

**A CRITICAL ANALYSIS OF THE LAW ON LAND ACQUISITION IN UGANDA. A
CASE STUDY OF AMURU DISTRICT.**

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DECLARATION

I, **RITAH SALAAMA**, declare that this research report is of my own work and effort, and has not been presented anywhere for any academic purposes.

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Date: ^{16th} April, 2018

APPROVAL

This is to certify that this Research report entitled “**Critical Analysis of the law on land Acquisition in Uganda. A case study of Amuru District**”.

MR. BWIIRE WALTER
(SUPERVISOR)

Signature.....

Date.....



DEDICATION

I dedicate this work to my dearest parent whose great love, support and encouragement paved way for my hard work. I pray that may he who blesses from above bless you abundantly.

I am also highly indebted to thank my Brothers and Sisters for their wonderful prayers and great love not forgetting Aunties and Uncles. May the good Lord bless you richly.

Lastly to my precious friends. Thank you for being there for me.

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I wish to acknowledge the indispensable assistance rendered to me by all people who made my research Report successful; Above all thanks goes to the almighty God for giving me life and all the necessary strength, knowledge, wisdom, financial and moral ability, and my fellow students.

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I am indebted to my Mum, My Aunties also to my siblings, my friends who always believed in me and have also been there for me emotionally, physically and financially.

May Almighty God bless you all.

Synopsis of Chapters.

The dissertation is divided into five chapters.

Chapter One

The general introduction and it covers the background to the research, the statement of the problem, objectives and significance of the study, research questions, the literature review, scope of the study and the methodology used.

Chapter Two

Will look at the Land Acquisition Act cap 226 and the extent it complies and or contradicts Article 26 of the Constitution

Chapter Three

Will focus on the key provisions of the proposed law on the right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Bill.

Chapter four

Will focus on the legal and Policy framework and emerging trends of large scale land acquisition in Uganda.

Chapter five

This chapter includes summary, conclusion and recommendation

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CHAPTER ONE

1.1 Introduction

Land in Uganda is a critical factor of production and an essential pillar of human existence and national development. Since the advent of colonialism, the country has never had a comprehensive Land Policy. What has been in existence are the scattered policies and laws on land and natural resources. Post-independence attempts to settle the land question and deal with fundamental issues in land tenure, land management and administration through the Land Reform Decree of 1975, the 1995 Constitution of the Republic of Uganda and the Land Act **Cap 227** have had limited success. This policy therefore, consolidates the various scattered policies associated with land and natural resources with emphasis on both ownership and land development.¹

The Amuru Study shows that people are now more aware of the value of land and will exploit any available opportunity to secure ownership. This has significantly exacerbated family and community conflicts as seen from the number of boundary disputes, gender violence and land grabbing².

With the cultural and religious dimensions of land which connects humans naturally to other social and economic development, land is highly regarded as an economic resource for all. Unless urgent action is taken now, the new emerging land related conflicts have the potential to cause yet another deadly conflict, to Lamogi and Pabbo counties.

1.2 Background of the study

The historical background in this country in relation to property rights is that people's properties were compulsorily acquired by Government during past regimes with either less compensation or without. Then following the 1995 Constitution of the Republic of Uganda, the framers of the Constitution had this unjust and unfair way of taking people's land in mind and put a limitation. The 1995 Constitution of the Republic of Uganda became very restrictive on the powers of Government to acquire land compulsorily without prior payment.

¹ Article 26 of the Constitution

² Land Acquisition Act, Cap. 226.

The Constitution of the Republic of Uganda provides that land belongs to the people, to the citizens of Uganda, vested in them in accordance with the land tenure systems provided for in the Constitution (**Art. 237**). These are: Mailo, customary, leasehold, and freehold. Beyond the constitutional provisions, land governance in Uganda is shaped with inherent gaps. The case of Mailo land tenure, for example, brings out the perpetual dilemma of multiple and overlapping interests in land between lawful and bonafide occupants all of which are legally recognized in law. There is also the dilemma of customary tenure where rights are allocated and sanctioned following the customs of a given community which then makes land rights more contextual than factual. When it comes to LSLAs these dilemmas work to limit the otherwise highly technical procedural processes of determination of rights and compensation over land.

Within the whole modernization imperative, large scale land investment on land, especially by foreign companies has been constructed as largely desirable and developmental with no adequate mechanisms for public interest protection. The current trends on LSLAs mostly in sub Saharan Africa illuminate the fragile nature of rights and governance systems characterized by disregard of the legal and institutional frameworks as well as impunity by those who wield power. In perceiving land as a primary tool for economic development, the state has prioritized the rights of investors over its larger populace, with ghastly dispossession of the poor without adequate protection. In one instance the state has leashed terror on its citizens without any compensation in favour of investment. In contrast the people perceive land as a social right core to their identity enjoyed since time immemorial. The specific case of Uganda demonstrates the fact that LSLA is taking place within a contest of complex and incomplete land governance. Critical analysis is pointing to very fragile situations that are fueling community tensions and land losses, with dire consequences for majority poor and especially by women whose land rights are rather fluid and who, at the same time have the primary responsibility for food production. The inherent cracks adversely affect the poor and more so women whose land rights are rather fluid and dependent on multiple factors.

Amuru District

In 2008 Amuru Sugar works under Madhivani group of Companies applied for lease and was granted 10,000 hectares in Amuru Sub County, by the District Land Board (DLB). This was supposed to be a joint venture with government with 49% of the shares. The granting of lease was on the basis that the land in question was gazetted public land. However, the process of

surveying and establishing the Project could not proceed as it met with stiff resistance by the community. The community outrightly rejected the project at the start because they felt that the DLB had no mandate to giveaway their land, which, to them, was governed under customary tenure. They argued that the land was vacant because of the war and not because it was public land. Women were very visible in this resistance. For example, on many occasions when they met with government officials they stripped naked and also instigated their children to cry.

On January 6th 2015, a deed of settlement between the government of Uganda and the Amuru community was signed. Indeed, resistance by the community has engendered a process of relative inclusiveness in the acquisition process, but the situation is still uncertain. The lingering uncertainty generates undue suspicion and anxiety among the community.

Thus by virtue and operation of **Article 26 of the 1995 Constitution of the Republic of Uganda of the Republic of Uganda** a person's land/property cannot be compulsorily taken without any prior compensation.

The Constitutional provisions that provide the right to own property equally put an exception to it, which is through compulsory acquisition by government if it is in the public interest. **Article 26(1)&(2) of the 1995 Constitution of the Republic of Uganda of the Republic of Uganda**. Similarly under the Land Acquisition Act cap 226, particularly S.7 provides for the modes and steps through which Government can compulsorily acquire someone's land.³

The point of concern and importance is at the time of **payment verses taking possession**, must Government first acquire your land then fulfil the Constitutional requirement of payment or it can choose to pay you before or even after, anytime it feels so convenient, do emergencies and disaster make it automatic for the Government to compulsorily acquire your land then pay later? Does a right to own property and compensation under **Article 26 of the 1995 Constitution of the Republic of Uganda of the Republic of Uganda** a derogable right?

³ Section 7(1) of the Land Acquisition Act states:

The determination of the above questions lays down the yardstick of what amounts to prompt payment prior to acquisition and the preservation of the sanctity of the Constitutional requirement of payment prior to taking of land.⁴ The law in spotlight being **S.7 (1) of the Land Acquisition Act cap 226**.

The government of Uganda commissioned a project to upgrade Hoima, Kaiso-Tonya road, Hoima District, in order to ease and facilitate the oil exploration activities in that area. The project was implemented by **Uganda National Roads Authority (UNRA)** a government agency. The government then proceeded under **S.7 (1) of the Land Acquisition Act cap 226** to compulsorily acquire land from the people affected by the project.

The complainant Uganda National Roads Authority appealed against the Court of Appeal decision where the respondents had sued the Attorney General and UNRA under **Article 137(1)(2)(3)** of the Constitution challenging the constitutionality of **S.7 (1) of the Land Acquisition Act cap 226**. They alleged that this was contravening **Article 26 of the 1995 Constitution of the Republic of Uganda of the Republic of Uganda**. The complaint by the respondents was the government proceeded to acquire their land without them being compensated first which contravened their right to own property as enshrined under Article 26 of the Constitution. In support of that submission counsel relied on *Attorney General Versus Major General Tinyefuza Constitutional Appeal No 1 of 1997* where this court stated that the Constitutional Court has jurisdiction under Article 137 of the Constitution is to interpret the Constitution and to deal with matters arising therefrom.⁵ Counsel submitted further that following the above interpretation by this court, the Constitutional Court dismissed the cases which did not require constitutional interpretation, namely: *Re Sheik Abdul Sentamu & Another* Constitutional Petition No 7 of 1998 and *Richard Mwami Vs Attorney General* Constitutional Appeal No. 821 of 2013.

The Constitutional Court Held; that **S.7(1) of The Land Acquisition Act cap 226** is nullified and is unconstitutional to the extent of its inconsistency with **Article 26(2) of the 1995 Constitution of the Republic of Uganda**. That is to the extent that it does not provide for prior

⁴ Uganda National Roads Authority v Irumba & Anor (CONSTITUTIONAL APPEAL NO.02 OF 2014) [2015] UGSC 22 (29 October 2015);

⁵ Magistrates Courts Act, Cap. 16.

payment of compensation before government compulsorily acquires or takes possession of any person's property.

