts of Mbale, Budaka and Butaleja of Eastern Uganda. This area was purposively selected because it has had recurring violent conflicts for over a decade. All the four transboundary sub-counties were purposively selected, these were; Kamonkoli and Lyama in Budaka district, Butaleja town council in Butaleja district and Bukasakya sub-county in Mbale district. The geographical context of Namatala is illustrated in the map below.



**Fig 1.** Map showing Namatala wetland

Source: Namaalwa, Dam, Guruh, Kagwa, and Sekayizzi (2012)

## Methods

This study adopted a retrospective approach drawing upon a review of secondary sources and oral interviews with 7 informants. The review of secondary sources was done to generate data on the conflict resolution attempts during the colonial era in Namatala. I read articles, books, online sources and newspapers relevant to this study and these were obtained from Makerere University Library. Oral interviews with key informants were used to generate data on conflict resolution attempts since the post-independence era; and the unresolved issues which drive the conflict. Since in qualitative research the

concern is more with the richness of the data and not numbers (O'Reilly & Parker, 2012), 3 district natural resources officers representing each of the districts and 4 sub-county leaders representing each sub-county were selected. Natural resources officers were chosen because they are the technical people at the district level on issues of ownership and use of wetlands; while sub-county leaders were selected because they are knowledgeable about the previous attempts and drivers of the conflict in their districts. All the interviews were recorded by use of a recorder and later transcribed. A thematic analysis was adopted to identify codes, categories and themes (Bryman, 2012) during and after data collection and verbatim quotations have been used to strengthen the description of findings. Ethical considerations of informed consent, voluntary participation, anonymity and confidentiality were upheld during the study.

## **Results and analysis**

The study set out to illustrate the conceptual limitations of the conflict resolution attempts in Namatala conflict. Findings show that there were a number of conflict resolution attempts in Namatala right from the colonial period; but all the attempts did not capture some issues that drive the conflicts in Namatala. The following section therefore will highlight the conflict resolution attempts and unresolved issues in Namatala.

### **Conflict resolution attempts in Namatala**

Contestations around Namatala began during the colonial rule, when political boundaries were adjusted several times during the expansion of the British protectorate to Eastern Uganda (Khanakwa, 2012). During the formation of Bukedi district in eastern Uganda, the initial administrative unit was placed in Bugwere in 1902 which is dominated by Bagwere ethnic group). However, it shifted to Mbale dominated by Bagisu, two years later (Twaddle, 1969). This led to competing claim over Mbale between the Bagwere and the Bagisu. In an attempt to end the existing contestations, Bugisu district was carved from Bukedi District in 1954, and Mbale was made an independent district hosting the administrative units of both Bugisu and Bukedi Districts, causing more confusion and more contestations (Karugire, 1980; Kasfir, 1976).

Before independence, the conflict intensified, compelling the colonial government to establish a boundary commission in 1962 to look into the Mbale question (Khanakwa, 2012). To corroborate this evidence, an elderly key informant from Mbale said; *"Britain helped and came and put a committee in 1962 to separate Bugisu from Bukedi. The good thing is that they even got the coordinates that separate them"*. However, all these efforts by the colonial government were to separate the conflicting groups by establishing new administrative structures. Probably the assumption was that; by laying new administrative units, the conflicts would end, but this was not the case as one key informant from Budaka explains; *"at first, boundary between Bugisu and Bugwere was at the high court, and the head offices were in Maluku. But later, one leader confused the process of*

*demarcation and the boundary was extended to the railway line, relocating Bugwere to Bukedi". By independence, the conflict over Mbale was still going on as one local leader from Kamonkoli narrates; the decision to give Mbale to Bugisu was made some years after independence with the betrayal of one of our leaders at the time. But the case on this issue is still in the high court of Mbale, it has never been disposed up to now. This history had huge implication for the conflicts between Bagisu and Bagwere rice farmers over Namatala wetland in in the post- independence era.*

When the new wave of conflicts broke out in 2005 between rice farmers from Bugisu and Bugwere, new attempts were made by government to ensure that this conflict ends. One of the attempts was to again re-survey and demarcate the land so that the Bagisu and Bagwere rice farmers know their limits as a key informant narrates;

