LAND USE IN UGANDA: A CRITIQUE OF THE LEGAL AND POLICY FRAMEWORK

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Declaration A

"This dissertation is my original work and has not been presented for a degree or any other academic award in any University or institution of learning".

Kyobutungi Dorothy

16-12-2013

Date

Declaration B

"I confirm that the work reported in this dissertation was carried out by the candidate under my supervision".

Godard Busingye

16-12-2013

Date

Dedication

To the Almighty God, my family, my parents, brothers and sisters and all my friends;
I dedicate this work.

Acknowledgement

My special thanks to the Almighty God who protected me till now and from whom knowledge comes.

I acknowledge the parental care and moral support given to me by my parents.

My sincere gratitude to my supervisor Godard Busingye for his guidance and support while carrying out this research.

Special thanks to my family and friends for their uncountable support too.

List of statutes/instruments

Constitution of the Republic of Uganda, 1995.

The Land Act Cap.227.

The Land (Amendment) Act, 2004.

The Land (Amendment) Act, 2010.

The Land Acquisition Act Cap. 226.

The Mortgage Act, 2009.

The Registration of Titles Act, Cap. 230.

The Succession Act, Cap. 162.

The Survey Act, Cap.232.

The Town and Country Planning Act, Cap. 246.

List of Government Policies.

The National Land Policy, 2013.

The National Land Use Policy, 2007.

The National Oil and Gas Policy, 2008.

Abstract

This dissertation examines the question of Land Use in Uganda and analyses the legal and policy framework. It explores the nature of Land Utilisation; the need to regulate its use, the most suitable option land is put to use and most importantly the, the key aspects of land use; that is, land ownership (tenure) and accessibility. However, its focus stays on the legal and policy framework. Uganda has no sufficient laws governing the general issues of land use, though efforts have been to ensure the regulations are in place. Analysis exposes the legal and policy gaps that need to be taken on in order to exhaustively deal with the question of land use ;(land ownership and access), thus the need for amendment of the prevalent laws. The study highlights the relevant provisions thereof under the prevalent law legislation which can and should be modified to the convenience of the land users and land owners. Further it provides a doorway for new legislation and regulations that can be harmonized within the present land laws with a view of bringing the general land law up to date with the contemporary land policy issues. The study also serves the general purpose of convincing on the need to harmonize or replace discordant land sector laws and bring them in line with the new legal order.

List of Cases

Boyd v Mayor of Wellington [1924] NZLR 1174

John Katarikawe v W. Katwiremu & Ors (1977) H.C.B 187

Kampala District Land Board v N.H.C.C, Civil Appeal No 2 of 2004

Kampala District Land Board and other v Venansio and others, Civil Appeal No. 2 of 2007.

Paul Kisekka Ssaku v Seventh Day Adventist Church, Civil Appeal No. 8 of 1993 (unreported)

Sentongo Producers & Coffee Farmers Ltd v Rose Nakafuma Muyiisa, HC MSC No. 690 of 1999

Shah v Modern Sweet Mart Ltd (1956-1957) 8 ULR 99

Tifu Lukwago v Samwiri Mudde Kizza and Nabitaka, Civil App. No. 13 of 1996

List of Acronyms

CPL	Condominium Property Law
EPRC	Economic Policy Research Centre
FAO	Food Agriculture Organization
GOU	Government of Uganda
IPCC	Intergovernmental Panel on Climate Change
LEAM	Land-use Evolution and Impact Assessment Model
MAAIF	Ministry of agriculture animal industry and fisheries.
MFPED	Ministry of Finance Planning and Economic Development.
MNR	Ministry of Natural resources
NEAP	National Environment action Plan
NEMA	National Environmental management Authority.
RTA	Registration of Titles Act
STOG	Second Treatise on Government.
UBOS	Uganda Bureau of Statistics
ULA	Uganda Land Alliance
ULII	Uganda Legal Information Institute
UNEP	United Nations Environment Program
USDA	United States Department of Agriculture.

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CHAPTER ONE
GENERAL INTRODUCTION

1.1. Background of the study

In Uganda, land is very a critical factor; it is the most essential pillar of human existence and national development.[1] It is the basic resource in terms of the space it provides, the natural resources it contains and supports, and the capital it represents and generates. It is a capital asset which can be used and traded, a critical factor of production and an essential part of national patrimony.[2] It is also a key factor in shaping individual and collective identity through its history, cultural expressions and idioms with which it is associated. [3]

Land use is the nature of utilisation under which land is put or the possible kinds of uses under consideration for the future.[4] It is the exploitation of land for agricultural, industrial, residential, recreational, or other purposes.[5] Historically most countries have a laissez-faire attitude toward land use, for this reason the land has been exploited at will for economic gain. Only in recent decades have states realized that land is not a limitless commodity.[6] Increasing population and industrial expansion have generated urban sprawl, with thousands of square miles of open space being taken over annually for housing and business[7].

As a result congestion and widespread pollution, contamination of the environment as a result of human activities (land use), along with depletion of water and mineral resources and destruction of wilderness and wildlife habitats, have become increasingly severe thus the need to protect the quality and continuity of life

[1]Government of Uganda (GOU). (2010). *National Developmnet Plan (2010/11-2014/15).*
[2] Uganda Land Alliance. (December, 2010).*The Uganda National Land Policy. 2013.*
[3] Ministry of Lands Housing and Urban Development. (March 2011),The National Land Policy, p.4
[4] Preamble to the National Land use Policy, 2007, p.viii.
[5] Z. A. Gutternberg. (1959). Multiple Land Use Clasification System; Journal of American Planning Association; http://encyclopidia2.thefreedictionary.com
[6] Journal of Land use and Environmental Law; Florida State University College of Law, http://encyclopidia2.thefreedictionary.com/enviromentalism.
[7] Ibid.

through conservation of natural resources, prevention of pollution, and control of land use.[8]

Uganda owes the current system of land use and management to the evolution of ownership and access triggered by the significance attached to land as a primary production means. The total surface area of Uganda is about 241,500sqkm of which 194,000sqkm is land and the rest open water and wetland. 84,000sqkm of the land which accounts for 43% is rangeland and 24.4% as marginal lands. Close to 88% of Ugandans live in rural areas and their livelihood depend on land either as pastoralists or farmers practicing subsistence agriculture.[9] Agriculture is the major land use form that employs close to 80% of the population and responsible for almost half of Uganda's Gross Domestic product. Other forms of land use that significantly contribute to the economy include wildlife management, forestry, wetlands management and human settlement — industrial production, commercial enterprises and employment. [10]

The people of Uganda depend on land and land resources to sustain their livelihoods; ranging from the food they provide; to the land on which their homes are built, to myriads of goods and services that are essential for their survival. They make this country habitable; purifying air and water, maintaining biodiversity, decomposing and recycling nutrients and providing many other critical functions.[11] Utilization of these land resources forms a root of Uganda's economy and provides the majority of employment opportunities in the country and thereby determining the future of this country. This calls for the proper assessment of the use on which land is put so that the most suitable option be promoted.[12] Further, the economic objectives demand that land be put to its productive, economically viable and

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[8] K. Mugerwa (1992). Management and Utilisation of Range Land- The case of Uganda.

[9] GOU. (1998)*Operationalisation of the Medium Term Plan for Modernisation of Agriculture in Uganda,1997/98-2001/2.*

[10] Ministry of lands Housing and Urban Development. (May 2007), *The National Land use Policy*, p.3.

[11] MAAIF. (1996). Medium Term Agricultural Sector Modernisation Plan for the Ministry of Agriculture Animal Industry and Fisheries. Modernisation of Agriculture in Uganda: The Way Forward 1998-2001.

[12] P. Jagger and J. Pander (2001). Policies for improved Land Management in Uganda. EPTD, *Workshop Summary Paper No. 10.*

sustainable use since economic costs of mismanagement of land will exert a heavy price on Ugandans especially the rural poor.[13]

Land comprises all elements of the physical environment to the extent that these influence the potential land use. Land refers to soils, land forms, geology, climate and hydrology, the plant cover, and fauna including insects and micro organisms.[14] The nature of utilisation under which land is currently put or the possible kinds of uses under consideration for the future is referred to as land use.[15]

However, despite all this endowment, Uganda faces a number of challenges arising out of a rapidly growing population, the country's quest for development and poor land use planning practices. These have put pressure and competition on the scarce land resources and resulted in inappropriate decisions in the allocation of land use activities. These are manifested , among others, in form of land degradation, loss of vegetation cover, loss of biological diversity, wetland degradation; pollution; uncontrolled urban development; conflicts over land use and reduced productivity. Such problems would not be elusive to attain if land management was premised on legislation emphasizing sustainable and optimal use of the land.[16] However, Uganda has just approved its first defined or consolidated National Land Policy this year, since the advent of colonialism.[17]

Instead the country had a Land Use Policy adopted in 2007, which only focuses on use of the land resource without addressing the main problem of how land is owned—the tenurial problem. The Land Use Policy does not provide for proper land use planning because this would be based on the tenurial aspects of a comprehensive Land legislation that is lacking. Consequently, Uganda is faced with problems of inadequate land use planning and enforcement of land use legislation. Further land use and its management lie in many and different institutions, each

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[13] *Ibid.*
[14] (NEMA) (1996). State of the Environment Report for Uganda, 1996.
[15] Ministry of lands Housing and Urban Development. (May 2007), Preamble to the National Land use Policy, p.viii.
[16] GOU. (2010). *(no. 1)*
[17] The National Land Policy, 2013.

managing isolated portions and aspects that are un coordinated and in competition with one another for recognition and resources hence creating critical overlaps in institutional responsibilities and insufficient collaboration among public sector institutions and agencies.[18] It is also governed by sectoral legislation whose tenets are not harmonized.

In the first decade of the independent Uganda , there was not much radical transformation in the land tenure and management regime save for the Public Lands Act which provided for protection of customary land right , thus only protected the interests of customary land holders.[19] The 1975 Land Reform Decree introduced fundamental changes in the land question. All land in Uganda was declared Public Land and land was vested in the Uganda Land Commission. Whereas all freeholds interests were abolished and mailo land converted to leaseholds, customary occupants held their parcels of land at sufferance. This allowed people to at least access any piece of land and in effect the decree transferred all land to the state. People using the land only did so, on a lease basis issued on conditions specifying the purpose for which the land may be used and for a period of time limited to 49 years. Under the leaseholds land users only received usufruct rights from the state and to the customary occupants with no legal titles to the land they occupied, the decree implied even serious consequences.[20]

Attempts have been made to radically streamline the land management regime and land use in Uganda; First it was the 1995 Constitution and later the 1998 Land Act. The two legislations try to reinforce each other, though management has remained under the mandate of different institutions thus making it evident that land related policies have remained inconclusive on the key aspect of land use. This creates a problematic situation for the land use institutional managers because the

[18] The Uganda National Land Policy. (2013), Chapter 6: Land Use and Land Management Frame work
[19] Nuwagaba. (1998) Involuntally Resettlement and Natural Resource Utilization, Makerere Institute of Natural Resources.
[20] M.B Tukahirwa. (2002). Policies People and Land Use Changes in Uganda. LUCID Working Paper Series No. 17.

institutional framework within which they operate does not clearly define their mandate.

1.2. Statement of the problem

Lack of proper legislation on land use, has caused land resources to be under-utilized and inefficiently managed in Uganda. It has also led to inefficiency and resource abuse. Land administration is inadequately resourced, and it is performing very poorly in service delivery. As performance standards are eroded, the public is slowly losing confidence in the entire land administration system, which is increasingly becoming dysfunctional.[21] Yet the underlying premise on which the practice of judicious management of natural resources is based is that an equitable and sustainable relationship between human and natural resources is fundamental and essential to stability and progress of a nation.[22]

Whereas effort has been made to rectify problems and conflicts that come along with the absence of clear land policies, these have not yielded any positive results.[23] The problem of the study is how to come up with findings and recommendations that can influence the government's attitudinal change so that the provisions of the comprehensive land policy framework that has recently been adopted are translated into operational terms.

1.3. Rationale of the study

The rationale of this study is to examine the impact of absence of robust legislation on land utilization in Uganda.

1.4. Scope of the study

Content scope

This study focused on land use in Uganda, the legal and policy framework and whether the land use policy can be properly implemented without the backing of well drafted land legislation. The study further stresses the fact that the

[21] The Uganda national land policy (2013), (no.18).
[22] The Uganda National Land Use Policy (May 2007).p.1
[23] *Ibid,* p.6

absence of a comprehensive legal framework that provides for firm ownership of land complicates the problem of land use in Uganda.

Theoretical scope

The study is underpinned on the Lockean property theories, in particular the Lockean argument for unilateral appropriation of property. It states that in a state of nature, individuals have an equal claim to unused resources meaning that natural resources are held in common, for the use of everyone but the property of no one. The theory will either be accepted or rejected by the end of the study.

Time scope

The content of the study is the current land legal and policy framework but delves into the pre- independence period; as Uganda has never had a clearly drafted land legislation which consolidates all the scattered policies that exist on various aspects of land question but are diverse, sectoral and inconclusive in many respects since the advent of colonialism in the nineteenth century; save for the recently approved, national land policy.

The study also discusses the post- independence situation as well as the recent attempts to settle the land question by the 1995 Constitution of Uganda, and the Land Act 1998 but failed to deal with the fundamental issues in land tenure due to absence of clear policy principles to inform the enactment of legislation that offers politically and socially acceptable and technically feasible solutions.