The Supreme Court upheld the Constitutional court decision and stated that **S.7(1) of the Land Acquisition Act cap 226 was inconsistent with Article 26 of the Constitution as it allowed government to compulsorily acquire land without prior compensation⁶.**

Application of Article 274 & Ousting the Jurisdiction of the Constitutional Court. This was another point of contention as to whether the Constitutional court was vested with powers vis-a-vis **Article 274**. That since this was an existing law, a pre-1995 law, then Constitutional Court should have referred it back to the appropriate court to deal with it. The Constitutional court had found that S.7 (1) of the Land Acquisition Act cap 226 could have been interpreted according to **Article 274** and this would have involved reading into the section the phrase “prior payment”

Having found that way, why then didn't the Constitutional Court forward the matter to High Court for enforcement, since by applying **Article 274** would not amount to the interpretation of the Constitution? (Emphasis mine)

On this point the Supreme Court held that,“...that cannot be the mandatory procedure for the Constitutional Court to follow. That whereas it is true that **Article 274** could have been used by any other court to interpret S.7(1) of the **Land Acquisition Act cap 226** to be in conformity with Article 26 of the Constitution, this did not oust the jurisdiction of the Constitutional Court to interpret the Constitution. It went ahead to state that though **Article 274** allows existing laws to be interpreted by other courts and tribunals so as to bring them in conformity with the Constitution, the Constitutional Court has the original jurisdiction for constitutional interpretation which should not be denied to it by anybody if it so chooses to exercise it”⁷.

Is Article 26 absolute or it is derogable? It was a point of contention as to whether Article 26 can be limited by S.7 of the Land Acquisition Act cap 226 since **Article 26** is not among the Non derogable rights enshrined under **Article 43 & 44**. That acquisition before payment is the exception where such right to own property can be taken away.

⁶ Land Act, supra note13, section 34 (3).
⁷ See, Section 32 A, Land (Amendment) Act 2010

Supreme Court held that whereas **Article 26** is not among the non derogable rights stated under Article 44, this does not give powers to Government to compulsorily acquire people's land without prior payment, and that such planned government projects do not fall under the exceptions of disasters and emergencies.

The Supreme Court dismissed the appeal and upheld the judgment of the Constitutional Court. The Supreme Court confirmed and preserved the sanctity of property rights, which are; the Constitutional right to own property under **Article 26**. In fact the court made it clear that this right whereas it is not expressly a non derogable right, but it is absolute save in instances of disasters, calamities and emergencies. Those are the only limits court qualified to be the exceptions where someone can be deprived of their property without prior compensation.

The judgment is a precursor on the applicability of and the difference between **Article 274** of the Constitution and **Article 137** of the Constitution.

1.3 Problem Statement

Land disputes and conflicts in Amuru district have become part of the definition of contemporary Uganda. Trans-state boundary disputes, inter-district boundary disputes and conflicts, hot spots of ethnic land conflicts, and conflicts between pastoralists and agriculturalists are all on the rise. Evictions on registered land between owners and the occupants are also on the rise. Efforts by government agencies to conserve vital ecosystems have resulted in violent conflicts that are sometimes fatal as they wrestle encroachment in protected areas. The capacity of the Ministry responsible for land; the Justice, Law and Order Sector institutions; administrators in the districts and politicians to tackle land conflicts is overstretched. Attempts by the Land (Amendment) Act 2010, to criminalize eviction of tenants are yet to bear effect because implementation is in its infancy.⁸ Devising a comprehensive, legitimate, accessible and cost-effective framework to tackle the root and structural causes of conflicts, disputes and frictions arising from unjust actions in the past is a prime challenge in tackling uncertainty and insecurity over land rights. Thus this study is aimed at analyzing the law on land acquisition in Uganda. A case study of Amuru district.

Land Reform Decree, Decree 3/1975.

1.4 Objectives of the Study

1. To critic the Land Acquisition **CAP 226** and assess the extent it complies and or contradicts **Article 26** of the 1995 Constitution of the Republic of Uganda.
2. To analyze key provisions of the proposed law on the right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Bill.
3. To examine the legal and Policy framework and emerging trends of large scale land acquisition in Uganda.

1.5 Research Question

1. What are the Land Acquisition Act **cap 226** and the extent it complies and or contradicts **Article 26** of the 1995 Constitution of the Republic of Uganda?
2. What are the key provisions of the proposed law on the right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Bill?
3. What is the legal and Policy framework and emerging trends of large scale land acquisition in Uganda?

1.6 Justification of the Study

This study will be carried out to give appropriate solutions to problems arising from Land Acquisition in Amuru district.

The study will further analyze and identify the legal gaps in the legal systems regulating Land Acquisition.

By attempting to answer the research questions posed in this study it seeks to contribute to the existing literature on Land Acquisition

1.7 Scope of the Study

The study focused on a period between 1995 to 2010 and it will be restricted to the circumstances that will give rise to law on land acquisition in Uganda, through an establishment of the issues taken into account while resolving land problems in Uganda The study will be carried out in Amuru district.

1.8 Significance of the Study

The study will contribute a considered awareness on the loopholes in the law in acquiring land in Uganda.

The study is expected to contribute towards improvement on law to provide a way forward to finding proper and appropriate immediate solutions to loopholes in land wrangles in Amuru district.

The same case settled the confusion that has been created by courts as to when and how does **Article 274** of the Constitution apply, when it comes to interpreting constitutional provisions that will be reserved by this Article to be read with modifications.

1.9 Literature review.

A few books and scholarly writings have been written on the laws of land acquisition in Uganda, quite a number of foreign published literature has been made available for example in libraries like Kampala International University Library and Uganda National Library.

1.10 Methodology of Research

In order to achieve the objectives of this study the researcher used an exploratory research design in which both qualitative and quantitative aspects will be observed.

This method will be purposely selected because it focuses on perceptions, facts, and findings where through interview, the research questions designed will be illustrative and analytical clarifications.

This will be through use of guided interviews containing short and clear statements which sought to generate information on major variables of this study which will be; to critic the Land Acquisition Act cap 226 and assess the extent it complies and or contradicts Article 26 of the Constitution and to analyze key provisions of the proposed law on the right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Bill⁹.

The method will be purposely selected because would allow for a systematic flow of information and will be directly carried out by the researcher who ensured that interviews will be impressionistic and free from suspicion.

⁹ New Vision, Museveni Gives Orders on Land Evictions, a reprint of a Statement issued by Yoweri Museveni on Land Grabbing in Uganda, 25 February

Primary data will be obtained through use of self-administered structured interview by the researcher.

The researcher will also base on information found in various text books, law journals, newspapers, statutes and any other written relevant material for qualification of the findings. These will be reviewed from KIU, Makerere University, Law Development Centre, FIDA, (U) etc

CHAPTER TWO
LEGAL FRAMEWORK ON LAND ACQUISITION ACT CAP 226 AND THE EXTENT
IT COMPLIES
AND OR CONTRADICTS ARTICLE 26 OF THE 1995 Constitution of the Republic of
Uganda

2.0 Introduction

Law and legal reform have a key role in Land Acquisition Act cap 226 and the extent it complies and or contradicts article 26 of the constitution. Despite the promulgation of the 1995 Constitution of the Republic of Uganda of the Republic of Uganda which gives powers to the people and every citizen a right to own property under **Article 26**. The present **Land Acquisition Act cap 226** gives government lee way to acquire people’s land at whatever terms it wants, even if it means violating the fundamental rights of those affected. This law has continued to act as tool violating citizens’ property rights.¹⁰

As a result of the above Act, thousands of citizens continue to lose their property in the name of undefined development. The policy acknowledges the centrality of land in social and economic development, by leveraging the land resource base for all productive sectors for Uganda’s transition from a rural subsistence agro-based economy to a modern economy, through sustained economic growth, employment creation, supporting industrialization, urbanization and the growth of a vibrant services sector¹¹.

2.1 Legal framework

The land in Uganda is regulated by the following laws:

The 1995 Constitution of the Republic of Uganda of the republic of Uganda, as amended

The Uganda Constitution provides that every person has a right to own property and that no person shall be compulsorily deprived of property or any interest in or right over property in except where, amongst other conditions, there is payment of fair and adequate compensation, prior to taking of possession or acquisition of the property.

¹⁰ Land Acquisition Act cap 226

¹¹ 122Constitution, supra note 43, Article 237 (4) (b); Land Act, supra note 13, section 9.

The 1995 Constitution of the Republic of Uganda of the Republic of Uganda is the Supreme law and provides for environmental protection and conservation. It sets out the norms, standards, rights and obligations at national level. The Constitution also sets out National Objectives and Directive Principles of state policy. Principle XIII of the National Objectives and Directive Principles provides that the state shall protect important natural resources including water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda. The State is also required to take all practical measures to promote a good water management system at all levels.¹²

The Constitution also provides for sustainable environmental management under Principle XXVII, and Article 39 of the Constitution provides that every Ugandan citizen has a right to a clean and healthy environment. The constitution requires the Government or a Local Government as determined by Parliament by law, to hold in trust for the people and protect, natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological and touristic purposes for the common good of all citizens¹³

Article 245 requires Parliament, by law, to provide for measures intended to protect and preserve the environment from abuse, pollution and degradation; to manage the environment for sustainable development; and to promote environmental awareness.

Under the **Land Act**,¹⁴ **S.43** provides that a person who owns or occupies land shall manage and utilize the land with accordance with National Environment Act, Cap. 153 or any other law. The Act also enjoins the government or local government under **S.44 (1)** to hold in trust for the people and protect the various natural resources for the common good of the citizens of Uganda. It is also a requirement under the Act that any use of land shall conform to the provisions of the Town and Country planning Act and any other law.¹⁵ **S.70** of the Act is to the effect that all rights in the water in any natural spring, river stream etc whether alienated or not shall be reserved to the government and such water shall not be obstructed, polluted or otherwise interfered with.

¹² Principle XXI.
¹³ Article 237 (2) (b).
¹⁴ See The Land Act, note 4 above.
¹⁵ *Ibid.*, note 4 above S.45.

Under the **Land Act**,¹⁸ **S.43** provides that a person who owns or occupies land shall manage and utilize the land with accordance with National Environment Act, Cap. 153 or any other law. The Act also enjoins the government or local government under **S.44 (1)** to hold in trust for the people and protect the various natural resources for the common good of the citizens of Uganda¹⁹. It is also a requirement under the Act that any use of land shall conform to the provisions of the Town and Country planning Act and any other law.²⁰ **S.70** of the Act is to the effect that all rights in the water in any natural spring, river stream etc whether alienated or not shall be reserved to the government and such water shall not be obstructed, polluted or otherwise interfered with.