*"In the 2007, the ministry of lands sent us a surveyor who organized a meeting with the conflicting parties and informed them that he was going to survey the land basing on 1962 boundary. Together with the district leaders, Resident District Commissioners (RDC), District Police Commander (DPC) and 12 more people from either side, land was surveyed placing pillars at certain intervals to mark the boundary. The following morning, people from Budaka came and removed all the pillars claiming that the surveyor had been compromised" (key informant from Mbale).*

The removal of pillars indicates that one group did not agree with demarcations that were made. And indeed another key informant emphasised that; *"The railway line had been the boundary for many years. Even Amin's road blocks used to be stationed there. But to our surprise, they were saying that Namatala stream is where the new boundary is. There was even a tree near the boundary, but when the surveyor came to demarcate, the tree was far away from what we knew as the boundary in favor of the Bagisu"* (an elderly key informant from Budaka). Another key informant also reported that in 2010, another attempt was made by government through the ministry of water and environment to cordon off the wetland for human activity but the surveyor was only rescued by the police from the angry mob from Nyanza in Budaka.

Due to the disagreements, another attempt that was made during the violent episodes was to halt the use of the wetland. The army and police were deployed around the wetland to avoid bloodshed. As a local leader claims; *"the DPC and RDC met with the farmers and ordered them to stop using the wetland immediately and they declared that whoever was to be found using the wetland during that period would be arrested". But after some time people gradually started going back to the wetland* (a local leader from Mbale). While these efforts were able to stop the violent conflict, the subtle conflict still went on. In fact one leader from Budaka said *"we don't know where the boundary is up to now"* and another from Mbale reiterated *"the major conflict stopped but people are running out of patience because many issues have not been resolved"*. This implies that

the conflict resolution attempts were able to calm down the violent conflict but there are still some unresolved issues and it is these that breed grounds for more conflicts.

As the conflict between the Bagwere and Bagisu rice farmers was declining, another wave of conflicts over farming rights in Namatala wetland emerged in 2015; but this time between Banyole of Butaleja District and Bagwere of Budaka District. In response, government intervened by sending government officials including the Inspector General of Police, Minister of State for Lands and permanent secretary Ministry of Lands to talk to warring parties and their leadership (local leaders from Butaleja). These attempts fuelled the conflict instead of lessening it. Like the previous conflict between Bagisu and Bagwere, government attempted to demarcate the districts of Butaleja and Budaka as remarked by a key informant; *“two surveyors were hired, one by Butaleja district and another by Budaka District. It was agreed before surveying that both parties should accept the outcome, but when this was done, the people from Butaleja disagreed with the new demarcations”* (Female key informant). Despite all the efforts by government, the conflicts have persisted; some with latent manifestations, while others are violent and fatal. The persistence of the conflict indicates that there are underlying issues that remain unresolved. The next sub-section is going to highlight some of these issues.

### **The conceptual limitations and the unresolved issues in Namatala**

The findings show that there is a historical element in the conflict that relates to change in weather patterns in the past. Key informants indicated that in the 1960s, there were heavy rains which flooded the low lying areas of Namatala forcing people to shift to the upper lands. However when the water levels receded, river Namatala had changed course, shifting the ownership of certain pieces of land. This historical event continues to play a significant role in driving the current conflict because some conflicting groups still feel that they unfairly lost their land.

Besides history, the findings also show that there were cultural issues embedded in the conflicts. One key informant made this expression; *“from time immemorial, what is now called a wetland used to be people’s homes, there were houses and there are burial sites even up to now in that wetland. So we cannot just leave our ancestors under the custody of strangers”* (an elderly male informant from Mbale). This statement suggests that the contested wetland is not only perceived as a piece of land for sustaining livelihoods but a symbol of their identity and cultural heritage. Additionally, language plays a significant role in escalating the conflict in Namatala. In one of the interviews, a local leader noted; *in 2007, “the conflict may not have broken out had it not been the language used by Bagwere. The people from Bugwere said; have you ever seen a buck mounting a cow? Meaning that we the Bagisu are goats and they are the cows”* (An elderly male informant). Such demeaning language raises emotions and can be used to mobilise other members to join the conflict.