Geographical scope

The geographical scope of the study is Uganda; it covers the national land legal and policy framework that governs land use in the whole country.

1.5. Objectives of the Study

i. To critique the legal and policy frame work on land use in Uganda.

ii. To discuss other factors that can inform the government on the need for proper and comprehensive land legislation for Uganda.
iii. To come up with conclusions and recommendations that can probably bring about a mindset change on the land use and ownership in Uganda.

1.6. Research questions

i. To what extent have the prevalent land laws and policies impacted on the question of land use in Uganda?
ii. What factors can inform the government on the need for proper and comprehensive land use legislation for Uganda?
iii. What can be done to bring about a mindset change on land use and ownership in Uganda?

1.7. Methodology

The study primarily dealt with the question of land use in Uganda in the sense of the nature of utilization, the need to regulate its use, the most suitable option land is to used and the key aspects of land use. Hence, the researcher narrowed it to the key aspects of land use and the focus was specifically put on the legal and policy framework.[24]

The study used both primary and secondary data. Secondary data was obtained from sources such as legal instruments, journals, journal articles, textbooks, the press, internet surfing and from records of NGOs and government offices.

The use of qualitative data collected from the different sources allowed a detailed analysis required in the question of land use in Uganda and promoted a greater understanding of the same. This is supported by Kisilu who asserted that such a study seeks to describe issues in detail, in context and holistically. It also

[24] Beach, W. W., Kane, T. Methodology: Measuring the 10 Economic Freedoms. 2007 Index of Economic Freedom. T. Kane, et. al. Washington D. C. and New York, The Heritage Foundation and The Wall Street Journal. 2007.

allows a great detail to be learned from a few samples of the phenomena under study.[25]

1. 8. Review of Literature

There is no agreement on what the basic question of precisely what land use means, but there seems to be no internally consistent alternative definitions. In the past, land use classification used a variety of theories which have relied on manual identification procedures to minimize the search necessary to distinguish the relevant groupings; for example the same land use could contain land use descriptors such as a "public open space" determined by a combination of "ownership" and visual description and heavy industry determined by a combination of activity and qualitative judgment.[26] This means that it can be defined as man's activity on land or the purpose for which land is being used or the nature of utilisation under which land is currently put or the possible kinds of uses under consideration for the future.[27]

As Albert Guttenberg, (1959) wrote many years ago, that "Land use is a key term in the language of city planning".[28] Commonly, political jurisdictions will undertake land use planning and regulate the use of land in an attempt to avoid land use conflicts. Land use plans are implemented through land division and use ordinances and regulations, such as zoning regulations. Management consulting firms and Non-governmental organizations will frequently seek to influence these regulations before they are codified.

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[25] D.K. Kisilu & L.A.T. Delno, (2006). Proposal and Thesis writing, p.70

[26] G. C Dickinson & M.G Shaw. JSTOR, Area Vol.9, no. 1 of 1977 pp. 38 – 42 (University of Leads & Centre for Environmental Studies respectively).

[27] Preamble to the National Land use Policy, 2007, p.viii.

[28] A. Z. Guttenberg (1959). 'A Multiple Land Use Classification System', Journal of the American Planning Association, 25: 3, 143 — 150.

FAO, defines land use as the human use of land. It involves the management and modification of natural environment or wilderness into built environment such as fields, pastures, and settlements.[29] It has also been defined as "the arrangements, activities and inputs people undertake in a certain land cover type to produce, change or maintain it".[30] Land use practices vary considerably across the world.

The United Nations Food and Agriculture Organization; Water Development Division explains that "Land use concerns the products and/or benefits obtained from use of the land as well as the land management actions (activities) carried out by humans to produce those products and benefits." [31] As of the early 1990s, about 13% of the Earth was considered arable land, with 26% in pasture, 32% forests and woodland, and 1.5% urban areas.[32]

Land use and land management practices have a major impact on natural resources including water, soil, nutrients, plants and animals. Land use information can be used to develop solutions for natural resource management issues such as salinity and water quality. For instance, water bodies in a region that has been deforested or having erosion will have different water quality than those in areas that are forested. Forest gardening, a plant-based food production system is believed to be the oldest form of land use in the world.[33] The major effect of land use on land cover since 1750 has been deforestation of temperate regions.[34] More recent significant effects of land use include urban sprawl, soil erosion, soil

[29] FAO, 1997a; FAO/UNEP, 1999: IPCC Special Report on Land Use, Land-Use Change and Forestry, 2.2.1.1 Land Use

[30] Ibid.

[31] FAO, Land and Water Division retrieved 14 September 2010.

[32] Ibid.

[33] Robert Hart (1996).*Forest Gardening*.p. 124. http://books.google.co.uk/books. "Forest gardening, in the sense of finding uses for and attempting to control the growth of wild plants, is undoubtedly the oldest form of land use in the world.

[34] Intergovernmental Panel on Climate Change, (no.29).

degradation, salinization, and desertification.[35] Land-use change, together with use of fossil fuels, are the major anthropogenic sources of carbon dioxide, a dominant greenhouse gas.[36]

According to a report by the United Nations Food and Agriculture Organization, land degradation has been exacerbated where there has been an absence of any land use planning, or of its orderly execution, or the existence of financial or legal incentives that have led to the wrong land use decisions, or one-sided central planning leading to over-utilization of the land resources - for instance for immediate production at all costs. As a consequence the result has often been misery for large segments of the local population and destruction of valuable ecosystems. Such narrow approaches should be replaced by a technique for the planning and management of land resources that is integrated and holistic and where land users are central. This will ensure the long-term quality of the land for human use, the prevention or resolution of social conflicts related to land use, and the conservation of ecosystems of high biodiversity value.

This concept of land use therefore refers to exploitation of land for agricultural, industrial, residential, recreational, or other purposes.[37] For the case of Uganda, it owes the current system of land use and management to the evolution of ownership and access triggered by the significance attached to land as a primary production means.

In the colonial times, policies and laws on land ownership and management favoured individual ownership while recognizing the existence of customary tenants. With the Land reform decree, came the conversion of all tenure types into leaseholds with communal lands turned public land potentially available for lease by any interested parties. Several areas gazetted for protection (forests and wildlife

[35] UN Land Degradation and Land Use/Cover Data Sources ret. 26 June 2007.

[36] UN Report on Climate Change retrieved 25 June 2007; from Web archive.

[37] LEAM; Comprehensive and Collaborative Urban Planning & Modeling. www.leamgroup.com/; http://encyclopidia2.thefreedictionary.com

reserves) were degazetted.[38] The setting affected people's security of ownership leaving many to prefer short term profit maximizing investments while neglecting long term environmentally sound and suitable investments.[39] The 1995 Constitution restored the systems of land tenure that were in existence at Independence. The Land Act of 1998 clarified the content of themultiple land tenure systems with stipulated guidelines for land management.[40]

Land use in Uganda is split into three main components including; Agriculture, Land for conservation and Built areas.[41] These components give rise to seven Land Use types:[42] Areas exclusively devoted to agriculture, Exclusively built areas, Areas exclusively reserved for conservation, A combination of built and conservation areas, A combination of agriculture and built areas, A combination of agriculture and conservation and a combination of agricultural land, built and conservation areas

Use of land to achieve the three basic components raises a number of issues of concern to all stakeholders that need to be addressed for sustainable land use and management. These include; Agriculture, Natural Resource Management, Land Management and Administration, Human settlements, urbanization and industrialization, Legal and Institutional framework, and Regional and International obligations.

The Constitution of the Republic of Uganda as amended[43], provides that the utilisation of natural resources of Uganda shall be managed in such a way to meet the development and environmental needs of the present and the future

[38] The Land Reform Decree promulgated in 1975, made a radical change in land and property relations by declaring all land in Uganda Public Land.
[39] This was because land ownership and use rights had become unclear and insecure with customary tenants being declared "tenants at sufferance".
[40] The Land Act, 1998 (as amended), Sections 2 & 3 which provide for land ownership and incidents of forms of tenure respectively.
[41] These utilization categories are not exclusive of one another and the inter-linkages between the three broad categories results in being characterized by different land use types.
[42] As stipulated in the National Land Use Policy, 2007, p.2, on Land Use in Uganda.
[43] The Constitution of the Republic of Uganda. (1995), *Objective XXVII (ii).*

generations of Ugandans in particular prevent and minimise destruction of land, air, water resources resulting from pollution or other causes thus providing for sustainable use of land since it is not a limitless commodity.

The Constitution, 1995 under chapter 5,[44] fundamental rights and freedoms of the citizens of Uganda are stipulated and these include the rights to acquisition and protection against deprivation of property.[45] "Land in Uganda belongs to the citizens of Uganda and shall vest in them with accordance with the land tenure systems provided for in this Constitution.[46] Further the state has residual authority to control land use in the interest of the public[47] as well as the police power to protect and preserve the environment from abuse, pollution, degradation and its management for sustainable development.[48]

In light of the provisions of the Constitution, land is the common heritage of all the people of Uganda and as such every citizen is entitled to share in this vital and strategic resource.[49] This is also important in view of the fact that land is a limited resource which will be affected by the increasing pressure as the population of Uganda expands. Then the role of the state in ensuring that every citizen has affair deal becomes very vital. In addition, much as there is no doubt that the ultimate ownership or the radical title to land rests with the citizens of Uganda there are practical problems relating to the manner in which the citizens of Uganda hold such title individually or collectively since the location of title determines the

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[44] Article 26 (1), 1995, Constitution which provides for the right of every Ugandan to own property either as an individual or in association with others.

[45] Property rights are economic interests supported by the law. In real estate law, property rights are referred to as bundle of rights because ownership of a parcel of real estate may embrace a great many rights, such as right of occupancy and use, the right to sell property in whole or in part and others.

[46] Article, 237 of the 1995 Constitution, provides for ownership of land since prior to this Constitution all land vested in the state as represented by the Uganda Land Commission, in trust for the people of Uganda.

[47] As enshrined in Article 242 of the Constitution which states that, "the Government of Uganda, under laws made by Parliament and Policies made from time to time, regulate the use of land".

[48] Article 245 which provides for the protection and preservation of the environment.

[49] As envisaged by the Uganda Constitutional Commission (the Odoki Commission) of 1993 that had recommended that "*the state should hold land in Uganda in trust and for the benefit and well- being of all the people of Uganda, including future generations*".

derivation, security and integrity of land rights. Therefore Uganda needs a comprehensive land policy framework that will provide a solution to problems arising out of the location of the radical title.

Still in view of what the Constitution stipulates, the residual sovereignty over land, as a real property,[50] vests in the citizens of Uganda but it also has serious implications since its true interpretation would mean that any reversionary interest in land rests with the citizens of Uganda yet the same Constitution gives proprietary powers to other institutions that do not have any legally recognised reversionary title or interest.[51] Similarly, the police power of the state and the doctrine of radical title are also outstanding issues which would be clarified by the enactment of a clear land use policy.

The Land Act, 1998,[52] on land use stipulates that a person who owns or occupies any piece of land in Uganda should manage and utilize it in accordance with the National Environment statute (1995), the National Environment Act, Chapter 153 and other environmental related sectoral laws.[53] Hence advocating for sustainability through protecting other environmentally sensitive areas.[54]

The Act also decentralized management of land through the establishment of District Land Boards.[55] This institution has a role of holding and allocating land in the district which is not owned by any person. This strengthens the control of land use at the local level. Under customary tenure, improper land use is evident. The Act further provides for the formation of Communal Land Associations for purposes of communal ownership and management of land.[56] It also provides for the issuance of

[50] Real property means land and any other fixtures attached to the land including buildings, apartments and other structures as well as natural objects such as trees.
[51] The Constitution, 1995, Article 241 (1) (a).
[52] The Land Act, Cap. 227.
[53] Ibid, section 43.
[54] Ibid, section 44, which provides for the control of environmentally sensitive areas.
[55] Ibid, Part IV, section 56.
[56] Ibid, section 15.

a certificate of customary ownership.[57] Therefore the Land Act has played a big role in land use in Uganda through its advocacy efforts, by influencing decisions both at the national and local government level as well as in the communities it serves.

1.9. Clarification of Key Terms

1.9.1. Land

The meaning attributed to land by law is the same as that attributed by a layman generally; that is, land includes the surface of the earth together with all the subjacent and the super-jacent things of the physical nature such as buildings and trees.[58] Land is generally defined as the primary input and factor of production which is not consumed but without which no production is possible. It is the resource that has no cost of production and, although its usage can be switched from a less to more profitable one, its supply cannot be increased.[59]

The term 'land' includes all physical elements in the wealth of a nation bestowed by nature; such as climate, environment, fields, forests, minerals, mountains, lakes, streams, seas, and animals. As an asset, it includes anything (1) on the ground (such as buildings, crops, fences, trees, water), (2) above the ground (air and space rights), and (3) under the ground(mineral rights), down to the center of the Earth. Perhaps the oldest form of collateral, land is still very attractive to lenders because it cannot be destroyed, moved, stolen, or wasted. All a lender needs is the borrower's clear title to it.

In terms of accounting, land owned for productive use is referred to as a fixed asset account (not subject to depreciation due to its un-wasting nature) and is listed under the equipment, land, and plant subheading in a balance sheet. It is recorded at its purchase price plus legal and development costs (such as for surveying, draining, excavation, filling, and grading). Land held for investment is listed under investments; a real estate firm, however, may list it under inventory.

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[57] Ibid, section 4 (1).
[58] Burn E. H. and Cartwright, J. (2006). *Cheshire and Burn's Modern Law of Real Property*, 17th edn, Oxford.
[59] Business Dictionary; http://www.businessdictionary.com/html.