The National Environment Water Act, Cap. 152 Cap 152 (Lakes and Rivers)

The Water Act, Cap. 152 is one piece of Uganda’s sectoral legislation with key provisions to enhance sustainable development. It provides for the use, protection and management of water use and supply²¹.

Some Acts have gone an extra mile to create environmental criminal offences in order to enhance environmental management and protections. The **Water Act, Cap. 152**²² for instance, makes it an offence for a person to cause waste to come into contact with any water, or waste to be discharged either directly or indirectly into water, or a person to allow water to be polluted.²³

The National Environment Mining Act

This Act vests the ownership and control of all minerals in Uganda in the Government and provides for the acquisition of mineral rights and other related rights. The Act requires every holder of an exploration license or a mining lease to carry out an EIA of their proposed operations in accordance with the provisions of the Environment Act²⁴.

The National Environment Forestry and Tree Planting Act, 8/2003

¹⁸ See The Land Act, note 4 above.
¹⁹ Advocates Coalition for Development and Environment, “Balancing Development: Land Acquisition, Resettlement and Community Livelihoods in Uganda”, November 2015, pg 1.
²⁰ *Ibid.*, note 4 above **S.45**.
²¹ See section 20 of the Act.
²² Cap 152 laws of Uganda 2000.
²³ *Ibid.*, note 25 above, **S.31**. See also Regulation 4 of the Water (Waste Discharge) regulation, S.I 32/1998.
²⁴ Section 107 (1) of Cap 153 Laws of Uganda 2000, formally Section 108 of the National Environment Statute (1995).

This is an Act for the conservation, sustainable management and development of forests for the benefit of the people of Uganda²⁵. The Act establishes central forest reserves and other forest reserves.

Ministry of Lands, Housing & Urban Development

This is the ministry responsible for providing policy direction, national standards and coordination of all matters concerning lands, housing and urban development and for putting in place policies and initiating laws that ensure sustainable land management promote sustainable housing for all and foster orderly urban development in the country.

Department of Land Registration / Office of Titles

The Department is responsible for issuance of Certificates of Title, general conveyance, keeping custody of the national land register, coordination, inspection, monitoring and back-up technical support relating to land registration and acquisition processes to Local Governments.

Department of Land Administration

The Department of Land Administration is responsible for supervision of land administration institutions and valuation of land and other properties²⁶.

Department of Land Use Regulation and Compliance

This department is responsible for formulation of land use related policies, plans and regulations. It also provides technical support and guidance to Local Governments in the field of land use regulation, monitoring, evaluation and systematization of the land use compliance monitoring function.

2.2 Article 11(1) Cap 227 Land Grabbing and Forced Eviction

Land grabbing and forced evictions are one of the major threats to tenure security. It is a violation not only of one’s right to property but of the right to housing, life and a host of other related rights. While the right to land is constitutionally protected, land grabbing (or the process

⁵ UNEP & Greenwatch Hand Book on Environmental Law in Uganda (2nd Edition) 2005 p90.
⁶ Global Rights Alert, “Acquisition of Land for the Oil Refinery: Tracking Progress in Resettling Project Affected Persons who opted for Land for Land Compensation” (2015).

of selling or leasing large tracts of land to foreign States or companies), has become a serious issue in Uganda, receiving increased international attention in recent years.²⁷ Most Ugandans live in rural areas and are dependent on agriculture for their daily survival.²⁸ In general, communities affected by land grabbing have not been adequately consulted or compensated for loss of land, and have suffered entrenched poverty as a result.²⁹ Advocates in Uganda have noted that land acquisition for investments are characterized by human rights abuse and violation, lack of transparency in negotiations, inefficiency in resource use, and environmental degradation³⁰.

As in many countries in the East African region, Uganda suffers from high gender inequality and is currently ranked 116th out of 146 countries on the Gender Inequality Index.³¹ At present, women provide “70-80% of agricultural labor and 90% of all labor involving food production in Uganda, yet own just a fraction of the land with figures varying between 7% and 20%.”³² This presents a major issue that disproportionately affects women. This concern of land rights presents other issues for women including forced evictions, land grabbing, food security and land tenure. Each of these specific issues individually and collectively violate the human rights of women³³.

The rights of land ownership among indigenous communities in Uganda are both recognized and protected by Uganda’s Constitution.³⁴ Additionally, in situations where land has been acquired by force, adequate compensation for such land has to be made to individuals and communities affected by such acquisition. Lack of access or rights to land usually results in economic insecurity.³⁵ The international community for many years has viewed forced eviction as a very serious issue and a gross violation of human rights. **Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)** provides for the right to adequate

²⁷ See, for example: National Association of Professional Environmentalists (FoE –Uganda) and Friends of the Earth International (FoEI), ‘A study on Land Grabbing cases in Uganda,’ April 2012.

²⁸ Think Africa Press, ‘Law of the Land: Land Grabs Threaten Local Livelihoods in Uganda,’ 28 November 2012.

²⁹ *Id.* See also: Milieudefensie, ‘Land grabbing for palm oil in Uganda,’ 2013.

³⁰ Uganda Investment Authority. 2011. “Brief Guide to Investing in Uganda”. UIA: Kampala, Uganda.

³¹ *Uganda: The Fight for Women's Land Rights*; Lewis, Phillipa (2012)

³² *Id.*

³³ Global Rights Alert, “Acquisition of Land for the Oil Refinery: Tracking Progress in Resettling Project Affected Persons who opted for Land for Land Compensation” (2015).

³⁴ Committee on Economic, Social, and Cultural Rights, General Comment No. 21.

³⁵ *Id.*

Land Act Cap 227(1998), as amended

The Land Act cap 227 of 1998 that was amended on 2nd July, 1998, to provide for the tenure, ownership and management of land, to amend and consolidate the law relating to tenure, ownership and management of land to provide for other related or incidental matters.

The Land Act under section 43 provides that a person who owns or occupies land shall manage and utilise the land in accordance with the Forests Act, Cap. 146, the Mining Act,¹⁶ and the National Environment Act, Cap. 153, the Water Act, Cap. 152, the Uganda Wildlife Act, Cap. 200 and any other law.

Section 44 provides for the public trust doctrine by providing that the Government or a local government shall hold in trust for the people and protect natural lakes, rivers, ground water, natural ponds, natural streams, wetlands, forest reserves, national parks and any other land reserved for ecological and touristic purposes for the common good of the citizens of Uganda and the Government or a local government shall not lease out or otherwise alienate any natural resource referred to in this section. However, the Government or a local government may grant concessions or licences or permits in respect of a natural resource referred to above.¹⁷

Section 70 provides that subject to section 44, all rights in the water of any natural spring, river, stream, watercourse, pond, or lake on or under land, whether alienated or unalienated, shall be reserved to the Government; and no such water shall be obstructed, dammed, diverted, polluted or otherwise interfered with, directly or indirectly, except in pursuance of permission in writing granted by the Minister responsible for water or natural resources in accordance with the Water Act, Cap. 152.

Land Acquisition Act cap 226 (1965)

This Act commenced on 2 July, 1965 to make provision for the compulsory acquisition of land for public purposes and for matters incidental.

⁶ Mining Act, Cap. 148.

⁷ National Development Plan 2010/2011 – 2014/2015, (April 2010) p160-161.

housing and State parties are required to recognize, grant and protect this right. ³⁶The right to housing should not be interpreted in a narrow or restrictive sense, rather it should be seen as the right to live somewhere in security, peace and dignity. As provided in the Committee's General Comment No. 4, one of the key features of the right to adequate housing is security of tenure. All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

Under customary ownership, "land is held in trust by the family, for all past, present and future generations, with the current adult occupants responsible for managing it, in the role of trustees." Over time, the roles of managing the land and actual individual legal ownership of the land have become confused. Trustees have taken on the role of ownership and women's ownership of the land has been weakened by the individuals who have been appointed to "manage" the land through various events.

Prior to current policies, land was obtained by communities and families by fighting for territory, this resulted in weaker groups losing their land, including women, children, elderly, and the disabled. Women and children are more likely to lose land to individuals with more physical strength (such as their male counterparts) as well as individuals with more exclusive status (such as corporations and wealthier individuals) and are therefore more vulnerable to land grabbing. Male family members, the educated, business owners, and the politically influential are usually the land grabbers.³⁷

Land grabbing is a direct violation of Uganda's **Constitution, Chapter 4** of the Ugandan Constitution assures that women have equal rights to men. Additionally, **Articles 31-33**, provide for equality between women and men in acquiring and holding land.

Displacement of land is done on a larger scale in the form of land grabbing. Land grabbing occurs when individuals and/or local communities are displaced from the land that they previously owned and such land is sold to outside investors including Governments and corporations.³⁸ In addition, land grabbing also occurs in order to produce commodity crops that are later sold to the overseas market, including food items, agro fuel, and coffee.³⁹ Land grabbing

³⁶ Article 11(1).

³⁷ National Association of Professional Environmentalists; *A Study on Land Grabbing Cases In Uganda*; (2012)

³⁸ Greenwatch & UNEP, *Hand Book on Environmental Law in Uganda* (2nd Edition – September 2005).

³⁹ Land grabbing is not a new phenomenon.

is a violation of the rights granted by the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, the Ugandan Constitution and the various land policies that are in place. Communities are being displaced and losing critical access to natural resources, including land for farming, firewood, forest products and in some places, water supplies.