The findings also indicated that there are issues of difference in the interpretation of the boundary. Some community members view Namatala river as the boundary while others use the boundary on the map of Uganda used by the technical people to separate districts. To emphasise this, a local leader said; *“In the year I have forgotten, the Ministry of Lands sent us surveyors. When the surveyors started plotting the boundary, they were attacked by some people claiming that they are changing the Borderline”*. This is indicative of the difference in interpretation of the boundary between some community members and the technocrats. Another key informant noted; *“You know that Namatala river is seasonal, but there are those who believe that Namatala is the boundary so even after the river has changed its course, they will follow the river as a boundary”*. The mismatch between the local interpretation of a boundary and that of the technocrats is a tacit issue that may not have been considered in the previous attempts.

Additionally, the findings also showed that the wetland of Namatala supports the livelihood system of farming communities that are adjacent to the wetland. Perhaps the conflict would not emerge if the wetland was not used as a source of livelihood for the conflicting parties. A key informant noted; *“the biggest thing is the economic benefit associated with the resource of a wetland. It is the driving force of the conflict because, if you are not using the resource, would you want so much to go and fight for it? Or would you care where the boundary is? The wetland is where rice farmers get higher economic benefit.”* The economic value of the resource of a wetland is critical, given that most users of the wetland are rice farmers who need constant flow of water in order to reap big. Another key informant also noted, *“Right now anybody who has a wetland is a very rich person because other pieces of land in Butaleja are not productive”*. The unproductivity of the uplands either due to loss of soil fertility or effects of climate changes is a significant push factor of the conflict. These unresolved issues have bred a feeling of relative deprivation among communities; resulting into perennial conflicts.

## **Discussion**

This article set out to illustrate the conceptual limitations of the conflict resolution attempts in the transboundary protected area. Given that such areas are transboundary in nature, it is easily assumed that such conflicts are about unclear or unstable boundaries. In as much as this may be true in some situations; in Namatala, there are other underlying issues. Therefore, the national efforts that informed the purpose and approach of these conflict resolution regimes in Namatala appear to have been based on that understanding. While government thought that physical separation of the conflicting groups, offering security to conflicting group or surveying the contested lands could resolve the conflict; this favoured the public administration structure but not the local people. Increasingly, the conflict in TBPA in Namatala wetland appear to be driven by historical and cultural rights of the contesting parties, the perception of boundary by local users, the changing nature of the river, and the role of climate change.

History is well known to play a significant role in conflicts (Gleick, 2014) but often times this history is not associated with change in weather patterns. In the case of Namatala, the history is in relation to heavy rains which led to flooding. The impact of flooding is well documented in terms of creating food shortages (Vermeulen, Campbell, & Ingram, 2012; Wheeler & Braun, 2013) and poor health conditions (Franchini, Mannucci, & Baldi, 2015; Hashim & Hashim, 2016), but this study suggests that it can lead to conflicts in subnational transboundary wetlands. The change in the river course due to the floods created social, economic and cultural losses to some groups and unless such groups get their entitlements, that continues to breed a feeling of deprivation. Physically demarcating territories is good for public administration, but to the local people it may just reinforce the injustice especially if what they claim remains in the hands of the competitor. The relative deprivation theory argues that feelings of felt injustice can continue to breed emotions even when overt manifestations are absent (Alam, 2013). Therefore if a conflict resolution attempt ignores such undertones, the attempts may become futile.

Culture is an important aspect in creating cohesion but it can as well create social difference especially when different groups share resources. When resources are contested for, cultural identity and heritage become important elements. In agreement with this argument, He and Xue (2014) contend that; collective violence becomes a means of building and defending cultural identities. In the case of Namatala, the need for communities to secure the burial sites is one of the factors causing the conflicts. Burial sites denote traditional places where families bury their dead. Evidence suggests that burial sites is one way in which communities and families maintain their cultural heritage (Nafziger, 2017), but their meanings and purposes vary greatly across families and communities. Rugg (2000) suggests that in some communities burial sites express an identity to the living but Francis, Kellaheer, and Neophytou (2000) assert that the deceased are part of the living and should be close by for customary and religious functions. However, the conflict resolution mechanisms of redefining boundaries sometimes make the burial sites more distant especially when ownership of the land changes to another person by the new boundary. Therefore, the persistent conflict may be a resistance to the fact that the deceased members of the family are distant, it could be a response to fact that some families are unable to perform certain cultural and religious practices; and it may equally mean that the living are not able to care for their deceased as they ought to. The relative deprivation theory argues that sentiment of relative deprivation takes different forms; it can be political, economic, social or cultural (Smith & Pettigrew, 2015) like it is in Namatala. This implies that cultural connotations have to be factored any attempt of resolving the conflict in Namatala.