Austin, *Jurisprudence*, 5th edn, & Murray (1885) define land as the corporeal[60] and incorporeal rights.[61] There are also some Latin maxims that attempt to modernize the law by describing land as," *Cuius est solum eius est usque ad coelum et ad inferos"* ; the owner of the land owns everything up to the sky and down to the centre of the earth and "*quicquid plantatur solo, solo cedit",* whatever is attached to the land becomes part of the land.[62] A good starting point is the Law of Property Act, 1925, S.205 (1) (ix) which gives the statutory definition of land[63].

Land was defined in the Law of Property Act, 1925, S.205 (1) (ix) as including 'the surface, buildings or parts of buildings' and whatever is attached to the land becomes part of the land as under the Latin maxim, *quicquid plantatur solo, solo cedit.* This rises, in practice; an important problem relating to ownership of those items which, but for the fact that they are attached to the land, would constitute chattels. The distinction needs to be drawn between those items which are fixtures, and therefore part of the realty, and those which are not, and therefore remain personal.

The Constitution of the Republic of Uganda (1995) as amended refers to land as a natural resource; as stipulated in the National objective and Directive principles of state policy.[64] The National Land use policy (May 2007), defines land to refer to soils, land forms, geology, climate and hydrology, the plant cover, and fauna including insects and micro organisms.[65] Whereas the Registration of Titles Act, Cap 230, defines land to include messuages, tenements and hereditaments corporeal and incorporeal; and...all easements and appurtenances appertaining to the land.[66]

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[60] Corporeal rights are the physical features of land and consist of the surface itself and everything attached to the land.

[61] These are not subjects of sensation; can neither be seen nor handled, they are creatures of the mind and exist only in contemplation.

[62] J. Austin, *Jurisprudence*, 5th edn, London: Murray, (1885), vol. 1, p. 362.

[63] E. H. Burn and J. Cartwright (2006). *Cheshire and Burn's Modern Law of Real Property*, 17th edn, Oxford.

[64] The Constitution, I995, Objective No. XIII, provides that, "the state shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda".

[65] Ministry of Lands Housing and Urban Development. (May 2007). The National Land Use Policy, p.viii

[66] The Registration of Titles Act, Cap. 230, Part 1- Section 1 (i).

1.9.2. Policy

The concept of policy is complex without a specific delineated definition. Policies seem to imply generally a set of goals and underlying actions for attaining the stated goals. Sapru (1994:3) defines a policy as "Guidance for action and takes a form of declaration of goals and objectives, societal values and courses of action".[67] The major element of a policy is the relationship among inputs, outputs, policy outcomes and measurable indicators.

Anderson (1975) defines policy as a purposive course of action determined by actors and directed at solving a problem.[68] It therefore refers to systems of land administration that determine the rights of holding land, the adjudication process of land matters and the organization of the land market. A policy is therefore a principle or rule to guide decisions and achieve rational outcomes.

A policy is intent, and is implemented as a procedure or protocol.[69] Policies are generally adopted by the Board of or senior governance body within an organization whereas procedures or protocols would be developed and adopted by senior executive officers. Policies can assist in both subjective and objective decision making. Policies to assist in subjective decision making would usually assist senior management with decisions that must consider the relative merits of a number of factors before making decisions and as a result are often hard to objectively test e.g. work-life balance policy. In contrast policies to assist in objective decision making are usually operational in nature and can be objectively tested.[70]

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[67] J. Mugambwa.(2007). A comparative Analysis of Land Tenure Law Reform in Uganda and Puapa New Guinea: Journal of South Pacific Law 2007 11 (1).

[68] C. Anderson. (April 4, 2005.) *What's the Difference Between Policies and Procedures?, Bizmanualz.*

[69] Ibid.

[70] R.T. Nakamura, *The Textbook Policy Process and Implementation Research*: Review of Policy Research Volume 7, Issue 1, P.142–154, September 1987 *http://onlinelibrary.wiley.com/doi.*

The term may also apply to government, private sector organizations and groups, and individuals. Presidential executive orders, corporate privacy policies, and parliamentary rules of order are all examples of policy. Policy differs from rules or law. While law can compel or prohibit behaviors, policy merely guides actions toward those that are most likely to achieve a desired outcome.Further, at its most basic, a policy is "a course or principle of action, adopted or proposed by a government, party, business or individual".[71] The term is used in many different ways, varying from institution to institution, organisation to organisation and sometimes within institutions and organisations as well. It can be hard to pin down, but there are some central features common to all good policy: it states matters of principle, it is focused on action, stating what is to be done and by whom and it is an authoritative statement, made by a person or body with power to do so. Above all, good policy is a tool which makes administration easier, and allows people to get on with the organization's core business more efficiently and effectively.

According to a dictionary definition, policy is "any course of action followed primarily because it is expedient or advantages in a material sense".[72] When put into a political theme, this definition would read: 'Public Policy is a concept (usually in a written document), whereby the government or a political party will determine decisions, actions and other matters that will prove advantages to society in general'. Another possible way to look at policies, particularly the governments, is to think of them as the principle (be it values, interests and resources) that underlines the actions that will take place to solve public issues.

This may be administered through state or federal action such as legislation, regulations and administrative practices.[73] The starting point for anyone who is producing policies is to realize that there needn't always be consistency in them. This is mainly because the values of society are continuously changing, and policies being the representation of society's preferences and ideals, must change with them. It is at this broad level that policy becomes a complex interplay of "social and

[71] *Ibid*
[72] *Australian Concise Oxford Dictionary.*
[73] G. Davis, J. Wanna. (1993). Public Policy in Australia", Allen & Unwin.

economic decisions, prevailing ideas, institutions and individuals, technical and analytical procedures, and general theories about the way policy is made".[74] All of these factors when taken into account will determine what effect the new policy will have. There is no right or wrong policy. But the foremost will be one that addresses the masses, and reflects their social values.

Considering that public policy is an action taken by the government that ultimately effects the public, it has been recognized that even when an area of activity is left in private hands, the very act of it being left alone can be viewed as a deliberate policy of the authorities. This could possibly be because the general societies needs did not need to be altered, or because the body that the activity was delegated to will make the necessary changes in the place of the government; possibly because they understand social issues better because of their standing within society, for example local councils. In general, the purpose of government is to add value to the lives of the people it serves, and through good policy making, this can be achieved. Policies should express and embody society's needs and values, and this is achieved through the comprehensive use of politics involving cooperation from groups outside the government body.[75]

On the other hand, the word 'policy' has been looked at the word as a very elastic term and only given it a working definition. That is; a "policy" is very much like a decision or a set of decisions, and we "make", "implement" or "carry out" a policy just as we do with decisions. Like a decision a policy is not itself a statement, nor is it only a set of actions, although, as with decisions, we can infer what a person's or organization's policy is either from the statement he makes about it, or, if he makes no statement or we don't believe his statement from the way he acts. But, equally, we can claim that a statement or set of actions is misleading and does not faithfully reflect the "true" policy.[76]

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[74] Concept by Hawker, Smith and Weller.
[75] A.M. MacDonald, "Chambers Dictionary", T&A Constable Ltd. Edinburgh, 1980.

[76] Paquette, Laure (2002). *Analyzing National and International Policy.* Rowman Littlefield.

In some other ways a policy is not like a decision. The term policy usually implies some long-term purpose in a broad subject field (e.g. land tenure), not a series of ad-hoc judgements in unrelated fields. Sometimes, however, we conceive of policy not so much as actively purpose oriented but rather as a fairly cohesive set of responses to a problem that has arisen. In the sphere of government development activities, governments have policies, plans, programes and projects, each of these in succession being a little more short-term, more specific in place and timing than the previous and each successively more executive rather than legislative. In the light of these considerations we can provisionally define a policy as a set of decisions which are oriented towards a long-term purpose or to a particular problem. Such decisions by governments are often embodied in legislation and usually apply to a country as a whole rather than to one part of it.[77]

Policy or policy study may also refer to the process of making important organizational decisions, including the identification of different alternatives such as programs or spending priorities, and choosing among them on the basis of the impact they will have. Policies can be understood as political, management, financial, and administrative mechanisms arranged to reach explicit goals. The intended effects of a policy vary widely according to the organization and the context in which they are made. Broadly, policies are typically instituted to avoid some negative effect that has been noticed in the organization, or to seek some positive benefit.

The policy formulation process typically includes an attempt to assess as many areas of potential policy impact as possible, to lessen the chances that a given policy will have unexpected or unintended consequences. Because of the nature of some complex adaptive systems such as societies and governments, it may not be possible to assess all possible impacts of a given policy. In political science, the policy cycle is a tool used for the analyzing of the development of a policy item. It can also be referred to as a "stagist approach", "stages heuristic" or "stages

[77] Howard, Cosmo. "The Policy Cycle: a Model of Post-Machiavellian Policy Making?" The Australian Journal of Public Administration, September 2005.

approach".[78] It is a fiction rather than the actual reality of how policy is created, but has been influential in how people look at policy in general.[79] One standardized version includes the following stages: Agenda setting (Problem identification), Policy Formulation, Adoption, Implementation and Evaluation. Whereas an eight step policy cycle is developed in detail in includes the following; Issue identification, Policy analysis, Policy instrument development, Consultation (which permeates the entire process), Coordination, Decision, Implementation and Evaluation.[80]

Policy addresses the intent of the organization, whether government, business, professional, or voluntary. Policy is intended to affect the 'real' world, by guiding the decisions that are made. Whether they are formally written or not, most organizations have identified policies. Policies may be classified in many different ways. The following is a sample of several different types of policies broken down by their effect on members of the organization.[81]

1.9.3. Land –use policy

Since environmental problems arise largely from the way land is used, traditional land-use policy has come under challenge. Zoning regulations are one example of legal limitations on land use.[82] Another is the common-law concept of nuisance, which places limits and responsibilities on the rights of ownership.[83] On such grounds, pressure for land-use reform has sharply and continuously intensified over time. It is argued that as accessible land grows scarcer, its function becomes more critical, and therefore choice of that function should no longer be dictated by private profit or local convenience. Moreover, local laws and zoning regulations are

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[78] *Ibid.*
[79] *Ibid.*

[80]Althaus, Catherine; Bridgman, Peter & Davis, Glyn (2007). *The Australian Policy Handbook* (4th ed.) Sydney: Allen & Unwin.

[81] Howard, Cosmo. "The Policy Cycle: a Model of Post-Machiavellian Policy Making?" The Australian Journal of Public Administration, September 2005.

[82]Justine Thornton & Silas Beckwith. (1997). Environmental *Law*, Sweet & Maxwell's Textbook Series. London.
[83] Salmond and Heuston, Law of Torts, p.57

inadequate for settling land-use questions involving regions that cut across local boundaries, such as wetlands, shorelines, and floodplains, or large-scale facilities such as strip mines, sewer systems, power plants, and highways[84].

A land use policy is thus a means to protect the environment while permitting some commercial exploitation of renewable resources. However, critics charge that the encouragement of tourism for instance over utilizes already fragile ecological systems such as favoring timber companies over preservation of old-growth forests. This issue is starkly illustrated by the extinction of some threatened species poor policies. One possible solution is to create a biosphere reserve, which provides a core area in which no disturbance to the ecosystem is permitted, a transition area in which experimental research is allowed, and a buffer zone that protects the biosphere from external development pressures.[85]

As a consequence, environmentalists have gone to court to prevent or resite the construction of projects that would degrade the environment. Land-use court battles have been waged over the silting of jetports, petroleum refineries, offshore tanker depots and drilling rigs, nuclear power stations, high-voltage transmission lines, dams, and even shopping centers and housing developments.

The U.S. Dept. of Agriculture (USDA), in its periodic inventory of natural resources, reported in 1999 that during the five-year period from 1992 to 1997 the nation's privately held forests, croplands, and wetlands were lost to development in and around cities and towns at twice the rate they were from 1982 to 1992.[86] The land-use policy of such public lands as the U.S. national parks and forests is a matter of continuing controversy.

1.9.4. Land tenure and Land User Rights

[84] D. Stanners & Philippe Bourdeau. (1996). *Europe's Environment: The Dobris Assessment.* The European Agency.
[85] *Ibid.*
[86] *Ibid.*

This is a mode of landholding, together with terms and conditions of occupancy.[87] It is therefore about the "bundle of rights"[88] held and enjoyed in the land resource. These bundles of rights are relative in terms of the degree of their enjoyment and they translate into the manner of use of land, the duration of use or occupancy as well as relocation of the rights may be through transfer, lease, sublease, bequeathing and licensing. The essence of land tenure systems are the ways in which land rights, restrictions and responsibilities people have are held. The Ugandan Constitution, 1995, defines the current land tenure systems to comprise four systems of land tenure including; freehold, leasehold, mailo and customary. [89]

Land tenure systems differ across Uganda and tenure practices are a mixture of traditional practice, colonial regulations and post-colonial legislation. Land tenure refers to the way land is owned, occupied, used and disposed of within a community. A properly defined and managed land tenure system is essential to ensure balance and sustainable development. Until 1975 there were four types of land tenure systems in Uganda, customary, mailo, freehold and leasehold, (NEMA, 1996). Tenure systems are not confined to particular farming systems and may encompass several farming systems.