Researchers highlight that land grabbing has also translated into increased conflicts over land, especially in the oil rich Albertine region of the country, and that “the manner in which large-scale land deals take place is highly invisible.”⁴⁰ In a recent report on human rights violations within the context of private mining in the remote northeastern Karamoja region, Human Rights Watch highlights that “the Ugandan Government, in partnership with the private sector, has excluded customary land owners from making decisions about the development of their own lands and has proceeded without their consent.”⁴¹

In 2000, the Ugandan Government launched its Plan for Modernization of Agriculture (PMA) in 2000.⁴² The overarching goal of this program was to eradicate poverty through “a profitable, competitive, sustainable and dynamic agricultural and agro-industrial sector,” to be achieved primarily through the conversion of subsistence farming into commercial agriculture.⁴³ Coffee has become the focus of the PMA policy, it accounts for up to 30 percent of Uganda’s export revenue.⁴⁴ In addition to the Government’s PMA policy, the Government has also allowed foreign companies to move onto large areas of land for a variety of reasons (including drilling), due to the recent discovery of oil, development of palm plantations, and carbon offset tree plantations.⁴⁵ These projects are taking place in western, eastern and central Uganda. One development in particular is the Kalangala palm oil project which is being developed as part of a Government program; supporters of this program are the International Fund for Agricultural Development (IFAD) and the World Bank. The Kalangala oil palm project set a goal to plant 10,000 hectares (approximately 25,000 acres) of palm on Bugala Island in Kalangala district of Uganda. This particular district has a population of 20,000 people.⁴⁶ People residing in Kalangala

⁴⁰ Roberts K. Muriisa, Pamela K. Mbabazi and Meldard Twinamatsiko, ‘Land Deals in Uganda.’
⁴¹ Human Rights Watch, ‘Uganda: Rights at Risk in New Mining Region,’ available online at: <http://www.hrw.org/news/2014/02/03/uganda-rights-risk-new-mining-region>
⁴² Land grabbing in Uganda (2012)
⁴³ *Plan for Modernisation of Agriculture: Eradicating Poverty in Uganda : Government Strategy and Operational Framework*;
⁴⁴ *Id.* at note 96
⁴⁵ *Id.* at note 93
⁴⁶ *Id.* Uganda Investment Authority. 2012a. Industrial and Business Parks. Last access 10 April 2012. Online at www.ugandainvest.go.ug/index.php?option=com_k2&view=item&layout=item&id=27&Itemid=236

district have reported that they have been denied access to multiple resources including land to which they possess title and a right to occupy.⁴⁷

Land grabbing is also present in the Bukaleba forest reserve where some 8,000 people from 13 villages were displaced with the goal to obtain carbon offsets. There was an unsuccessful land grabbing attempt of the Mabira Rain Forest which stretches across three districts. The Ugandan Government insisted that the area should be given to an investor. The Government however, was faced with strong resistance from the community as well as civil society organizations.⁴⁸ Another land grabbing incident involved the New Forest Company (NFC), a United Kingdom corporation. The NFC recruited the help of Government officials to evict 20,000 people from natural forest land in the Luwunga Forest Reserve. NFC's goal was to clear the forest land and replace it with pine monoculture.⁴⁹

The Ugandan Government's willingness to hand over land to wealthy corporations causes a disruption of customary way of life, displacing rural communities and affecting food security. These various projects also cause damage to the land and environment. Furthermore, local communities get dispossessed of natural resource with a lack of judicial remedy to render the situation and restore land that is rightfully theirs. Land that was once used to feed villages and communities in rural areas are now being used to grow palm oil among other products. The recent compulsory acquisition by the Government of land for oil refinery in Hoima, and for road improvement and pipeline construction in Hoima and Buliisa Districts, has threatened the tenure security of communities who have occupied these lands for generations. Contrary to the intent of the National Land Policy 2013, the Government in its Resettlement Action Plan (which has also been shared with the World Bank that is supporting some of these development projects) only recognizes compensation of those with evidence of ownership. This makes customary tenure to be treated as lesser, and excludes those who have no documentation. Such projects of Government affect the land rights of women more as they reinforce existing discriminatory practices.⁵⁰ Even compensation of products on unregistered land benefits the 'head of

⁴⁷ *Id.* Uganda Investment Authority. 2012b. Land Request Form. Last access 10 April 2012. Online at www.ugandainvest.go.ug/index.php?option=com_breezingforms&view=form&Itemid=208.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Albertine Region Sustainable Development Project (ARSDP), Resettlement Policy Framework (RPF), Volume 1, Final report November, 2013.

household’ who are seen as male, yet it women who are involved in crops growing. The choice of cash compensation also greatly disadvantages women since they are the ones who lose the right to food security when their spouses are left to solely to decide on how cash is to be spent.⁵¹

The Africa Biodiversity Collaborative Group, found that “Despite lacking clear legal authority or codified procedures, the Uganda Investment Authority has directly acquired agricultural properties for allocation to private investors.” To address the issues, the Government should implement a comprehensive policy to uphold the rights of communities and protect them against forced evictions, including within the scope of bilateral agreements with investors.⁵² In particular, the Government should also provide information about all investments –particularly those involving Government land acquisitions—and support on-going monitoring and reform and to decrease opportunities for abuse.”⁵³

⁵¹ Global Rights Alert workshop report on women’s land and property rights in the context of oil and gas in Bunyoro region.
⁵² M. Mercedes Stickler, ‘Governance of Large-Scale Land Acquisitions in Uganda: The role of the Uganda Investment Authority,’ Africa Biodiversity Collaborative Group, September 2012.
⁵³ *Id.* See also: Land and Natural Resource Tenure in Africa Program (in which the World Resources Institute is a partner with Landesa), FOCUS on Land in Africa Brief: Uganda,’ December 2010.

CHAPTER THREE
THE KEY PROVISIONS OF THE PROPOSED LAW ON THE RIGHT TO FAIR
COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION,
REHABILITATION AND RESETTLEMENT BILL

3.1. Introduction.

This chapter will try to identify the rights accorded or ought to be accorded to vulnerable children owing to their situation. There are a multitude of human rights concern for vulnerable children in Uganda particularly and the world in general, which would need to be urgently addressed in order to ensure that vulnerable children live and enjoy a human and fulfilled life. However, this chapter will seek to discuss only key concerns normally faced or likely to be faced by vulnerable children and major rights that seem to be at stake, and which would stimulate a necessity for legal intervention⁵⁴.

The key issues addressed by the policy include: Historical injustices and colonial legacies, which have resulted in multiple rights and interests over the same piece of land; disposition and loss of ancestral land by some communities; border disputes arising out of tribal, ethnic groupings and trans-state border disputes; and the ineffective dispute resolution mechanisms, which have resulted into illegal evictions. Whilst under contemporary issues, Uganda is faced with disparities in ownership, access to and control of land by vulnerable groups; displacement, land grabbing and landlessness resulting from high population growth and the increasing demands on land for investment especially communal lands which are neither demarcated nor titled⁵⁵.

In addition other issues addressed by the policy include underutilization of land due to poor planning and land fragmentation; environmental degradation and climate change; poor management of the ecological systems due to their trans boundary nature and unsustainable exploitation arising out of the conflicting land uses and inadequate enforcement of natural resource management, standards and guidelines. It also tackles issues of inefficient and

⁵⁴ In an interview with His worship Kadisi Charles Mukono grade II magistrate/ the family and children's court at Mukono, some of these were raised as major rights/ concerns of the vulnerable children.

⁵⁵ Uganda Investment Authority. 2012c. List of agricultural properties held by the Uganda Investment Authority for allocation to private investors. Obtained 15 March 2012 in person.

ineffective land administration and management system, which has made the system prone to fraud and forgeries.

To address these problems, the Government formulated the National Land Policy. The vision of the policy is: “a transformed Ugandan society through optimal use and management of land resources for a prosperous and industrialized economy with a developed services sector“. While the goal of the policy is: „to ensure efficient, equitable and optimal utilization and management of Uganda’s land resources for poverty reduction, wealth creation and overall socio-economic development“.

*Uganda National Roads Authority v Irumba Asumani & Peter Mageloh
Constitutional Appeal No.2 of 2014*

On 29th October 2015, the supreme court pronounced itself on the constitutionality of **S.7(1) of the Land Acquisition Act cap 226** in line with **Article 26** of the Constitution, as far as the constitutional right to own property and prompt payment prior to compulsory acquisition of land is concerned.

The same case settled the confusion that had been created by courts as to when and how does **Article 274** of the Constitution apply, when it comes to interpreting constitutional provisions that were reserved by this Article to be read with modifications.

Article 26 of the 1995 Constitution of the Republic of Uganda prohibits compulsory deprivation of property, except when such acquisition is necessary for public use or national security, public safety, public order, public morality or public health. The acquisition must also be after payment of fair and adequate compensation prior to such acquisition.

The said Article, however, has flaws. The phrase ‘acquisition in public interest’ is vague and subject to abuse. For example, the governments give-away of land formerly housing Uganda Broadcasting Corporation and the Shimoni land were done in disregard of public interest.

Such moves propel investors to an ocean of material prosperity and cast the displaced to an island of poverty and material dispossession. As a preliminary step, public interest circumstances and limits must be specified by law.

Another dilemma is that there is no comprehensive law or policy to regulate the process of acquisition, compensation and resettlement.

As a matter of right, amendments to the law should seek to invalidate any compulsory acquisition of land, which does not provide for: notice to land owners; opportunities for land owners to negotiate; free expert (survey and valuation) support to the poor and marginalised; access to independent arbitrators in case of disagreement on the assessed values and easy and affordable access to judicial remedies; timely and prompt compensation; and lastly, compensation prior to taking over the land in question. This will help avoid the prevailing slanted land acquisitions⁵⁶.

But instead of honouring citizen's right to own property, the government is proposing to amend *Article 26* in a way that will deprive people of their means of livelihood.

Government proposes to take over private property before payment of a prompt and fair compensation. Exception will be where the property taken over comprises permanent and physical structures. Ironically, the main purpose of this proposal is to promote investment and promote the economy⁵⁷.

But first, any business that cannot fund its start-up of paying for the acquired land is a nonstarter. Second, there is no national interest in displacing people.

Third, the poor, once empowered, can contribute to the development of our economy. The delay in developing Naguru Housing Estate, Shimoni land and UBC land, should serve as warning signals.