Related to culture is the issue of boundary definition. In many African societies, geographical features such as valleys, rivers, mountains and forests have always been used as thresholds to determine how far one can use a particular resource (Ngwochu,

2012). In agreement Grassiani and Swinkels (2014) contend that borders are not man made but socially constructed. This denotes that borders can be determined by local perception through the process of socialization. Therefore, if people have learnt from experience that Namatala stream/river is the boundary, anything contrary to this will be contested. This is because the socially constructed boundary is visible and has a geographical location compared to the imaginary one determined by use of the Global positioning system (GPS) which is normally used in trying to resolve the conflicts. Arieli (2016) further maintains that imaginary lines act as barriers, but socially defined boundaries involve a network of trust. Therefore, the use of GPS may be the best approach for district leadership because it clearly determines the threshold of each district, but to the local people, it is unfamiliar, foreign, and a total contradiction of what is known. The paradox though is that even the socially constructed boundary is problematic because land marks like rivers/streams change position over time. It is even worse if it is a seasonal river like Namatala because access and use of the wetland will be determined by the season. Clearly, this creates a feeling of inequality that is the central idea in relative deprivation theory (Agbibo, 2013). But redefining such borders based on the imagery line yet the local people define it differently is counterproductive because it destroys the networks of trust local people have. This implies that socio-cultural connotations have to be factored in any attempt of resolving the conflict in Namatala.

From an economic point of view, the transboundary wetland of Namatala is a critical resource for survival of communities adjacent to the wetland. Even when it is illegal to use the wetland for human activity, their reality gives them limited options. Findings indicate that the upland has become less productive and therefore the wetland is the only mechanism available for coping to the unproductive uplands. What could have made the uplands less unproductive is not clear; but it could probably be due to climate change effects like higher temperatures (Fischer, Hertz, & Velthuis, un dated). A conflict resolution mechanism that halts or restricts the surrounding communities to use the wetland like it was in Namatala is detached from reality. It deprives all the conflicting groups from using the wetland which is an economic dimension of relative deprivation. Since there are limited alternative livelihoods, the wetland is the only source of livelihood and income for surrounding communities (Bhatta *et al.*, 2016; Nasongo, Zaal, Dietz, & Okeyo-Owuor, 2015). Besides that, it offers a favourable condition for the major economic activity of rice farming because of the constant availability of water for production. Effects of climate change and the need for water for production play a significant role in influencing the different dimensions of conflicts in Namatala. However, the Conflict resolution mechanisms seem to ignore them. The failure of the conflict resolution attempts to capture such issues is bound to lead to unending conflicts.

## Conclusion

This article illuminates the conceptual limitation within the public administrative and geophysical initiatives that have been made by government to end the perennial conflicts in the transboundary wetland of Namatala in Eastern Uganda. This article demonstrates that the conflict resolution attempts in Namatala have largely adopted an institutionalized separationist approach using public administrative frameworks and geophysical solutions including spatial deprivation of the resource. This has involved defining of boundaries between the conflicting groups, dividing of administrative units, provision of security and establishing buffer zones for human activity. The assumption of government has been that; once a group has been given a well-defined territory for utilisation and administration; and has been given protection; then that group is secure. But this paper shows that conflicts in TBPA's take different dimensions. Increasingly, the conflicts are also being occasioned by increasing demands for water for production in the wetland, boundary definition and the changing nature of the river; language historical and cultural claims. Therefore while the purpose of the conflict resolution attempts in Namatala is good, the approaches used to resolve the conflicts in Namatala favour the public administrative systems but negate the underlying tacit historical and socio-cultural issues of the local people. Therefore, there is need to have holistic attempts that capture all these undertones within the community.

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