Customary tenure is found all over the country, but predominates in the northern and eastern cereal-cotton-cattle farming system, as well as the West Nile Cereal-cassava-tobacco system. Mailo tenure, dominant in the Buganda region, constitutes the intensive banana coffee system, but customary, freehold and leasehold tenure are also found in this farming system. Customary, freehold and leasehold tenure is also prevalent in the Western banana-coffee-cattle system and the Kigezi Afro Montane system.[90]

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[87] E.M Tukahirwa. (1992) Uganda Environmental and Natural Resources Management Policy and Law: Issues and Options, vol. 11. Documentation.
[88] Thomas Grey, 1980. "The Disintegration of Property" in *Property*, J. Ronald Penncok and John W. Chapman eds. NOMOS Monograph No. 22.
[89] The Constitution, Article 237, Paragraph 3.
[90] M. Kamanyire. (2000). Sustainability Indicators for Natural Resource Management & Policy. Working Paper 3; Natural Resource Management and Policy in Uganda, Overview Paper. EPRC. ISBN: 1

Customary land tenure is the most dominant in Uganda, whereby land is owned and disposed of in accordance with customary regulations. Specific rules vary according to ethnic groups and regions. This tenure system also exists on its own as communal land ownership. Customary land tenure was the only land tenure system in operation before colonial rule in the late 19th century. Up to the time of the Land Reform Decree in 1975, land held under customary tenure constituted about 75% of all the land in Uganda (EPRC, 1997). Principal categories of customary tenure are: communal/tribal tenure where ownership of land occupied by the community or tribe is vested in the paramount tribal leader as owner, who holds it in trust for the entire group or clan/family tenure where land is vested in the head of the group as owner or trustee for the entire group.

Customary tenure does not recognise individual ownership of land. It only recognises the rights of the individual to possess and use land subject to superintendancy by his family, clan or community. The disadvantage is that it does not encourage record keeping, often making it difficult to resolve land use disputes. Environmentally the main disadvantage is that it generates little personal interest in the status of land resources (tragedy of the commons) leading to mismanagement and degradation (NEMA, 1996).

Mailo tenure was introduced as a result of the 1900 Buganda Agreement. Under this Agreement, 9000 sq. miles of land were divided between the Kabaka, other notables and the Protectorate government. This area represented half the estimated area of Buganda. The basic unit of sub division was a square mile, hence the name mailo. Initially there were two categories, private mailo and official mailo. In the case of official mailo, grants of land were attached to specific offices in the Buganda government. They could not be subdivided or sold but passed intact from original office holder to his successor. In private mailo, the owner held rights in the land akin to those of freehold and could dispose of land as he wished.

Official mailo land was transformed into public land in 1967, with the abolition of kingdoms. Under this system land is held in perpetuity and a certificate of title is issued (EPRC, 1997). The allocation of original mailo holdings took no account of the rights of peasant cultivators whose tenancy rights were recognised under the customary land tenure that had existed before.

The principal advantage of this system is that it provides security of tenure thus allowing long term developments including those related to conservation. Absentee landlordism and lack of access by regulatory agencies are disadvantages that limit sound environmental management. Absentee landlordism encourages squatters on mailo land who have no incentives to ensure sustainable management of land they do not own. To the extent that mailo land is private, resource management regulatory agencies have limited authority over what happens on it. As such, most of the deforestation occurring in the districts of Buganda is on mailo land.

In freehold tenure, ownership is also in perpetuity and a certificate of title is issued. The system was originally established to address limited and specific requirements or requests such as by religious organisations. Freehold tenure was also granted by the Toro Agreement of 1900, Ankole agreement of 1901 and Bunyoro Agreement of 1903. The Crown Lands Ordinance of 1903 gave the British colonial administration power to alienate land in freehold. This system is found mainly in parts of eastern and western Uganda. It is argued that while land held under freehold tenure is not of the same magnitude as that under mailo tenure, it has a lot of similarities with mailo tenure and shares the same environmental management problems. Also that due to population pressures in parts of Uganda where freehold tenure exists, land fragmentation is a common occurrence. Land fragmentation is believed to have contributed to significant environmental degradation although concrete evidence is lacking.[91]

[91] (NEMA, 1996).

Leasehold is where land is held based on agreement between lessor and lessee. There are two types of leasehold tenure agreements, private leases given to individual landlords and official or statutory leases given to individuals and or corporate groups under public act terms. The advantage of the leasehold system is that the lessor can attach conditions to leases and has the right to revoke ownership in case of abuse. The main disadvantage is that leases are costly and cumbersome to obtain and so far leases awarded have not addressed environmental concerns.[92] The different land tenure systems affect land use and land management in a variety of ways and have environmental impacts too.

1.9.5. Access to land

Land utilization relates closely to the different tenure systems because the purpose, interests and rights of the parties involved impact greatly on the activities and innovations the occupants and or owners undertake on the land. The most developed estates in Uganda are in urban areas and in freehold and leasehold systems. The main reason is that relatively the holders enjoy unquestionable and unimpeded user rights fully backed by the law. Hence the holder can inject any amount of money so as to develop the land. The implication here is that the majority of the populations have resorted to trying access land for cultivation and grazing, a condition that has culminated into excessive and sometimes unwise utilization and subsequent degradation.

1.9.6. Property Rights

These are economic interests supported by the law. In real estate law, property rights are referred to as bundles of rights because ownership of a parcel of real estate may embrace a great many rights, such as the right of occupancy and use, the right to sell property in whole or in part, the right to bequeath, the right to transfer by contract for specified periods of time, and all other legally sanctioned benefits to be derived by occupancy and use of that piece of real estate.

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[92] Ibid.

Rights to private property, therefore, include the right of use, the right of exclusion and the right of transfer. However, private property has no uniform meaning. In some instances as defined above, property refers to real estate. In other context; it refers to rights in good against a particular person or the world under contract. Property can refer to remedy or restoration or injunction, as opposed to damages. Still other accounts of property are result oriented. It can refer to a means to promote allocative efficiency or to protect individual security and independence.[93]

1.9.7. Condominium Property

A condominium is one of a group of housing units where each homeowner owns their individual unit space, and all the dwellings share ownership of areas of common use. Units normally share walls, but that is not a requirement. The main difference in condos and regular single homes is that there is no individual ownership of a plot of land. All the land in the condominium project is owned in common by all the homeowners. Usually, the exterior maintenance is paid for out of homeowner dues collected and managed under strict rules. The exterior walls and roof are insured by the condominium association, while all interior walls and items are insured by the homeowner.[94]

In summary it is a form of property ownership in which each owner holds title to his/her individual unit, plus a fractional interest in the common areas of the multi-unit project. Each owner pays taxes on his/her property, and is free to sell or lease it. And in essence condominiums, are apartments that are individually owned. Common elements generally include walkways, driveways, lawns and gardens, lobbies, elevators, parking areas, recreational facilities, storage areas, laundry rooms, stairways, plumbing, electrical systems and portions of walls, ceilings and

[93] T. Grey. (1980). "The Disintegration of Property" in *Property*, J. Ronald Penncok and John W. Chapman eds. NOMOS Monograph No. 22.

[94] The Uganda Legal Information Institute (ULII); Legal Opinion on Condominium Property.

floors, and other items. Parts of the common elements may be designated for the exclusive use of one or more of the individual unit owners, in which case these are called *limited common elements* or *limited common property.* In other words, they are limited for the use only of specific owners. Examples would include parking spaces, roof gardens, balconies, storage lockers, and front and back yards.

In Uganda Condominiums are becoming more popular because of better land utilization, price competitiveness, built-in amenities, and convenient locations and designs. The condominiums are important for; better land utilization, price competitiveness, built-in amenities, and convenient locations and designs, condominium ownership appeals to active young singles, couples without children, couples with children, and pre-retirement and retired couples or singles.

However, in Uganda, the implementation of the Condominium property law (CPL) is still lacking yet this law provides for division of buildings into units and common property; individual ownership of those units by issuance of certificates of title; ownership of common property by proprietors of units as tenants in common and the use and management of the units and common property and for other connected matters.[95]

Further, the Condominium law is vital for enhancing the viability of housing finance. Although few private developers and public corporations have been selling apartments in high rise buildings, there is no much emphasis on this law for such transactions. For example, the sale of multi- family houses by the national housing and construction corporation was preceded by the enactment of the condominium law in 2001.

[95] The Condominium Property Act 2001 and the Condominium Property Regulations S.I N0 29 of 2002.

CHAPTER TWO

THE LAND QUESTION IN UGANDA: AN HISTORICAL PERSPECTIVE

2.1. Introduction

In Uganda, land continues to be a critical area, and an essential pillar for both human life and national development. The land question in Uganda has origins in the legacy of colonialism, wherein historical injustices deprived some communities of their ancestral lands that resulted in multiplicity of tenure regimes, multiple rights and interests overlapping on the same piece of land, and a heritage of evictions, arbitrary dispossession, land disputes and conflicts.

The major land reform was attempted in 1975, with 'The Land Reform Decree' that declared all land to be public and vested the State with the power to hold land in trust for the people of Uganda, thus all land being administered by the Uganda Land Commission. It also abolished the Mailo system of land tenure and converted them into leaseholds of 99 years. In 1995 a new Constitution was enacted, which reinstated the old tenure systems and gave land ownership back to the citizens of Uganda. Recently, the Government Uganda approved the National Land Policy,[96] which among other things, seeks to re-orient the land sector in national development by articulating management co-ordination between the land sector and other productive areas to enhance the contribution of the sector to social and economic development of the country.[97]

2.2. PRE-COLONIAL

It is difficult to identify a single land tenure pattern for Uganda as a whole for this period because before colonial rule, land tenure in Uganda consisted of a number of customary tenure systems, both sedentary and pastoralist. In general, customary tenure in sedentary agricultural communities revolved around kings and chiefs who allocated land to clans and community households according to

[96] The Uganda National Land Policy, 2013, Gazetted on the 30th August, 2013.
[97] Ministry of Lands, Housing and Urban Development. General Notice No. 504 of 2013; In the Uganda Gazette, Vol. CVI No. 43 of 30th August, 2013

customary norms and practices. Every person and household had the right to access sufficient land for their subsistence; this right came either from the lineage or clan head or from the chief to whom the person pledged allegiance. Transfer (i.e. rent, sell, and sometimes inheritance) rights were not granted—land not used or wanted reverted to the King or chief. Since most lineages in Uganda are patrilineal, when land was handed down within a family, it passed from father to son.

In the semi-arid regions of the country, access to land by clans and households was generally based on agreements with other clans that permitted the movement of households and cattle during the year to areas where pasture and water were available. Thus, households did not seek access to a piece of land in particular community or lineage on which to build shelter and plant crops, but rather access to lands along the traditional cattle corridor. Customary tenure recognized various rights of the individual to possess and use land subject to sanction by the family, clan and or community.[98]

Therefore the individual land holder had the right under customary tenure to utilize land as thought best, rest or lend a piece of land for temporary purposes, pledge crops on land but not land itself. Sale of land was subject to the approval of the family. The clan or family had the right to settle land disputes within the area of control, exercised the right to buy any land offered for sale by its member; as regards utilization, the general community had the right: to graze communally over the whole area, free access to salt licks, watering of cattle at running or open waters and access to water from springs and other common rights.

In the central (Buganda), land was by and large held by the Kabaka on behalf of and in trust for the people. The Kabaka effectively undermined the power of the clan heads largely by means of the power to appoint chiefs of various grades who had both administrative and military duties. In return, chiefs also got the right

[98] M. Kamanyire. (2000). Supra, no. 90

to use the land and produce of the peasants under them. At least four categories of rights of control over land could be identified:[99]

Rights of Clans over land (Obutaka), these rights accrued to heads of clans and sub clans who were known as bataka. The particular land involved was viewed as clan or ancestry land, the traditional seat of the head of the clan or sub-clan who determined a right to reside there but had a right after their death to be buried on such lands. Butaka estates were held not in private ownership but in semi-collective tenure, where a mutaka could allocate the right to use land and receive profits from the land with consent of the clan. This tenure was not alienable to foreigners and succession was passed to the successor in the role of mutaka rather than the descendants of a particular mutaka.

Rights of the Kabaka and the Chiefs (Obutongole), the Kabaka held paramount title to all land in Buganda. He granted land to his great chiefs (bakungu) who were few in number and to his lesser and more numerous chiefs called batongole. These rights in land are collectively described as obutongole. The grantees had rights of use in the estates attached to their chiefly offices. These rights were good during the continuance in office of the particular chief. The batongole exercised the same rights towards the peasants on their lands as those exercised by bataka with regard to the tenants on butaka land.

Individual hereditary rights (Obwesengeze), these were individual rights over land stemming from long and undisputed occupation and, or original grant by the Kabaka. They could be acquired by a chief or individual tenant. This type of tenure carried no political rights or duties like butongole tenure, and unlike butongole tenure, if the holder died, the land passed on his to heir. The holders were not subject to labor obligations like peasants.

[99] W. Kisamba Mugerwa. Private and Communal Property Rights in Rangelands and Forests in Uganda.Makerere University of Social Research, MUK.p. 3

Peasants' rights of occupation (Ebibanja), the peasants formed the majority of the population. The peasants were free to choose a chief under whom to live. A peasant got a piece of land for his undisturbed occupation under a chief of his choice who would organize for his security and general welfare while the peasant was to respect his chief, render him some tribute and occasionally work for him. However, although the peasant performed, would still be subject to being evicted from his kibanja/plot by the chief at any time. His rights of tenure, therefore, depended on his maintaining the cordial social relation and correct political behavior. Upon his death, a peasant's successor had a right to remain in occupation.