⁶ The Land Act (Section 59(1)(e)(f) authorizes the District Land Boards to "compile and maintain a list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other thing that may be prescribed" on an annual basis.

⁷ New funding from the European Union and UNIDO is meant to help the UIA establish the status of the roughly 5,000 investments licensed since UIA opened its doors in 1991 (Mitti 2011).

This proposal does not only benefit the rich but directly disorganises the marginalised poor. Where the property taken over is not in form of physical structures in permanent materials, the compensation should be paid within one year⁵⁸.

Certainly, majority poor Ugandans will have to wait much longer without any compensation. Moreover, currently most people affected by various infrastructure projects wait for more than five years to be compensated. The resultant landlessness and poverty will rid affected citizens of their dignity, survival and wellbeing⁵⁹.

Courts have already ruled that any compulsory acquisition of property must be after payment of a fair and adequate compensation. *GREENWATCH -VS- ATTORNEY GENERAL AND NEMA MISC. APP. 139 of 2001*.

The Supreme Court has recognised that the right to property is the highest right a person can have over anything to which one claims ownership, from lands and tenements, to goods and chattels; and in no way depends on another man's courtesy.

The displacement of people should be the last resort. In most cases, the compensation won't repurchase the lost assets. The transaction costs, the start-up costs of a new life, and lost social amenities make compensation a damage substitution exercise⁶⁰.

To the proponents of these amendments, let us regain our humanity. To our legislators, the practice of amending the Constitution without thorough soul-searching can cost generation's lives and stability.

⁵⁸ Land Matrix Portal. 2012. Accessed 21 June 2012 at <http://landportal.info/landmatrix/get-the-detail>.
⁵⁹ Barlow, C. 1997. "Growth, Structural Change, and Plantation Tree Crops: The Case of Rubber." *World Development* 25 (10): 1589–1607.
⁶⁰ Bogere, H. 2011. "Uganda Land Commission is 'illegal'". *The Observer*, 4 August 2011. Accessed 11 April 2012 at http://www.observer.ug/index.php?option=com_content&view=article&id=14572:uganda-landcommission-is-illegal-&catid=34:news&Itemid=114.

CHAPTER FOUR

ANALYSIS OF THE LEGAL, POLICY FRAMEWORK AND EMERGING TRENDS OF LARGE SCALE LAND ACQUISITION IN UGANDA

4.0 Introduction.

This chapter concentrated on the Ugandan legal regime, citing and analysing different provisions of the law. The chapter will present the strengths and weaknesses/ loopholes that do exist within the Ugandan legal system which seeks to provide the legal, policy framework and emerging trends of large scale land acquisition in Uganda.

4.1 The Legal Framework and Emerging Trends of Large Scale Land Acquisition In Uganda

4.1.1 Historical Acquisitions:

Colonial Government Laws and Policies

Land holding systems in pre-colonial Uganda were for a greater part premised on diverse customary norms and practices prescribing access and use of land. Crosscutting among majority communities in Uganda was the unwavering right for every member of the community to access land either directly or through an established authority or entity of association. The latter held true for “stratified societies” such as Buganda. In such societies, institutional holding and control of land was largely on the basis of agency for the members of the community⁶¹.

Also important in many of the African settings was the holding of land by the living on agency for the past and future generations. Specifically for Uganda, the prevalent customary modes of holding land could be said to be unknown to the English system. To the British, the customary system required reform to give it currency.

A number of legislative and other reforms aimed at the preceding resulted into land changing hands directly and indirectly, in a way that gave some of them characteristics of land grabs such as violation of the human rights. Below is a discussion of some of these. A. Acquisitions through Declaration of Crown Land.

¹ The Republic of Uganda. 1995. Constitution of the Republic of Uganda 1995.

These are categorized at two levels: the indirect and the direct. The indirect historical acquisitions may not necessarily (always) have resulted into the physical/actual taking of the land from its customary owners or displacement from land. The trend was first set by the British colonial masters who through the 1903 Crown Lands Ordinance converted all customary land into Crown land; by corollary, land was vested in her Majesty the Queen of England. Driven by the belief that customary tenure was not as good as other tenures, the above conversion meant a number of things including: making the de facto occupiers and owners of land mere tenants (in accordance with the law), on land owned by the Crown -- hence technical dispossession. All customary land, except that which had been alienated otherwise -- say, through the allotments made under the 1900 Buganda Agreement, as private land -- was converted to Crown land. This was more in other areas of Uganda than in Buganda: The un-alienated land (Crown Land) was 5,949 sq. miles⁶². When Buyaga and Bugangaizi reverted to Bunyoro, Crown Land in Buganda was further reduced by 667 Sq. miles leaving a balance of 5,282 sq. miles. When Ranching schemes were established in Buruli, Masaka and Singo, crown land was further reduced by 644 Square miles leaving a balance of 4,614 sq. miles. Considering that customary land was most prevalent in the whole of Uganda at the time, the above dispossession (at least in law through the Crown Lands Ordinance) was an indirect large-scale dispossession of people (in law) and acquisition by the Crown government in England.

It should also be noted that, theoretically, the authority to transact in this land was left to the Crown "owner" of the land, who could parcel it out and create other interests on it without necessarily seeking the consent of the occupiers. Among the cited examples of cases in which the above happened involved gazetting of the Bwindi Mgahinga Impenetrable and Echuya forests reserve for environmental conservation, pushing out the indigenous Batwa. Technically, environmental conservation and protection of wildlife imperatives in some of the above cases was of utmost importance than subsistence use of land by the local communities that were the original customary owners, but for the Crown's acquisition.

⁶² Uganda Investment Authority. 2012c. List of agricultural properties held by the Uganda Investment Authority for allocation to private investors. Obtained 15 March 2012 in person.

The Constitution of Uganda 1962

Article 17 guaranteed fundamental rights for all irrespective of race, creed, colour, sex. The provision under *Article 17* covered protection of everyone’s right to privacy of home and other property; protection from deprivation of property without compensation.

It should be noted, however, that Article 17 contained a limitation to the effect that the uarantees in it were “subject to the respect for the rights and freedoms of others, and for the public interest” The right to property in the constitution would therefore be overtaken by an interest of a public nature.

The above limitations on the right to property not only covered physical property but extended to interests in property. This is seen under **Article 22** of the Constitution of 1962. According to it, there would be no compulsory deprivation of possession, interest or right over property, except if the deprivation is in the public safety among others. Any such compulsory acquisition had to take place according to law, which also made provision for prompt payment of adequate compensation, and access to the courts for a remedy in case of any disgruntlement⁶³.

The emphasis on legality (according to law) is meant to exclude illegal selfish actions, although this was a time where emphasis on legality was not a sure guarantee of fair actions and outcomes. Laws could be passed to promote actions aimed at depriving some classes of people of their property.

The Public Lands Act 1969 Cap 227

The customary occupiers of land were to some extent protected under this law, although not preferred to the progressive commercial farmer that may need land for production than subsistence. At the same time, there was a growing trend to convert customary land into leaseholds. By virtue of **section 24 (1)**, customary tenants would occupy any unalienated public land in the rural area without grant. Section 25 provided that customary occupiers would apply to a Controlling Authority for a leasehold interest to be granted to them on the land that they occupied⁶⁴.

⁶³ Uganda National Land Policy, *supra* note 14, statement 96 (b).
⁶⁴ National Development Plan for the period 2010/11 to 2014/15, 421 Objective 1, strategy 2 Page 163, available at, <http://opm.go.ug/assets/media/resources/30/National%20Development%20Plan%202010:11%20-%202014:15.pdf> (accessed November 27, 2014).

Although leaseholds and freeholds were encouraged and preferred during this time, under sections 24 (2) and (3) of the PLA, leases or freeholds out of land occupied by a customary tenant could not be granted to another person without the former's consent. Grant of such leaseholds on land occupied by a customary tenant to another was also subject to supervision by the Minister; s/he had to give a written consent to a Controlling Authority to grant leaseholds or freeholds to land in a rural area that is held under customary tenure.

In addition to consent, compensation to a customary occupier who might be dispossessed when land is given away to another on lease was provided for and the Minister had to approve of it. The preservation of consent in the above context means promotion of the peoples' right to participate in decisions on land that might affect them.

The Land Reform Decree 1975

The LRD is a landmark that had tremendous implications for access to land in Uganda and land governance in general. It is relevant for both historical and contemporary times. It is the benchmark that the post-1995 era land reforms aimed to replace with more progressive means of land governance⁶⁵.

Just like its predecessor legislations, the LRD aimed at promoting use of land for development. According to its long title, the Decree was, among other things, to promote economic and social development by vesting land in the hands of those that could develop it. To facilitate the easy transfer of land from those that could not develop it to others, the protection granted to customary occupiers on land had to be reduced.

This was by doing away with the consent privilege they had in the PLA, prior to leasing out their land. Further, private persons' grip on land had to be reduced by vesting all land in the country in the custodianship of the Uganda Land Commission to manage it according to the Public Lands Act 1969 as public land, "with modifications as may be necessary to bring that Act into conformity with this Decree".

Any interest in land that was greater than leasehold was abolished; absolute ownership of land under the mailo and freehold titles, were explicitly converted into leases from the Uganda Land Commission as the lessor without a premium, and other interests purchased or derived from the

⁶⁵ See the Land Acquisition Act, cap 226.

converted leases were converted into subleases. The public bodies and religious institutions' leases were for a period of 99 years and those for individuals 99 years.

4.1.2 The Land Law Reform Era: Post-1995 Legal and Policy Initiatives

The legal and policy initiatives of the post-1995 era are characterized by a number of positive strides towards streamlining land governance in Uganda for the good of both the people and also national development. A number of these land governance initiatives touch issues to do with: (i) clarification and delimitation of rights to land access and use; (ii) reconciliation of conflicting interests on land; (iii) processes of dispute settlement on land (decision-making); (iv) regulation and stipulation of institutions mandated to deal with conflicts over land (both formal and informal); their processes/procedural imperatives, outcomes, and how these outcomes are implemented and perceived by the people affected. The legal and policy framework of Uganda post-1995 era has gone a long way to throw more light on the ideals of the above in the Ugandan context. This section analyses the law to trace the extent to which the ideals of good land governance above are embedded in the law.

4.2 The Policy Framework and Emerging Trends of Large Scale Land Acquisition In Uganda

Land tenure in Uganda

The Constitution (**Section 237(1)**) states that “Land in Uganda belongs to the citizens of Uganda...in accordance with the land tenure systems provided for in this Constitution”, which are customary, freehold, *mailo* and leasehold. This principle—that land belongs to the people of Uganda—significantly diminishes the government’s authority to acquire land for agricultural investment. The **Land Act of 1998 Cap 227** confirms that land belongs to the Ugandan people (Section 2) and elaborates upon the four categories of land ownership as follows⁶⁶.

Customary tenure is “owned in perpetuity” (Section 3(1)(h) of the Land Act) by the local people and is subject to “local customary regulation and management” (Section 3(1)(e)), including communal ownership (**Section 3(1)(f)**). Holders of customary land can acquire a certificate of customary ownership

⁶⁶ See, HRW Report, *supra* note 154, at 7-8.

(Section 4) that “is conclusive evidence of the customary rights and interests specified in it” (Section 8(1)). Section 8(7) states that “a certificate of customary ownership shall be recognized by financial institutions, bodies and authorities as a valid certificate for purposes of evidence of title.” Thus, the Land Act provides for the certificate of customary ownership as conclusive proof for ownership of customary. However, in many areas, customary land owners have not applied for the certificate because the government has not provided a framework through which the certificates can be issued—as a result, land registries do not have a system in place to issue the certificates⁶⁷. Moreover, in practice banks do not recognize certificates of customary ownership as collateral (UIA 2012).

To promote official recognition of customary ownership that is on par with the documentation provided for other tenure categories, such as titles and leases on freehold or *mailo* land (see below), the Ministry of Lands, Housing and Urban Development has recently introduced a “customary title” (NGO A 2012; UIA 2012). Although this new document does not differ appreciably from the certificate of customary ownership envisaged under the Land Act, it is hoped that the customary title will increase the security of customary tenure (Ojwee 2012) and “facilitate investment” by making customary titles commensurate with freehold titles (UIA 2012). Roughly 69 percent of all land in Uganda falls under customary tenure; much of this land is in the north and east of the country⁶⁸.

Freehold tenure “involves the holding of registered land in perpetuity or for a period less than perpetuity which may be fixed by a condition” (Section 3(2)(a)). It provides the holder with full rights to use, develop, transact, or dispose of the land (Section 3(2)(b)(i-iv)). Holders of freehold and are eligible to register their rights through a freehold title (Section 3(3)). Freehold tenure represents about 18.6percent of all land in Uganda (MLHUD 2010).

Mailo tenure “involves the holding of registered land in perpetuity” (Section 3(4)(a)) and “permits the separation of ownership of land from the ownership of developments on land made by a lawful or bona fide occupant” (Section 3(4)(b)). The tenets of land holding under *mailo* tenure are almost the same as under freehold tenure, except that *mailo* tenure derives from lands

⁶⁷ NGO A. 2012. Trustee, NGO focused on environment and development. Personal interview, 14 March and email correspondence, 23 August.

⁶⁸ Land Act, supra note 13, section 59 (1) (a) - (e).

that were historically awarded in freehold to chiefs of the Buganda kingdom who collaborated in the British conquest of the Buganda from 1890-1900⁶⁹.

The term “*mailo*” is derived from the measurement of these land grants in square miles. The **Land Act (Section 3(4)(b)(c))** also recognizes the usufruct rights of tenants, known as *kibanja* (pl. *bibanja*). Both the Act and its 2010 Amendment uphold the rights of *mailo* tenants (*bibanja* holders) and limit the powers of *mailo* owners to make land management decisions without the consultation and consent of *bibanja* holders (Terra Firma 2011). In practice, however the relationship between *mailo* tenants and owners has been interpreted in different ways that reflect a long history of unequal power relations (Terra Firma 2011). *Mailo* tenure is found in the central region and parts of western Uganda and covers some 9 percent of the land⁷⁰.

Leasehold tenure is created by contract or by law that describes the relationship between a landlord (lessor) and a tenant (lessee) (Section 3(5)(a)). It is usually limited to a specified time period and may be subject to rent (Section 3(5)(c-d)). Leasehold tenure essentially confers freehold rights to both the landlord and the tenant “subject to the terms and conditions of the lease” (Section 3(5)(e)). Leasehold tenure accounts for just 3.6 percent of land in Uganda; some of this land falls within the *mailo* areas⁷¹.

Foreigners cannot own land in Uganda—they can only acquire leasehold rights to land (Land Act of 1998, Section 40(1)). A noncitizen of Uganda cannot acquire a lease exceeding 99 years (**Section 40(3)**), and all leases of at least five years acquired by noncitizens must be registered in accordance with the Registration of Titles Act (**Section 40(2)**). By law, noncitizens are not eligible to acquire or hold *mailo* or freehold land (Section 40(4)).

The role of the UIA in helping investor’s large scale land acquisition in Uganda

The Uganda Investment Authority is legally empowered to promote investment in Uganda, including by facilitating investor access to land. The first sub-section below briefly describes

⁶⁹ NGO B. 2012. Executive Director, NGO focused on land rights. Personal interview, 14 March.

⁷⁰ Private Consultant. 2012. Land expert at private consulting firm. Personal interview, 16 March.

⁷¹ Terra Firma 2011

provisions of the Investment Code Act (“the Act”), Cap 92 of 1991⁷² and other legislation relevant to the process of acquiring and allocating agricultural land for large-scale investment. The next sub-section critically examines how these provisions have been applied in practice based on key informant interviews with the UIA, the Uganda Land Commission, and civil society experts.

Authorities provided in the investment Code Act Cap, 92

At just twenty-two pages, the Act is fairly concise. The Act creates the Uganda Investment Authority (UIA), whose functions are, *inter alia*:

- “to promote, facilitate, and supervise investments in Uganda;
- to receive all applications for investment licences for investors intending to establish or set up businesses enterprises in Uganda under this Code and to issue licences and certificates of incentives in accordance with this Code⁷³.
- to secure all licenses, authorizations, approvals, and permits required to enable any approval granted by the authority t[o] have full effect;
- to do all other acts as are required to be done under this Code or are necessary or conducive to the performance of the functions of the authority” (Part II, Section 6).

In establishing the Uganda Investment Authority, the Act specifies that “The authority shall be a body corporate...capable of acquiring and holding property” (Part II, Section 2(3)). It appears that the UIA has chosen to broadly interpret this authority, which was meant to empower the UIA to acquire land for its own use as a body corporate, to include acquiring and holding property for allocation to investors (NGO B 2012). However, the authority was “never granted express power to acquire land and then either sell it to investors or [otherwise] allocate it to them” (NGO C 2012).

Given that the UIA is not explicitly legally authorized to acquire land on behalf of investors, it is perhaps unsurprising that there are no rules or regulations governing the UIA’s identification or

⁷² Although revisions to the Act have been proposed and forwarded to the Ministry of Finance, these revisions are awaiting “onward consideration by Parliament” (UIA 2012).

⁷³ The Republic of Uganda. 1991. Investment Code Act, Cap 92.

acquisition of agricultural land for private investment. Neither does the Act itself specify any rules or regulations governing the allocation of agricultural lands⁷⁴ held by the UIA for private investment (UIA 2012). Significantly, however, the Act does state unequivocally that “[n]o foreign investor shall carry on the business of crop production or acquire or be granted or lease land for the purpose of crop production or animal production” (Part III, Section 10(2)). However, a company that is 49% foreignowned could still register as domestic company and circumvent this rule.

Although the Act does not explicitly provide the UIA with the authority to acquire, hold, or allocate land to investors, it does provide the UIA with the authority to *facilitate* investor access to land:

The executive director shall liaise with Government Ministries and departments, local authorities, and other bodies as may be necessary in order t [*sic.*] assist an investment licence holder in complying with any formalities or requirements for obtaining any permissions, authorizations, licences, land and other things required for the purpose of the business enterprise (Part III, Section 15(2)).

However, there are no codified rules or regulations governing the UIA’s authority to facilitate investor access to land. The Act does not specify whether the UIA is responsible for helping investors acquire land from private owners or from other government agencies that hold land, such as the ULC or the District Land Boards. Neither does the Act specify how the UIA should interface with the other government institutions that have played roles in recent land acquisitions, including the Ministry of Agriculture and the National Forestry Authority.

The Investment Code Act stipulates that the UIA should appraise the capacity of the proposed investment to contribute to “locally or regionally balanced socioeconomic development” when considering an investment application (**Section 12(e)**). It also explains that a license may contain provisions requiring the investor “to take necessary steps to ensure that the operations of his or her business enterprise do not cause injury to the ecology or environment” (**Section 18(2)(d)**).

⁷⁴ The UIA does, however, have criteria for allocating land within its Industrial and Business Parks. In addition to meeting the minimum requirements for an investment license, investments wishing to obtain “free land” from the UIA must meet two out of three additional criteria: i) total investment per acre must exceed US\$ 1 million; (ii) a minimum of 80 percent of the total product value must be exported as value added products; (iii) local employment must support a minimum of 30 semi-skilled or 15 skilled workers per acre (UIA 2010c, reported in Zeemeijer 2011).

However, the Act does not specify any sanctions for non-compliance with this optional provision. Beyond these two guidelines, the Act does not stipulate any social or environmental safeguards that apply to agricultural investments in Uganda⁷⁵. The Act also does not cross-reference relevant environmental laws and regulations governing the project development in Uganda.