It is therefore clear that land relations in the pre-colonial period were, classified in a number of ways, some of which are unique to particular communities. Relations were based on feudalism where access to land was controlled by an oligarchy in which political power in society was exclusively vested. Security of tenure for land users was based on continuous loyalty to that oligarchy. The payment of tribute in the form of produce and gifts was therefore, a requirement as evidence of that loyalty. At the time of colonization, this system was fully established in and unique to the kingdoms of Buganda, Bunyoro, Ankole and Toro. Systems of land tenure were based on territorial control in which access to land resources was governed by a complex network of reciprocal bonds within families, lineages and larger social units commonly called chieftaincies to protect and guarantee individual and community rights as prescribed by custom. As long as such bonds remained, any individual or group of individuals could secure access to the resources of that community.[100]

Further, for the systems of land tenure prevalent in the non-feudal sedentary communities, land relations were defined not only by the network of social relations prevalent in each community, but also by the specific uses to which parcels of land occupied by individual families, clans or lineages were put. Tenure relations therefore recognized individual rights as well as community obligation in virtue of

[100] Ibid.

access to such rights. The radical title to land was always vested in the community as a corporate entity rather than in the political organs through which control of the territory or the resources of the land was exercised or mediated.

2.3. COLONIAL PERIOD

The colonial state in Uganda was built on the official philosophy of protectorate and indirect rule rather than colony, territory or direct rule. The dominant economic structure chosen was one of small peasant agriculture under the prevailing customary tenure since it was considered dangerous to modify customs as arbitrary imposition of change would cause a total failure of efforts to administer the local indigenous population. Therefore in order to appease the local chiefs and get local political allies in the effective administration of the country, the colonial administration introduced polices which could accommodate customary tenure. Besides, the preservation of customary tenure, mailo tenure and leasehold tenures were introduced.[101]

2.3.1. Mailo land

By virtue of the 1900 Buganda Agreement, large extensions of land called mailo estates were conferred to chiefs and other notable personages. Mailo land was divided into two categories: Official Mailo which was grants of land attached to specific offices in the Buganda local Government; these lands could neither be sub-divided or sold and instead passed intact from the original land holder to his successor. These were abolished in 1967 and became public land.[102]

Private Mailo was estates allotted to some 1,000 chiefs and private land owners, equivalent to 8,000 square miles of land. Approximately half of Buganda (more than 8,000 square miles) became formally privatized, despite the fact that these mailo estates were already settled by smallholders under customary tenure, whose usufruct /land use rights were not legally recognized. By 1963, it was estimated that the original 4,138 estates had increased to 89,089 estates as a result

[101] NISH'S Law School Guide. Land Tenure in Colonial and Post Colonial Uganda.
[102] Ibid.

of sub-divisions through inheritance and sales. Other persons who wanted to settle on mailo land had to approach the mailo owner and get permission to occupy a specific piece of land on terms agreed with the landlord.[103]

Though tenants paid rent and labour services, the mailo owners were considered lords of their area and their tenants were their servants; even though mailo owners permitted them to retain possession of the land they were occupying, this effectively converted them from customary land users into legal tenants on private property. This laid the ground for the genesis of multiple rights on the same piece of land, which is a defining characteristic of land relations as evidenced by evictions and a land use impasse between landlords and tenants in contemporary Uganda.[104]

In 1928, a law that provided the tenant cultivators with security on the land and set a limit on the fees which they are required to pay to the *mailo* owner was enacted.[105] This law acknowledged use rights by making it very difficult to evict tenants. However the result was confusion over who holds what rights. Formally, landowners had legal private ownership rights to the land, but their tenants felt they had permanent use rights to the land they held even though they paid rent. When the mailo owner sold land, for example, it was understood that, his or her tenants remained on the land. While tenants were legally operating on private property, actual practice was based on customary norms, and 'rents' did not actually reflect the asset value of land.

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[103] Ibid.

[104] E. Mugerwa. (1973).The Position of the Mailo Owners in the Peasantry Buganda: A case study of Maye and Lukaya Villages. Department of Political Science, University of Dar es salaam, Tanzania. (Thesis).

[105] The *Busuulu* and *Envujjo1* Law of 1928; Landlord and Tenant Law in Buganda

2.3.2. Freehold

The colonialist introduced three types of freehold, outside of Buganda:[106] There were freeholds created under the crown lands ordinance of 1903 from crown land to individuals by the colonial Government. Very few freeholds were given under this ordinance and these attached development conditions which were carried forward by the Public Lands Act, 1969. The state however, reserved the right to enter and inspect the adjudicated freeholds.

There were adjudicated freeholds converted from customary tenure pilot schemes in the districts of Kigezi, Bugisu and the Kingdom of Ankole. In these schemes there was surveying and actual registration of existing customary holdings. In some areas, consolidation of fragmented plots was also carried out. And finally, the native freeholds (similar to mailo in Buganda) which were grants of land under the Toro and Ankole Agreements of 1900 and 1901, respectively. Such land could only be transferred only to a native of the kingdom. The terms of the tenure were not freely negotiable but were fixed.[107]

2.3.3. Leasehold:

A leasehold estate is an estate created in land as a result of an agreement between a lesser and a lessee to the effect that the latter will enjoy exclusive possession of the land subject to a specified and certain duration in consideration of a cash payment or otherwise called rent moving from the lessee to the lesser. In Uganda, there are two types of leases: private lease and leases out of public land. A private lease is granted by an individual landowner to an individual or organization. The public leases are given by a public authority.[108]

2.3.4. Customary Land

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[106] W. Kisamba Mugerwa. Private and Communal Property Rights in Rangelands and Forests in Uganda.Makerere University of Social Research, MUK.

[107] As stipulated by the Ankole Landlord and Tenant Law, 1947 and by Toro Landlord and Tenant Law, 1937

[108] In Uganda today, public leases are provided for under the Public Lands Act, 1969.

For the rest of Uganda, all land not alienated under mailo, freehold or leasehold became crown /public land. All land users became, at the stroke of a pen, tenants at will of the State. After independence, under the Public Lands Act, 1969, any person was authorized to hold land by customary tenure without any grant, lease or license from any controlling authority provided the land was not in an urban area and had not been alienated into registered tenure.[109] As referred to in the case of ***Tifu Lukwago v Samwiri Mudde Kizza and Nabitaka***[110] which cited the decision in ***Paul Kisekka Ssaku v Seventh Day Adventist Church***[111] where it was held that customary occupation without consent of the prescribed authority was unlawful.

Two general customary systems can be distinguished; under the communal land system, primarily found in northern Uganda, the household is the primary owner of the land and may include extended members of the family. Communal land in Uganda includes gardens and pastures, grazing areas, burial grounds and hunting areas commonly known as common property regimes. User rights are guaranteed for farming and seasonal grazing, access to water, pasture, burial grounds, firewood gathering, and other community activities. No specific ownership rights of control are conferred on users. Control and ownership are through the family, clan, or community.[112]

Under individual, family, or clan customary tenure, emphasis is also placed on use rather than on ownership. Male elders are the custodians of customary land in most communities and determine distribution of the land. However, the family rather than the community has more control in the land utilization, and individuals in the family are allocated land. Allocations are only made to male members of the household with very few exceptions. As customary land has become more

[109] Section 24 of the Public Land Act 1969 and Section 5(1) of the Land Reform Decree 1975 prohibited customary tenure in urban areas.
[110] Civil App. No. 13 of 1996
[111] Civil Appeal No. 8 of 1993 (unreported)
[112] W. Kisamba Mugerwa, Supra, no. 108.

individualized and incidents of sale are very high though not initially acceptable, often before a sale is made clan members and family have to be consulted.

The advert of colonialism therefore, legitimized an intricate system of political relationships based on land that had been in existence for centuries, with distortions of individual property relationship introduced and engrained as a defining attribute. This shift was mediated through a series of agreements made with traditional rulers and their functionaries compelling a move from informal feudal relations in access to land; defined either by kingship, territorial control or social relations, to land relations whose operations were set within legislative norm.[113]

This not only legitimized the feudal system of land tenure then in existence, but firmly conferred upon feudal overlords' absolute control of land which they never had under customary law, thus a formal transformation was accomplished. An elaborate system of land rights administration and registration was instituted to confer absolute title to legal beneficiaries and is still in existence to date.

More so, the advert of colonialism firmly located the radical title to land by implication, to the British colonial government, who asserted the right to control the management and use of land, thus usurping and right to control and the power to manage the use of land previously vested either in communities or in the political functionaries of such communities. Being holder of radical title, the colonial government proceeded to grant a limited number of freehold estates to selected individuals churches and corporations. The privatization of ownership left the occupants of mailo and native freehold in an insecure position for it meant that the genesis for multiple interests and rights on land was permanently laid and today has been blamed for the escalating land conflicts and evictions in the central region. For instance the case of ***Kampala District Land Board and other v Venansio and***

[113] The one major, and best known, intervention by the British in Uganda's land tenure relations was 1900 Buganda Agreement, which set in motion, firmly and steadily, the conversion of customary property rights into individualized property ownership rights in Uganda on the basis of a system approaching freehold tenure.

others[114], where the respondents were facing eviction from the suit land, Court noted that, 'It was an admitted fact that the respondents were in occupation of the suit land at the time the lease was granted to the second appellant. The predecessors in occupation to the respondents had been in possession of the suit land since 1970. ...that they were not customary tenants, but they were described variously in the lower Courts as squatters, tenants of a tentative nature, licencees with possessory interest, or *bona fide* occupiers protected from administrative injustice.' This clearly indicates how the existing land law accommodates multiple interests on the same piece of land though even in some instances such as this case it is not clear, which particular interests the respondents had in the suit property save for being in possession hence resulting into unending conflicts.

2.4. POST-COLONIAL PERIOD

The 1962 Independence Constitution slightly modified the tenure relations and established a National Land Commission to hold and manage land formerly held by the colonial government as "crown land" henceforth renamed "public land", and land boards within federal units to perform similar functions in those areas. Land which had been allocated to or vested in indigenous entities such as the Kingdom of Buganda, Ankole and Toro was not, affected by the independence Constitution. Although the 1966 and 1967 Constitutions abolished federalism, they did not change the structure of land holding and distribution established under colonialism.

In 1975, a Land Reform Decree was promulgated. It made radical changes in respect of the land and vested all land; the radical title, in the State to be held in trust for the people of Uganda, and to be administered by the Uganda Land Commission. It abolished all mailo and freehold interests in land converting them into leasehold of 199 years where these were vested in public bodies and to 99 years where these were held by individuals, except those vested in the State which were transferred to the Uganda Land Commission. The decree also abolished all laws

[114] Civil Appeal No. 2 of 2007.

that had been passed to regulate the relationships between landlords and tenants in Buganda, Ankole and Toro.

It scrapped the protection accorded to kibanja tenants whether on registered land or on customary land requiring their consent and compensation before alienation. Thus customary land users became tenants at sufferance occupying state land and could obtain long-term leases. However, this new tenure structure introduced by the Decree was largely ignored by local authorities, tenants and landowners alike. Mailo owners and tenants continued to operate in the semi-customary arrangements they were practicing previous to 1975. The law was never implemented in practice; by and large land transactions were being conducted as if the Decree did not exist. But it remained in the statue books until 1995 when the 1995 Constitution repealed it and established a new system of land administration, consisting of land boards in every district.

This Constitution introduced radical changes in the relationships between the State and the land and vested the radical title in the citizens of Uganda and in accordance with specific land tenure systems enumerated therein; mailo, freehold, leasehold and customary.This reversed the provisions of the 1975 Land reform decree and accepted a multiple tenure system. It's therefore clear that Uganda's policy since colonial times has privileged individual private property. Freehold tenure and land markets have been put forward as progressive and efficient structures for economic development. The customary tenure systems that permit traditional pastoralism have found their areas restricted as common grazing lands become individualized private property. This tendency continued even under the Land Reform Decree of 1975, the Constitution, 1995 and has been the policy drive up to present day Land Act, 1998[115].

[115] The Land Act, Cap. 227.

CHAPTER THREE

THE NON - LEGAL ASPECTS AFFECTING LAND USE

3.1. Introduction

Although several attempts have been made to address the injustices arising out of the multiple and conflicting tenure rights and interests often overlapping over the same pieces of land, there aspects of the contemporary land policy issues that have persisted and become a defining characteristic of the complexity of land relations in Uganda. These include among others; the rights of women in matters of access, use and ownership, of which the Constitution has outlawed the discriminative traditions and customs but the practice does not acknowledge these changes, land disputes that have become part of the definition of contemporary Uganda, population growth and issues of tenure, compensation displacement and resettlement arising out of the discovery of oil and petroleum.[116]

The existing land laws have not been sufficient in dealing with all these issues so as to maintain cordial relations between users and owners of land. Therefore there is need to devise a comprehensive and legitimate framework to tackle the root causes of such issues as well as alternative ways to prevent unjust loss of rights and interests in land.

3.2. Women's Rights in Land

Despite having the best policy and Constitutional frameworks relating to gender, and particularly to women's land rights as well as having ratified several international instruments on human rights, the practice is far from the standards and values ascribed because gender discrimination is culturally engrained. There is a large gap between what is on paper and the practice. The manner in which society,

[116] Ministry of Lands, Housing and Urban Development. (July, 2009), The National Land Policy Issues and Recommendations Report from Stakeholder consultations, Parliament Avenue, Kampala-Uganda.

allocates roles and responsibilities for men and women puts women at a disadvantage in comparison to their male counterparts, as regards opportunities for social and economic development.[117]

This gendered structure of land rights is highly unequal, as women are economically constrained by their social roles and responsibilities, their low status, lack of ownership and access to productive assets, low participation in decision-making and high workload. This is because access to, and use of land in Uganda is underpinned by the patriarchal nature of traditional communities, in which women and girls can only gain access to land through their male kin in their life cycle. Girls and unmarried women can claim land through their fathers. When they get married women claim land through their husbands.[118]

For example, the Divorce Act and the Succession Act have been subject to strategic litigation by coalitions of civil society organizations and sections of the laws have been impugned, in so far as the violated the Constitution, as a man, in practice, assumes full ownership of the matrimonial home on the death of his wife, whereas a woman does not;[119] thus in many ways affecting the rights of women. It therefore important to note that securing women's land rights makes economic sense, since they are the major producers of food and they play important roles in feeding the families and in general household management. All in all, protection and enforcement of women's land rights is still problematic hence making land use an issue of concern as regards women.

[117] Chapter 4 of the Constitution (and in particular articles 31–33) provides for equality between men and women, including in respect to the acquisition and holding of land.

[118] Women's Land Link Africa (WLLA). The Impact of National Land Policy and land Reform on Women in Uganda. www.wllaweb.org.

[119] Specifically section 26 and 29 of the Succession Act, Cap. 162, Laws of Uganda and Rules 1,7,8, and 9 of the Second Schedule to the Succession Act.

3.3. Escalating Land Disputes and Conflicts

Land conflicts have escalated in almost all areas in Uganda and there is a possibility that they will spread to the whole country. Conflicts include border disputes with neighboring countries[120], inter-district border disputes[121], wrangles between landlords and tenants, and tenants resisting acquisition of land by investors[122], evictions and land grabbing.[123] One of the main reasons underlying the increased incidence of land conflict is the failure of the prevailing land tenure systems to respond to the challenges posed by appreciation of the value of land. Land disputes are evidence of pressure points in land use. Disputes also show areas where old rules on mailo and other registered tenures and customary norms are no longer sufficient to sustain orderly use and co-existence of land users and owners.

Yet this is not helped by failure to have a sound legal and policy frame work as well as institutional presence for land dispute resolution due to the adoption of an ambitious institutional design together with lack of funding as intended institutional reforms embedded in the Land Act could not take off. Uganda necessitates a legal regime that has to deal with the situation, that lead to the de facto elimination of the institutions that had traditionally dealt with conflict, without establishing new ones to take their place. This has left a vacuum, fuelling the overall incidence of conflict and giving disputants an opportunity to manipulate overlapping normative orders through 'legal institution fora shopping' between judicial establishments and political offices.

3.4. High Population Growth

[120] Examples include; Migingo Island in Lake Victoria pitting Uganda against Kenya, a 9 km stretch in Yumbe betweenUganda and Sudan, the Katuna border area with Rwanda, the Mutukula border area with Tanzania, and Rukwanzi Island in Lake Albert, Semliki, Medigo area in Pakwach and Vurra border area in Arua

[121] Disputes over district borders exist between Moroto and Katakwi, Sironko and Kapchorwa, Bundibugyo and Kabarole, Moroto and Lira, Katakwi, Tororo and Butaleja, Butaleja and Budaka and over Namatala swamp between Mbale and Budaka districts.

[122] Especially in northern Uganda; Amuru District in Acholi.

[123]Margaret Rugadya, Herbert Kamusiime & Eddie Nsamba-Gayiiya.(2006-2007) Post-Conflict Land Policy And Administration Options: Lessons from Northern Uganda Volume 3, Study done on behalf of the World Bank.

According to the 2002 Census Report, the population of Uganda was approximately 24.4 million; projected to 30 million by 2008 and is growing at the rate 3.4% per annum. The midyear population estimate for 2009 was 32.4 million. It was projected to shoot up to 39.3 million in the year 2015 and 54.9 million in 2025 due to the high fertility rate (6.7). This means that the country doubles its population every 20 years, reaching a projected 130 million by 2050, a phenomenon which will increase pressure on land resources.[124] This is because six times as many people are trying to survive on the land and natural resources than there were 60 years ago. This pressure has dramatically impacted land resources in high density areas thus land fragmentation and increased intensity of land use. This has partly contributed to the spontaneous growth of informal settlements; these obtain precarious situation or circumstance, invading fragile eco-systems and marginal lands in the urban areas.[125]

3.5. Minerals and Petroleum

The discovery of oil deposits in the Albertine Graben has generated excitement in Uganda regarding the promise the resource may yield and the probable economic windfall in the energy sub-sector, its contribution to national economy and social well-being. However, within the Albertine Graben, there is degazettement of the once reserved vast lands for conservation in the area which has transformed land tenure relations yet communities that were supposed to benefit from such degazettement are either unaware or not in a position to take over, manage and direct tenure relations in lands officially reverted to them.[126]. Instead like for the communal lands and resources have been privatized to the exclusion of communities who ought to be the rightful holders of such land as new settlers or migrants purchase at higher price.[127]

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[124] Ministry of Finance Planning and Economic Development, 2008; (UBOS), 2008.
[125] Ibid, MFPED, 2008.
[126] Study commissioned by Alert International Uganda carried out by Associates Research Uganda, 2009
[127] Ibid

In addition, there is a trend of extensive sporadic individualization of customary land, creating large chunks of registered land in form of leaseholds. This rapid and extra-ordinary transition is driven by individual scramble to strategically reap from the expected demand for land anticipated due to oil discovery. In other areas such as the northern districts of Uganda, where land relations were already fragile due to IDP displacement and return, the discovery of oil is heightening community fears related to land grabbing and this affects land use in Uganda as well.[128]

At present, the Mineral Policy of Uganda (2001) does not appear to comply with Article 244 (2) & (3) of the Constitution as amended, as it does not take into account the interests of the individual landowners. The policy states that royalties shall be shared between Central Government and the local government from where minerals are produced. This is inconsistent with the views expressed by the Ssempebwa Commission (2003) that the exploitation of natural resources, apart from being vested in the State should benefit the people of the area or region in which the resources are located.[129]

3.6. Pastoralists and Migration

About a quarter of Uganda's land area is used for Pastoralism. Whereas the pastoralist system is a customary tenure system, it is quite different from customary tenure systems practiced by agricultural communities. Agriculture needs relatively permanent rights for a fixed spatial area, while pastoralism is based on temporary rights of access across a variety of spaces. Customary tenure systems that permit traditional pastoralism have found their areas restricted as common grazing lands become individualized private property[130].

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[128] MFPED, 2008, Supra no.125.

[129] Uganda Constitutional Commission (Ssempebwa Commission) of 2003

[130] Margaret Rugadya, Esther Obaikol & Kamusiime Herbert.(2005) Critical Pastoral Issues and Policy Statements For the National Land Policy in Uganda. Land Research series No. 5. Associates for Development; Research and capacity Building on Land Based Resources; Kisamba Mugerwa (2003).p.8

The impact has been the reduction of the once large public good supporting huge herds of cattle in the cattle corridor, and thus better pastureland (better soils and water) have become individualized as a result ecologically fragile areas become degraded. Uganda's policy since colonial times has privileged individual private property. Yet mobility is a coping strategy by pastoralist over the hostile environment in the rangelands. It enables them to manage the low net productivity, unpredictability and risk on arid and semi-arid lands. However mobility often leads to conflict with neighboring communities over grazing and water resources, especially in instances where it results in resource capture.[131]

Although the Land Act, 1998 has provisions for setting aside land for common use, national regulations and standards are lacking. As a result both disputes within agro-pastoral communities and with other communities are on the rise. In addition, the guaranteeing of the right to movement cannot be devoid of regulation, aspects that need to be dealt with in a pastoral policy and a resettlement policy.

[131] Ibid.

CHAPTER FOUR

THE LEGAL AND POLICY FRAMEWORK

4.1. Introduction

Land forms the basis for social, political and economic life of Uganda. Land issues are thus sensitive, demanding careful management to avoid social and political conflicts. Good land governance is therefore critical for addressing the current socio-economic challenges.[132] Further Uganda's land question has always been at the centre of the Constitutional and legal discourse. The result is that land issues are mired in a bed of complex Constitutional structures and processes, drawing legitimacy from historical as well as contemporary political demands.

Land issues in their historical complexity do not appear to have been satisfactorily resolved by the 1995 Constitution as amended and the Land Act 1998 as amended, as these did not entirely deal with the fundamental issues underlying land tenure relations in Uganda. Indeed what the Act, did, was to elaborate upon juridical principles underlying the land tenure and management systems introduced by the Constitution. Uganda desires an elaborate system of land administration and dispute resolution introduced by the Constitution.

These issues are so critical that they need to be resolved and taken on exhaustively so as to offer politically palatable and technically conclusive answers to questions that require reform hence the need for comprehensive land legislation and in particular on land use.

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[132] O. Mugyenyi (2011). Land Governance in Uganda: Large scale Land Acquisition and Land Expropriation. Policy Analyst, Advocates Coalition for Development and Environment.

4.2. The Constitution, 1995.

The 1995 Constitution of Uganda brought about fundamental reforms regarding issues affecting land use in Uganda such as ownership, tenure management and the general control of land through reinstating the systems of customary land tenure, freehold tenure, leasehold tenure and Mailo tenure. It also made new and radical changes in the relationship between the state and land ownership. It declared that land in Uganda would henceforth belong to the citizens of Uganda.[133]

It further set out quite detailed provisions in relation to land rights, while leaving other provisions to be determined by subsequent legislation. In that respect the Constitution of the republic of Uganda, 1995, addresses the following salient features in particular on security of tenure; Land ownership in general, Customary Ownership and Tenants on Registered Land

The Constitution stipulates that land in Uganda shall belong to the citizens of Uganda and shall vest in them in accordance with four tenure systems: Customary, Freehold, Mailo and Leasehold. This clause totally reverses the old system where land was vested in the public land. Now, individuals' rights to land have been secured by virtue of occupation. The state no longer controls ownership of land in Uganda.[134]

The Constitution recognizes customary tenure as one of the forms of holding land in Uganda and since the majority of Ugandans hold land under customary tenure; this provision guarantees them security of land ownership. These tenants on customary land can now acquire a certificate of customary ownership on the land they occupy and they can convert this certificate to a freehold title. This certificate of customary ownership has been accorded value under the Land Act

[133] Article 237, which provides for Land Ownership.
[134] Article 237 (1) & (2).

enabling it to be transferred, mortgaged, or otherwise pledged. This enables holders of a certificate of customary ownership to have access to credit.[135]

The Constitution guarantees security of tenure to tenants on registered land commonly referred to as lawful or bonafide occupants. These tenants can acquire a certificate of occupancy on the land they occupy and if they so wish, they can negotiate with the registered owner to be able to acquire a freehold title. These tenants on registered land are to pay the registered owner of land a ground rent of not more than 1,000/=. Failure to do this for two (2) consecutive years may lead the tenant to lose his security if he/she does not have sufficient reason for not paying. The certificate of occupancy can also be mortgaged, pledged or transferred. The tenant by occupancy also has the right to pass on his tenancy in a will.

It further permits the Government, or a local government body, to acquire land in the public interest, subject to the provisions of Article 26 of the Constitution, which protects people from being arbitrarily deprived of their property rights.[136]

4.3. The Land Act, 1998.

The Land Act[137] came into force in 1998 to operationarise the provisions above mentioned in the Constitution and give them a practical effect. The most important issues covered by the Land Act are ownership, tenure rights and land administration. The Land reform process leading to the enactment of the Land Act, 1998 was based on three principles that;[138] A good Land tenure system should support agricultural development through the function of land market which permits those who have rights in land to voluntarily sell their land and for progressive framers to gain access to land.

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[135] Article 237 (4) (a) & (b).
[136] Article 26(1) provides that every person has a right to own property either individually or in association with others.
[137] Cap 227 of the Laws of Uganda as amended.
[138] M.Rugadya. Land Reform: The Uganda Experience.
http://www.oxfarm.org.uk/landrights/ugaexp.rt.

The second principle was that a good land tenure system should not force people off the land, particularly those who have no other way to earn a reasonable living or to survive. This meant that the land tenure system should protect people's rights in land so they are not forced off the land. Thirdly, that a good land tenure system should be uniform throughout the country. In the absence of a Land Policy in Uganda, it was envisaged that those three principles would guide Uganda in its land reform process.

The main objectives of the Land Act were to provide security of tenure to all land users who for the case of the Uganda they are mainly customary land holders- referred to as customary tenants on public land and the lawful or bonafide occupants on registered land; to resolve the land use impasse between the registered owners (mailo, freehold and leasehold) and the lawful and bonafide occupants of this land. This had inhibited land markets in urban areas where purchasers experience difficulties in purchasing secure property holdings.[139]

The Land Act went ahead to lay down what obligations tenants and landlords have towards one another. The 2010 an amendment,[140] in particular went ahead to criminalize eviction of tenants by requiring court orders for a lawful or bona fide tenant on registered land to be evicted, and also requires landlords looking to sell to give tenants the first option to buy.[141]

As regards institutional framework, it provides for the control and management of land under a decentralized system. This is for the purposes of effecting the devolution of authority over land management/ administration as provided for in the 1995 Constitution, ensure proper planning and well-co-ordinated

[139] For example, prior to the passing of the Land Act, Cap 227 substantial areas of potentially productive rural land had remained idle or under-utilised due to lack of incentives to invest on the part of either registered owners or tenants. Registered owners have had difficulty in evicting tenants in order to develop the land although the old law permitted under certain conditions while the tenants lacked sufficient security.