Neither does the Investment Code Act specify or cross-reference any compensation procedures for existing occupants on land acquired for private investment. The **Land Act (Section 59(1)(e)&(f))** stipulates that compensation for land acquired by the government is paid based on the current market price of the land in the area of the land to be acquired, which is valued annually by the District Land Board. Following the completion of established procedures⁷⁶—which include surveying the land, making a declaration by law that the land is suitable, and providing at least 15 days’ notice for all people with interest in the land to present their claims—the Uganda Land Commission pays compensation for the value of the land (**Section 6(4)(b)** of the Land Acquisition Act cap 226 of 1965). The extent to which the UIA implements this legislation when acquiring land for investors will be discussed in the next section.

Implementation of the Investment Act Cap 92

This sub-section relies primarily on key informant interviews to illustrate the *de facto* role of the Uganda Investment Authority in allocating land for agricultural investment and to draw conclusions about the implementation of the Investment Code Act of 1991. The section analyzes the UIA’s role in facilitating investor access to land—which is explicitly authorized by the Act—separately from the UIA’s role in directly acquiring, holding and allocating land for large-scale agricultural investment—which is not explicitly authorized by the Act—before highlighting challenges related to both roles⁷⁷.

Land acquisition facilitation

⁵ The Republic of Uganda. 1991. Investment Code Act, Cap 92.

⁶ For further information on acquisition procedure, see “Fact 6/8/2011: The procedure through which Government can acquire private land” on the Uganda Land Alliance website (<http://ulaug.org/fact-sheets/>). Last access 11 April 2012.

⁷ Tumushabe, G. and Bainomugisha, A. 2004. The Politics of Investment and Land Acquisition in Uganda: A Case Study of Pian Upe Game Reserve. ACODE Policy Briefing Paper No. 7. Kampala: ACODE.

The Investment Code Act does explicitly authorize the UIA executive director to “liaise with Government Ministries and departments, local authorities, and other bodies as may be necessary” to help investors acquire land (**Section 15(2)**). However, no rules or regulations have been promulgated to govern the exercise of this authority. Interviews with both the UIA and the Uganda Land Commission provided some insights into the role of the UIA in helping investors acquire both government and private land for agricultural production.

Government land acquisition

When an investor requests UIA assistance in identifying land for an agricultural investment, the UIA may liaise with other government agencies to identify land that may be suitable for the investment (UIA 2012, ULC 2012). Several government agencies have recently been involved in allocating agricultural land for private investment in Uganda. These include the Uganda Land Commission, the District Land Boards, the Ministry of Agriculture, the Uganda Wildlife Authority, and the National Forestry Authority (UIA 2012, ULC 2012, Tumushabe 2003, Tumushabe and Bainomugisha 2004, Veit et al. 2008).

As previously mentioned, the Uganda Land Commission⁷⁸ (ULC) is authorized to “hold and manage any land in Uganda which is vested in or acquired by the Government in accordance with the Constitution” (**Section 49(a) of the Land Act**). Prior to the 1995 Constitution of the Republic of Uganda, which created the ULC (Section 238(1)), various government institutions held and managed government land. For example, the government, through the Ministry of Agriculture, previously maintained model farms of 1,000 to 2,000 acres at each of 52 District Farm Institutes. This land, along with all other land vested in or acquired by the government⁷⁹, is now held and managed by the ULC (UIA 2012). As such, the UIA typically helps investors acquire government land through the Uganda Land Commission⁸⁰.

In response to an investor’s request for land, the UIA may write a letter of recommendation to the government agency that formerly managed lands suitable for the investment (e.g. the Ministry of Agriculture) requesting that the agency authorize the ULC to transfer the title to the

⁷⁸ District Land Boards are authorized to “hold and allocate land in the district which is not owned by any person or authority” (Section 59(1)(a) of the Land Act)..
⁷⁹ The ULC (2012) considers that all national parks, forest reserves, and other protected areas are also ‘government land’ that can be allocated to investors. (Tumushabe 2003; Tumushabe and Bainomugisha 2004; NGO A 2012).

⁸⁰ Uganda Investment Authority. 2011. “Brief Guide to Investing in Uganda”. UIA: Kampala, Uganda.

investor as a leasehold (UIA 2012, ULC 2012). The UIA recommendation is based on the information presented in the investment license (e.g. financial qualifications, technical qualifications, and experience in the sector). The ULC then consults its registry of government properties to identify properties that might meet the investor's needs (ULC 2012).

There are no specific criteria or procedures for identifying government land that would be suitable for a given investment. At a minimum, the ULC considers the project profile, including the size of land required and the proposed use of the land, to determine which properties might be suitable. Once a suitable property has been identified, then the agency writes a letter to the ULC requesting them to permit the investor to lease the land (UIA 2010).

If the ULC approves the agency request, the ULC would then begin the process of transferring the title to the investor as a leasehold, typically for up to 49 years. As part of this process, a site visit is required to determine the current land use and identify any "squatters" (i.e. tenants) occupying the land (ULC 2012). As described above, these tenants must either be resettled or compensated before the land can be transferred to the investor. While the investor is responsible for paying the compensation, various government agencies, including the ULC and the Chief Government Valuer, facilitate this process.

However, it is not clear which authority has ultimate authority over the resettlement or compensation. Investors also typically pay ground rent⁸¹ for the land (ULC 2012).

Private land acquisition

Given that only some 15% of land in Uganda is considered "government land," including forest reserves and national parks, it is unsurprising that investors would be interested in acquiring *private* land (NGO B 2012). The UIA maintains a database of private landowners who are interested in selling or leasing their land to investors. Using this database, the UIA "links investors to landowners" to help investors identify private land suitable for their proposed investment (UIA 2012, Mitti 2011). The UIA does not hold rights to these properties. Rather, it acts as a broker by connecting investors and land owners, who privately negotiate the terms of lease or sale of the land.⁸²

⁸¹ The Land Act (Section 31(3)).

⁸² Section 31(5) limits this ground rent to a maximum of one thousand shillings per year regardless of the area or location of the land.

When an investor requests the UIA's assistance in acquiring private land, the UIA prepares a "short list" of properties tailored to meet the investor's needs based on the information provided in their investment license application and/or the Land Request Form (UIA 2012). Typically, the UIA consults with the Ministry of Agriculture to determine which areas of the country are best suited for growing different crops. The UIA also relies on local knowledge of which crops grow best in different areas to identify properties that would likely suit the investor's needs. Beyond this desk review, investors are expected to complete their own site visit and any other investigations (e.g. soil sampling) necessary to determine the suitability of the land for their proposed investment (UIA 2012).

Once a suitable property has been identified, the investor must negotiate directly with land owners

(and tenants, where relevant) on the price and terms of the lease or title transfer (NGO C 2012; UIA 2012). The Land Act of 1998 Cap 227 (Section 29) recognizes the rights of "bona fide" and "lawful" tenants to occupy and utilize lands held by a registered owner (i.e. title holder). The 2010 Land (Amendment) Act further reinforced tenant rights on *mailo* land (Terra Firma 2011).

A thorough discussion of the statutory protections granted to tenants (occupants) is beyond the scope of this study. However, it is worth noting that, according to the Land Act, all tenants are entitled to tenure security (**Article 31(1)**) and to the right of first refusal where the owner wishes to sell land occupied by tenants (**Article 35(1)** and **Article 35(2)**). In practice, "bona fide" and "lawful" occupants are entitled to compensation or resettlement when an investor wishes to acquire the lands they occupy (UIA 2012).

Challenges Related To Policy and Practice

Firstly, and perhaps most troublingly, the UIA has acquired land and allocated it to investors despite the lack of any clear legal authority to do so (NGO B 2012; NGO C 2012). Only under the broadest interpretation of the UIA's authority to acquire and hold land as a body corporate might this activity be justified (NGO B 2012). Moreover, there are currently no policies, laws, or regulations in place to govern the UIA's authority to acquire, hold, and allocate land to investors. This makes it difficult to determine whether these transactions followed legal procedures for government land acquisition. For instance, it is not clear whether these allocations of government land followed the public notice and compensation procedures specified in the **Land Acquisition**

Act cap 226 of 1965 (see further discussion below) or the legal requirements governing the disposal of public assets as codified in the Public Procurement and Disposal of Assets Act of 2003. The “complete lack of [a] legal framework and accountability mechanism” leaves this process vulnerable not only to poor management, but also to “corruption and injustice”⁸³.

Secondly, the UIA registry clearly indicates that it has allocated large areas of land to foreign investors for crop production—which directly contravenes Part III, Section 10(2) of the Investment Code Act. The UIA reports quarterly on the number of projects approved by sector (e.g. agriculture, forestry, etc.) and by investor country of origin. However, beyond the UIA registry, no official data on government or private land acquired by approved domestic or foreign investors are available (UIA 2012). Thus, it is not possible to determine how much land foreign investors have acquired for agricultural production in Uganda. However, recent research suggests that there are several foreign companies operating agricultural production investments in Uganda (Land Matrix Portal 2012). Furthermore, by allowing companies that are up to 50% foreign-owned to register as domestic entities, the Investment Code Act leaves investors with ample room to circumvent restrictions on foreign land acquisition⁸⁴.

Thirdly, the Investment Code Act and the Land Act, among other relevant laws, assign unclear and sometimes overlapping authorities to different government institutions that in practice play a role in the process of transferring land to investors⁸⁵. There are no established procedures governing the authorities of either the UIA or the ULC⁸⁶ to manage government land (Bogere 2011). Nor are there any regulations to guide the interaction of different government agencies, for example in identifying government land suitable for a particular investment (UIA 2012; ULC 2012). Moreover, the District Land Boards also have the authority to “hold and allocate land in the district which is not owned by any person or authority”, but it is not clear how the Land Boards exercise this mandate with respect to the UIA or the ULC (**Section 59(1)(a)** of the Land Act).

⁸³ Tumushabe, G. 2003. Trading Natural Wealth for Fiction: A Legal Opinion on the Proposed Degazettement of Pian Upe Wildlife Reserve. Legal Series No. 1. Kampala: Uganda Wildlife Society. Online at: <http://www.careuganda.info/PUWR%20Legal%20Brief%20governance.pdf>

⁸⁴ Cap 243 laws of Uganda

⁸⁵ See The National Environment Act, note 3 above, **Section 4**.