[140] The Land (Amendment) Act 2010

[141] Ibid, Sections 32, 32A and 35.

development of urban areas as well as ensuring sustainable land use and development throughout the country.

The Land Act also recognizes the right of people to hold communal land. The people may if they so wish form themselves into a communal land association and this association may be incorporated. The communal land Association may also form a common land management scheme by which the members agree to manage the communal land and to set out their rights and duties.[142]

It also requires that before any transaction can be carried out on land on which a family resides or from which it derives sustenance, the spouse, dependent children of majority age and the Land Committee in case of children under the age of majority should be consulted.[143] And in same spirit of the Constitutional provisions, it provides that any customary provisions or any customary practices which deny women, children or use of any land shall be null and void. Thus ensuring that the rights of vulnerable groups are protected.[144]

Whereas the Land Reform Decree of 1975 had sought to increase control over land by the central government and make tenure conditional on the land's development, the Land Act, is part of a very different policy. It expressly limits government owned land to that which was being used by the Government when the Constitution of 1995 came into force. It stipulates that if the Government requires additional land it must purchase this, either from a willing seller or through compulsory acquisition in accordance with the rights to private property contained in the Constitution.

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[142] The Land Act, Section 15.

[143] S.39 provides for restrictions on transfer of family land and gives all spouses the right to security of occupancy on family land and requires consent of the spouses for transactions of family land.

[144] Section 27 provides that any decision made on customary land according to the customs or traditions that denies women access to ownership, occupation or use of any land or violates the rights of women in the 1995 Constitution is null and void.

4.4. The Uganda Land Use Policy, 2007.

In 2007, to give effect to Article 242 of the Constitution[145], a land use policy was adopted for purposes of ensuring sustainable land utilization. Its overall aim was to achieve co-ordination, sustainability and optimal land utilization for socio-economic development. The Land Use Policy, however, only focuses on use of the land resource without addressing the main problem of how land is owned—the tenurial problem. The Land Use Policy does not provide for proper land use planning because this would be based on the tenurial aspects of a comprehensive Land legislation that is lacking.

Land use and its management in this respect, lie in many and different institutions, each managing isolated portions and aspects that are un coordinated and in competition with one another for recognition and resources hence creating critical overlaps in institutional responsibilities and insufficient collaboration among public sector institutions and agencies.[146] Its provisions lack a firm land ownership policy and are rendered more or less redundant thus land use is governed by sectoral legislation whose tenets are not harmonized.

4.5. The Uganda National Land Policy, 2013.

The Government of Uganda recently approved a National Land Policy whose vision is to ensure sustainable and optimal use of land and land based-resources for the transformation of the Uganda society and the economy; While its goal is to ensure efficient, equitable utilization and sustainable utilization and management of Uganda's land and land based resources for poverty reduction, wealth creation and overall social economic development. This policy came at a time when land conflicts are occurring all over the country and this includes massive eviction of people from land and increased dispossession of rights holders all of which issues have an impact on land use in Uganda.

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[145] It stipulates that the Government may, under laws made by Parliament and policies made from time to time, regulate the use of land.

[146] The Uganda National Land Policy. (2013), Chapter 6: Land Use and Land Management Frame work

The objectives of the National Land Policy, among others, include: to stimulate the contribution of the land sector to overall socio economic development, wealth creation and poverty reduction in Uganda; ensure planned, environmentally friendly, affordable and orderly development of human settlements for both rural and urban areas, including infrastructure development; reform and streamline land rights administration to ensure efficient, effective and equitable delivery of land services; harmonize all land related laws, and strengthen institutional capacity at all level of Government and cultural institutions for sustainable management of land resources.

The need for a Land policy development in Uganda is driven by a number of factors including; the fact that the problems burdening the land sector cannot be resolved unless steps are taken to develop a comprehensive sector policy, The need to refocus the discourse on land from over-emphasis on property rights, to its essential resource value in development. However this cannot be done outside a comprehensive land sector policy framework and the existence of policy gaps on special issues of importance to the land sector itself as well as a large spectrum of land-dependant public policies/plans/programmes. These include energy, fragile eco-systems ;including lakeshores, wetlands, hilly and mountains areas, water, dry lands; including rangelands, energy, and livestock, urbanization, infrastructure and industrialization. As much as policies exist on these issues, they are not properly integrated into land sector development; no effective sectoral development can take place.[147]

Above all, the lack of clarity in both the Constitution[148] and the Land Act[149] as to what the role of the state is or should be in land sector development and management is self evident. Yet the land sector is the bed-rock of all development and is therefore, expected to play a crucial role in the development of other sectors

[147] Ministry of Justice and Constitutional Affairs, dated 5th March 2008, in a Ministerial Statement to Parliament of Uganda.

[148] The Constitution, 1995, (as amended)..
[149] Land Act, Cap. 227, (as amended).

and, specially, provision of leverage in efforts at poverty reduction, the promotion of governance and social justice, political accountability and democratic governance, the management of conflict and ecological stress and sustainable modernization of the economy as whole.

4.6. Land management institutions in Uganda

The land Act follows the overall government policy of decentralized land management and dispute settlement mechanisms. The legislation established the creation of a large number of new institutions for land management administration and land dispute dissolution.[150]

The land management hierarchy starts with the Uganda Land Commission, which is responsible for all government land and related issues. The District Land Board is independent from the Uganda Land Commission and from any other government. It is in charge of all land at the district level. It is also responsible for, among others things, for managing and allocating land that does not belong to anyone, assist in recording, registering and transferring claims on land; mark, survey, plan, map and draw estimates on land; and maintain and revise lists of rates of compensation for loss or damage of property. The District Land Office shall provide technical services through its own staff or arrange for external consultants.[151]

Area land committee assists the District Land Board on land matters, especially ascertaining rights in land, including; helping people obtain certificate of customary tenure and certificates of occupancy, and protects the land rights of women, children and persons with disabilities.[152]

Finally, a recorder normally at the sub - county, town, township, and division in the city, accepts application for and issues certificates of occupancy and certificates of customary ownership, and keeps records of certificate of occupancy and

[150] Ibid, Part IV; Land Management.
[151] Ibid, Section 59(6)
[152] Ibid, Section 64

certificates of customary ownership. Further, Land Dispute Resolution Institutions in Uganda include courts of judicature, local council courts, traditional authorities, and mediators.

4.7. Challenges and Constraints to the Legal and Policy Framework

4.7.1. Absence of comprehensive land legislation

Uganda lacks a comprehensive land legislation which is so vital in guiding land utilization. What exists are scattered part of the legislation which can only be pieced together from the 1995 Constitution, the Land Act, 1998, presidential public pronouncements and government statements. The need for a proper and comprehensive land legislation to guide streamline the objectives and guard against contradictions and inconsistencies cannot be under estimated. Comprehensive land legislation is also necessary to guide institutional implementers on how to exercise the discretionary powers, which the law bestows on them. This law would also be vital in the prioritization of objectives as well as the implementation activities.

Even with a comprehensive National Land policy to cater for the mishaps in the legal regime, there is need to translate its provisions into operational terms through proper amendments in almost all the prevalent land laws to either include or capture the fundamental issues raised by the policy for it to be effectively and exhaustively implemented for the benefit and convenience of the land users.

4.7.2. Inconsistent related laws

Today, there are some commonly referred to legislations in land law practice and conveyance matters. This is principally because the interests pertaining to the aforementioned tenure systems are mainly addressed in these laws, Loopholes and uncertainties in these laws adversely affect, inter alia, land use, business competitiveness, private sector development, and Uganda's economic life in

general. These include inter alia; the Registration of Titles Act;[153] the Mortgage Act;[154] the Land Acquisition Act;[155] the Survey Act;[156] and the Town and Country Planning Act.[157]

The inconsistencies in these laws have brought about controversies such as the reasoning that, under the Registration of Titles Act, a registered interest defeats an unregistered interest, despite notice-and that to take with notice of an unregistered interest is not to act fraudulently (as the term "fraud" is understood in the context of Torrens title statutes) as was in the case of ***Shah v Modern Sweet Mart Ltd.***[158] This is based on the reasoning that mere knowledge of an unregistered cannot be imported as fraud under the Act, unless such knowledge is accompanied by a wrongful intention.[159] Yet such interests are guaranteed by the same laws.

In the circumstances, therefore it is evident that this result not only accords with the philosophy of the Torrens system, but also helps promote a confident land market. The Torrens title system assumes that persons will register the interests they acquire in land-or else take the risk of losing out at the hands of a later interest-holder who becomes registered even with notice. In short, one should not be concerned about unregistered interests whose holders have not sought the protection of registration or caveat.

The considered view is one of exercising due diligence. In other words, under the Registration of Titles Act a person taking an interest in land should be expected to register it, to avoid losing out to someone who later acquires a registered interest in the land. The unregistered holder's remedy lies in their own hands: they can register. Yet, some interests are inherently unregistrable; and other

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[153] Cap. 230, Laws of Uganda.
[154] Cap. 229, Laws of Uganda.
[155] Cap. 226, Laws of Uganda.
[156] Cap. 232, Laws of Uganda.
[157] Cap. 246, Laws of Uganda.
[158] (1956-1957) 8 ULR 99, discussed in Mugambwa, *Principles of Land Law in Uganda,* Fountain Publishers, 2000, p 76.
[159] An early example is *Katarikawe v Katwiremu* [1977] HCB 187. This seems now to be the approach taken generally: for example, see, per Odoki CJ and other members of the Supreme Court, in *Kampala District Land Board v N.H. C. C* (Civil Appeal No 2 of 2004).

interests, though inherently registrable, might be embodied in documents that, for one reason or another, are not in registrable form.[160] However, such interests can always be protected by caveat-a protection which, though not equivalent to registration, is sufficient to prevent extinction of the interest as a result of registration of a competing interest through exercise of due diligence by someone intending to register his or her interest on the land.

This result, of course, would not affect the operation of the principles relating to fraud. If the later interest holder has been fraudulent in acquiring the interest, then their registered title is liable to defeasance for fraud but putting in consideration that notice, of itself, is not fraud, this leaves vulnerable persons unprotected. Note that Uganda has seen a proliferation of unregistered interests, whose owners will know little or nothing of the need to register or caveat to protect their interests from defeat at the hands of later registered holders. Such vulnerable persons fall within or include the bracket of the so-called "bibanja" owners and other customary land owners constituting over 60% of land holders in Uganda.

Noteworthy too is the fact that in the zeal to protect the numerous un registered and competing interests through amendments such as exceptions to indefeasibility of title under the R.T.A, the bona fide and lawful occupants under the Land Act as well as the rights in relation to "family land", these laws have seemingly continued to contradict in their provisions thus creating unnecessary confusion. Take an example where the Land Law seeks to strengthen the position of occupants on land registered under the name of another person, financial institutions would get cold feet in accepting such land titles as collateral, simply because the registered proprietor's interests on the land appear to be overridden by the interests of the occupants thereon. The freedom of contracting has thus also been curtailed and the registered proprietor can no longer feel the security of indefeasibility of title.

[160] Such as Land bequeathed through the registered proprietor's last will and testament.

Further, the 2010 Land amendment, in particular requires court orders for a lawful or bona fide tenant on registered land to be evicted, in the same vein, provides for compensation to the person evicted. First this alone brings about unnecessary litigation between the tenants and the registered owners. Secondly, focusing on the perspective of a bona fide and customary tenant on registered land who has spent some years cultivating and grazing on that land until he or she is evicted. Giving them a sum of money while leaving them homeless and destitute can trigger off sour conflict and offends the principle of equity and social justice. The Government therefore has an important role to play by assisting in the resettlement of those evicted on alternative land as opposed to relying on an ineffective means of compensating them.

More so, in order to protect family land the, the Land Act put forward a requirement of a spousal consent and goes ahead to protects a much wider category of persons including dependent children of majority age; and in some circumstances protects minors and orphans; and expressly makes transactions without consent void, even in favour of innocent purchasers; whereas the Registration of Titles Act is silent on the effect of the absence of consent. However, it should also be noted that under normal Torrens title principles, an innocent purchaser under a transaction where consent appeared to have been given but was not in fact given (for example , where a spouse's consent was obtained by deception or duress, or where a person impersonated the spouse), would take free of the need for consent.[161]

The Land Act also places mortgages in a special realm as far as spousal consent is concerned. It is on the strength of this provision that her Lordship Justice Arach Amoko rejected the Respondent's claim to an equitable interest in the suit property in the case of ***Sentongo Producers & Coffee Farmers Ltd v Rose Nakafuma Muyiisa.***[162] The Respondent had claimed an equitable interest on the suit property on the basis of having contributed money and materials for the construction of the house thereon. The Court's holding was to the effect that the

[161] Boyd v Mayor of Wellington [1924] NZLR 1174.
[162] HC MSC No. 690 of 1999.

restrictions on land transfer under section 39 of the Land Act do not affect a legal mortgage and secondly, that co-ownership cannot be conferred by marriage.

It is therefore imperative that these land-related laws are reviewed, modified and/or up-dated in order to harmonize them with the provisions of the Constitution, the national land policy and Land Act so as to meet the current needs. The principal laws which are in need of revision include; the Registration of Titles Act; which is based on the Torrens system of registration (which reflects the underpinning concept of state guaranteed title);[163] setting out lengthy and difficult procedures for the acquisition of certificates of titles, the Land Acquisition Act ;which is currently inconsistent with Constitutional requirements for compensation for land acquired by government and could cause difficulties in acquiring land for redistribution to tenants, the Survey Act; which dates from the 1930s and provides for detailed and high standard survey which is unnecessary complicated for surveying of customary holdings, and the Town and Country Planning Act; which needs harmonization with the current local government arrangements.

4.7.3. Public Awareness on the Land Law

The urgent provision of information for the public, as to the content of the law and its implications have not been widely publicised, and there is a clear demand for information. The provision and maintenance of grassroots support for land tenure reform is a critical element in the success of implementation. Government has therefore to give high priority to sensitization, for instance regarding the new land policy that is, letting each and every citizen know what the land law says, what it does not say, what roles it plays in land reform, what should change and how, what kind of time frame may the stake holders expect, and what the law means for the different stakeholders. And the sensitization team should be composed of government, non-government and private persons to oversee the production and dissemination of information messages to the grassroots.

[163] Section 64, Registration of Titles Act, Cap.230.

4.7.4 Institutional capacity and administration

In implementing the existing land legislation, the Ministry of Lands, Housing and Urban Development which is the line ministry, adopted a participatory and consultative approach to the planning as well as the actual execution of the implementation by involving all key stakeholders. The country therefore adopted a participatory and consultative implementation strategy. The main thrust of this strategy is a creative "bottom up" approach to the implementation by involving a range of stakeholders from the outset, and by building capacity at the centre, in local institutions, and at the grass-roots. However, this is not easy to implement given Uganda's tradition of top-down administration. However, Uganda has already made several strides in its decentralization programme. The main challenge is to balance the need for strong co-ordination at the centre with effective mobilization of district based institutions to use the powers devolved to them by the Land law. Another challenge is that the centre may attempt to take on too much, or that local governments and other local institutions may not be empowered enough to fulfill their roles effectively. The latter danger is already a real threat.

4.7.5. Institutional Framework

The establishment of District Land Boards and the Land Fund are requirements under the Act. However, the laid down procedure is complex as these boards are appointed with the approval of the Minister. Equally challenging is how to co-ordinate the very large number of institutions, which are involved in land, matters. The line Ministry is responsible for the creation of procedural frameworks, guidance and methodologies, and for capacity building and inspection functions. Local governments are themselves directly mandated to establish and support the local level management structures. The Directorate of Land and Environment has the overall responsibility to oversee the implementation of the Land Laws. Overall there are major capacity constraints, both in terms of the resources and expertise at the disposal of existing institutions, and the ability to resource and fund the new institutions.

4.7.6. Inadequate institutional co-ordination

The success of implementation depends on the effective co-ordination and contributions of a wide range of institutional stakeholders including non-government organizations, and the commitment of a large range of key actors. There is a risk that certain key legal requirements for the establishment of institutions are delayed by bureaucratic inefficiencies. In particular authoritative decisions required on points of law relating matters established by the legislation in place, before realistic plans can be made for its management and operations, and parliamentary assent are required for the authorization of regulations governing the operations of institutions.

The Constitutional and legislative framework within which the key institutions must operate is somewhat ambiguous, especially in terms of the boundaries of their various mandates. For example there is a big issue on implications of the autonomy of District Land Boards created under the Land Act. How much power do District Authorities have in determining land policy and in regulating in its respect through promulgation of by-laws? How does Uganda make devolution real on the ground when the 1995 Constitution lists land as a national function?

It is imperative that the key statutory bodies and other stakeholders have a serious dialogue to sort out issues. In this way duplication of effort, conflicting priorities and confused information can be avoided, and the effective implementation of the legislation secured. Above all there is need for amendment of the existing legislation to implement issues raised by the new national land policy.

4.7.7. Political Pressure and absence of strategic plan

Currently there is a lot of political pressure to be seen to be implementing the existing Land legislation thus undermining the implementation process. Over reliance on market-assisted approaches and demand-driven solutions and strategies, underpin the reform programme. One of such weaknesses in the reform programme is that there was no strategic plan at the inception of the Land Act to work out the

required resources, the financial implications, and the availability of human and financial resources thus impeded its implementation.

4.7.8. Poor Inter-Sectoral Planning and Consultations

Different line ministries and departments are involved with land, other natural resources and agriculture, all of which have a long tradition of independent action and rarely consult among each other when formulating policies under their line sectors. A good example is the National policy on Modernization of Agriculture and Food Security. Throughout the formulation of this important policy, which depends a lot on land for its success, no senior officer from the land sector was involved. In the end a number of policies are not properly harmonised. For example the Poverty Eradication Action Plan talks very little about the land sector and the policy objectives and policy instruments in the plan covering land are a bit vague. There is need to revamp and rationalise the various bureaucracies that have jurisdictions in the land sector and the agrarian sector with the aim, inter-alia, of eliminating overlaps, conflicts, contradictions and inertia.[164]

[164] Ministry of Lands, Housing and Urban Development. (2009).The National Land Policy, Issues and Recommendations Report from Stakeholders Consultations.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This study examined the law relating to land use in Uganda; a critique of the legal and policy framework. In particular discussed the most relatable aspects of land use; that is; land tenure/ownership and land access. This chapter therefore presents the conclusions and recommendations made in the study. The conclusions and recommendations made are in form of legal, institutional and policy issues which are presented as follows;

5.2. Policy Issues

In accordance with this study, it's clear that, Uganda has just approved its first defined or consolidated National Land Policy this year, since the advent of colonialism.[165] Instead the country had a Land Use Policy adopted in 2007, which only focuses on use of the land resource without addressing the main problem of how land is owned, that is the tenurial problem. Further, this Land Use Policy does not provide for proper land use planning because this would be based on the tenurial aspects catered for by, a properly drafted and comprehensive legislation that is lacking.

Therefore, there is need to stem land conflicts arising from the tenurial problem by tackling the root causes, many of which are anchored in resolving the question of historical injustices and a colonial legacy, as the current explosion in conflicts is a manifestations of frictions arising from unjust actions in the past creating uncertainty in land use rights. This is particularly important as there is need to manage the conflicts before they occur by addressing the root causes. In

[165] The National Land Policy, 2013.

addition; is the need to revisit the conflict and dispute resolution mechanisms, to devise a prevention and management mechanisms.

Secondly, the current provisions of the Land Act are not effective in resolving the land use deadlock; hence the rampant mass evictions by registered land owners. The other controversy surrounds nominal ground rent as provided for in the Land Act. The definition and rights accorded to bonafide occupants in the same act are also unpopular and lack legitimacy to most landlords and this has resulted in massive forced evictions.

Rapid population growth, combined with either limited opportunities for non-agricultural employment or, in other areas, increasing non-agricultural demand for land, is a key factor that causes land values to appreciate thus a paradigm shift is necessary to get the people off the land by providing alternatives in the service sector and in industry. Relieving pressure on the land by considering other alternatives to rural land and agricultural use is a necessity that the policy makers must consider. In addition, inter-sectoral linkages and leverage for other productive sectors need to be harmonized and enhanced. For the urban areas, an urbanization policy to provide the rationale for urban land use is necessary and to address the issue of pressure in informal settlements.

In relation to the minerals and petroleum, the communities in the albertine graben, where there conflicts resulting from the struggle to benefit in the oil resource, need to secure their land rights under the threat of cumulative speculation and the royalties due to them in the face of government action. As anticipated the rush to secure land breeds land grabbing, as communal lands are not demarcated, thus the rights of the communities are insecure. In addition, there is need for the energy sector to be guided on how to access land, on pollution and natural resource degradation regulation so as to ensure that the sub-sector counters the apprehension created over a plethora of issues including revenue sharing, the environment, land tenure and possible displacement.

National Slum Upgrading Strategy can be used to solve problems arising from land utilization. Slum upgrading is a process through which informal areas are gradually improved, formalized and incorporated into the city itself, through extending land, services and citizenship to slum dwellers. This strategy, released in December 2008, is Governments plan for how to address the issue of slums in Kampala and other cities across the countries. This strategy, if used well can reduce the pressure on land in urban areas, and save Uganda the current situation of slums in Uganda.

Finally, the existence of policy gaps on special issues of importance to the land sector itself as well as a large spectrum of land-dependant public policies and programmes. These include energy, fragile eco-systems, including; lakeshores, wetlands, hilly and mountains areas, water, dry lands, including rangelands; energy and livestock, urbanization, infrastructure and industrialization. As much as policies exist on these issues, they are not properly integrated into land sector development thus no effective sectoral development can take place.

Noteworthy also, is the fact that the international and regional trends in land policy require that Uganda should broaden and deepen its policies by looking beyond its borders, especially within the context of the East African Community since all sectoral partner states policies are to be harmonized.

5.3. Legal Issues

According to this study, it is evident that through the various Constitutional provisions that have governed land relations in Uganda, the radical title or sovereign authority over land has changed hands several times. Initially by the 1900 Buganda Agreement, the traditional authorities or rulers ceded this sovereign authority to the British Crown, at Independence the Crown vested this authority in the State i.e. the Republic of Uganda, and the 1995 Constitution fundamentally placed it in the hands of the Citizens of Uganda. These trends show the path to the present.

Further, the 1975 land reform decree is considered a landmark with its attempt to nationalize land in Uganda at an enormous cost. For, it not only abolished the Busuulu and Envujju but its misinterpretation gave rise to the bonafide occupants, a phenomenon that is nearly derailing legislative principles today. The 1995 Constitution in attempting to restore, the pre-1975 situation, further blundered, without resolving the intricacies that had happened during that time.

As regards, customary tenure it has been extensively ridiculed and treated unfairly, and left to undergo a delirious death, to the extent that structures were put in place to ensure its evolution stills, or stops at that point in time. In the 1995 Constitution, haphazard recognition of customary tenure did not put it at par with the other statutory tenure system. Instead the Constitution and the Land Act partially restored the status of customary land tenure by recognizing it as one of the four regimes through which access rights to land may be obtained. Whereas this is evidence that the Constitution and the Land Act recognize customary tenure, it would appear that the objective of policy makers and legislators was to also facilitate the individualization of land rights and the functioning of land markets.

Yet again, over 80% of land in Uganda is held in customary tenure. This situation is unlikely to change in the foreseeable future. It is also acknowledged that customary values and principles operate as important variables in the dynamics of registered property relations in Uganda. Available evidence indicates nonetheless that despite that neglect, customary land tenure values and principles have survived. Indeed these values and principles have been known to sabotage the operation of statutory law in situations where customary tenure rights have been converted.

All in all, it's clear that for the registered land, the current legal and Constitutional framework promotes individualisation of property rights in land but in multiple systems of land ownership/tenures which gives rise to multiple rights on the same piece of land hence creating land lord tenant relationships. Yet, the law does

not specify whose interests are to be taken as priority or superior; neither can one tell whose interests have to be extinguished in order to resolve the land use impasse between landlords and tenants; and on what terms will this resolution be attained. Thus failing to deliver an amicable or workable relationship between the two parties. This controversy resulting into conflicts and unnecessary litigation has been depicted in our case law for example in the case of ***Kampala District Land Board & Another v Venansio and others*** (supra) where though the respondents were held not to be holding any legal interest but were mere licensees with possessory interest in the suit land who should have been given priority over anybody else before the registered proprietor could lease out his property. These were mere occupants with usufruct rights but they seem to override the registered proprietor's interest.

It is thus necessary to resolve the dilemma brought about by multiple systems of land ownership/tenures and the entrenched landlord-tenant relationships prescribed in the Land Act, which attempts to resolve the land use deadlock between the statutory tenants (lawful occupants and bonafide occupants i.e. bibanja holders) and the registered land owner (mailo or native freehold owner). Indeed, this has only served to escalate land conflicts and evictions by personifying overlapping and conflicting land rights on one and the same piece of land. The definition of and the rights accorded to bonafide occupants are unpopular and it is unjust to impose an interest un-consented to, as the Land Act does in respect of the bonafide occupant to the registered owner.

5.4. Institutional Issues

It is important to note that many of the management and administrative reforms envisaged by the Constitution and delivered by the Land Act 1998 have never been implemented. This has led to the emergence of a huge gap between how land rights are theoretically dealt with in Uganda and how the system actually functions in practice. For example, there are very few, if any, Land Committees in existence. The District Land Boards, where they exist, are extremely weak and the District Land Offices, which were supposed to support their work, are grossly under-

resourced. Although Land Tribunals were created, they were never enough to cover the entire country and those that did exist soon built up a massive back-log of cases. The administration of the tribunals was subsequently shifted from the Ministry of Lands to the Ministry of Justice and their work was formally suspended in November 2006. The handling of land cases has effectively been handed back to the courts.

There is opportunity for partnership in implementing the Land Law. Government can work with committed Local Non-Governmental Organisations with activities related to land, agriculture, food security and women. A number of these NGO's have already been important in lobbying on behalf of specific interest groups in relation to the land law. These NGO's can participate in the consultations and their presence is a great asset in ensuring that land policies and laws are reviewed to address the land rights of the poor and to protect access to land for the vulnerable and disadvantaged groups and individuals in Uganda.[166]

In fact, the most appropriate goals for tenure reform in Uganda are that the land tenure law and practice should contribute to the economic and social development of agriculture, protect the land rights of farmers who have no alternative source of income and contribute to the evolution of a single uniform, efficient and equitable tenure system for the nation.

[166] Groups, such as; Uganda Women's Network (UWONET), Uganda Women's Lawyers Association (FIDA), and Uganda National Farmers Association (UNFA). A national association of farmers with a network of field offices and the ability to deliver extension services and public information messages to a broad constituency.

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