⁸⁶ Although a thorough investigation of the authorities of the ULC is beyond the scope of this report, it should be noted that a recent audit reported a number of shortcomings in the ULC’s performance (Bogere 2011).

At a minimum, the lack of legal and procedural clarity on the duties of the UIA and other government authorities in allocating government land to investors creates opportunities for inefficiencies—and perhaps even corruption (Bogere 2011). In fact, a recent audit of the Uganda Land Commission found several cases where the same parcel of government land was allocated to two or three different investors with different lease titles⁸⁷ (Bogere 2011). Some investors apparently go directly to the President of the Republic to secure land (NGO B 2012; ULC 2012).

Fourthly, the absence of clear and transparent procedures for the UIA and other relevant government agencies to facilitate investor access to land makes it difficult to monitor this process and ensure it adheres to the letter and spirit of the law. For example, there are no criteria for assessing the technical feasibility of proposed investments or determining which investors should have preferential access to lands held by the UIA or other government agencies (UIA 2012; ULC 2012). The UIA apparently consults with the Ministry of Agriculture on the feasibility of agriculture projects, but details on this process were unavailable (UIA 2012).

The lack of clear procedures for identifying and compensating legitimate claimants to either private or government lands allocated for investment is particularly problematic (NGO B 2012). The Investment Code Act does not specify how to determine who is eligible to receive compensation, the criteria for determining the value of compensation, or the actor responsible for implementing (or monitoring) this process. In practice, numerous actors are reportedly involved in the compensation process, including the investor, the UIA, the ULC, the Chief Land Valuer, and District Land Boards⁸⁸, and various other local authorities, including the local council (UIA 2012, ULC 2012). It authorizes the District Land Boards to “compile and maintain a list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other thing that may be prescribed” on an annual basis. New funding from the European Union and UNIDO is meant to help the UIA establish the status of the roughly 5,000 investments licensed since UIA opened its doors in 1991 (Mitti 2011).

⁸⁷ The report found that the ULC does not work effectively with “other partner institutions” and specifically references local governments and District Land Boards (Bogere 2011).

⁸⁸ The Land Act (Section 59(1)(e)(f) authorizes the District Land Boards to “compile and maintain a list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other thing that may be prescribed” on an annual basis.

The situation is further complicated where investors acquire government land, as the government authority with rights to use this land may also be involved in the compensation process—despite lacking the legal authority or competency to do so (NGO B 2012). In some cases, the compensation process has apparently been handled by the Office of the Prime Minister (NGO B 2012). Regardless of which actors are involved, the lack of transparency and accountability governing the identification and compensation of rights holders risks undermining the legitimate rights of owners and especially occupants (NGO B 2012, NGO A 2012).

Finally, the lack of publically available data on the land acquisition process and its outcomes undermines effective monitoring and increases the likelihood of abuse. The UIA does not have sufficient resources to monitor even the most basic information about approved investments. With the exception of the six rural properties the UIA has directly allocated to investors, neither the UIA or the ULC collects data on the amount of land investors have acquired for agricultural production or the processes through which investors have acquired farmland⁸⁹. Although the UIA shared its registry of six properties for this research, there is no map or publically available registry of government lands allocated to investors (UIA 2012; ULC 2012). Nor does the UIA monitor the outcomes of these investments in terms of, for example, job creation, income generation, or rural development⁹⁰. In fact, since its creation in 1991, the UIA has not been able to determine whether approved projects were actually operational (Mitti 2011). This makes it impossible to determine whether approved projects have, at a minimum, met the objectives specified in the Act, including job creation and “locally or regionally balanced socioeconomic development” (Section 12(c)(e)).

The lack of data on the land acquisition process and its outcomes also precludes effective monitoring that could inform current policy debates on the role of foreign investment in developing Uganda’s agricultural sector. It also obscures aggregate statistics on how much farmland foreign investors have acquired in contravention of the Investment Code Act. Furthermore, the lack of publically available data on the land acquisition process increases the likelihood that such transactions will be subject to manipulation by powerful interests⁹¹. Making

⁸⁹ UIA 2012; ULC 2012

⁹⁰ See The Constitution, note 2 above, Article 126 (1).

⁹¹ FAO. 2009b. <http://www.faostat.fao.org>, accessed April 15, 2010.

the land acquisition process more transparent—especially for government lands, which should be used for the benefit of all Ugandans – will be particularly critical to ensure that agricultural investment leads to sustainable and equitable development in Uganda.

CHAPTER FIVE

FINDINGS, RECOMMENDATIONS, CHALLENGES AND CONCLUSION.

5.1 Introduction:

This chapter will present the observations from the findings made during and after the research, make several recommendations that the researcher thinks are feasible in curbing the weaknesses and loopholes identified within the law.

The chapter will again present the challenges the researcher met during the research as well as the conclusion.

5.2 Findings:

The discussion in the above sections shows that the laws of Uganda have for most part not provided people with sufficient protection against land grabs/evictions. Further, although it provides for a relatively robust institutional framework of both judicial and quasi-judicial institutions, these have not entrenched the culture of ensuring accountability for land grabs or large-scale acquisitions.

That notwithstanding, one cannot say with certainty that law and policy are always guiding tools in decision-making around land. This is more so where protection of individual rights as provided for in the law does not augur well with what is considered “public interest” of, say, promotion of national growth through investment or mining. In other instances, political expedience or efforts at assertion of dominant positions of power lead to routes that by-pass what is legally sanctioned. Studies on the legal and policy frameworks are important, but also

invaluable is the interrogation of the questions: why the state may not abide by them; and, what initiatives can be made to promote adherence to the law⁹².

The constitutional and legal framework at this time was bent more towards the protection of property rights (including land), although (in practical terms) more for purposes of economic development. There was no monolithic verity that all could contribute to economic development and at the same time benefit. In short, protection was more due to persons that had the potential to translate their property rights into economic development for the new independent Uganda. To Nabudere, this period, up till 1969, was driven by the desire to promote the “progressive farmers” to boost the economy. Many of these were not the local subsistence farmers, but elites in the kingdom area (of, say, Buganda) and large-scale Asian bourgeoisie⁹³.

5.3 Challenges

Despite this Act being the main legislation governing land acquisitions and compensation in Uganda it fails to protect the property rights of the poor and vulnerable communities as envisaged by Article 26 of the Constitution that provides for prompt payment of fair and adequate compensation prior to acquisition of a person’s land. And its defects include:

The Act does not define what constitutes public purpose it gives the minister power to determine what public purpose is. This creates a gap that is being exploited to violate citizens’ rights by the government and her investors. Example was the displacement of over 4000 Kampala-Naguru Housing Estate affected people, people affected by the acquisition of Shimon Schools.

The Act does not provide for a social Impact Assessment and therefore, there are no mechanisms to determine the social, economic and environmental impacts to be measured before a decision is taken to acquire or not to acquire the said land hence grabbing people’s land without ensuring that the said acquisition serves the intended purpose⁹⁴.

² see also for example Constitutional Petition No. 40 of 2013, Advocates for Natural Resource Governance and Development and 2 Others versus Attorney General and Another.

³ World Bank. 2009. *Awakening Africa’s Sleeping Giant: Prospects for Competitive Commercial*

¹ Bogere, H. 2011. “Uganda Land Commission is ‘illegal’”. *The Observer*, 4 August 2011. Accessed 11 April 2012

In spite other laws that establish authorities for example the Electricity Regulatory Authority, National Environmental Management Authority, to regulate the sector the existing law, has no provision for a Land Acquisition, Compensation, Rehabilitation and Resettlement Authority that would independently regulate the acquisitions of land in the country. Local government authorities who would have helped are neither independent nor competent enough to deal with compensation rights.

The Act does not provide for prompt payment of compensation prior to acquisition of land rather gives powers to government to acquire land and later pay look at **section 7 of the Act**. Refer to the case of **Advocates for Natural Resources Governance and Development and Another versus Attorney General**, where the Constitutional Court declared Section 7 of the Act, undefined acquisitions unconstitutional on grounds that it was inconsistent with Article 26(2) of the Constitution. That is to say, to the extent that it does not provide for prior payment of compensation, before government compulsorily acquires or takes possession of any person's property⁹⁵.

Further the existing law does not make provision for rehabilitation and resettlement, no resettlement mechanism or scheme detailing infrastructural amenities to be provided, to the project affected people like schools, medical centers, roads, safe drinking water and others these are important in every acquisition.

Limit on the right of access to court for only an award under the Act, **see section 13 of the Act**, meaning one cannot go to court for any other thing such as challenging private acquisitions that are not public purpose.

The current **Land Acquisition Act cap 226** does not establish a Land Acquisition and Compensation Disputes Tribunal that would enable the affected people majority of whom are poor and vulnerable to access justice that is affordable and reliable for redress in cases of grievances. As a result, every affected person must go to tradition courts which are more

⁵ UIA. 2012. Physical Planner, Land Development Division, Uganda Investment Authority. Personal interview, 15 March, and email correspondence, 16 April.

expensive to afford or go to informal village grievance committees created by those acquiring the land⁹⁶.

No regulations on assessment and payment of compensation, since 1965 when the Land Acquisition Act cap 226 was enacted, the minister for lands has failed to put in place regulations for the assessment and payment of compensation as provided for under **section 20 of the Act**. This leaves the determination of the compensation to be paid to the affected people at the mercy of the government.

The current law does not stop the government from intimidating the affected people with the cut-off dates.

District Land Boards provided for under the Land Act cap227 are not required to consult the citizens when compiling rates of compensation. The law does not provide for offences and punishment for those who misappropriate money meant to compensate project affected persons.

The Constitution demands the administration of justice without undue regard to technicalities under **Art.126 (2) (e)**. This is particularly important in environmental matters which require urgent and prompt action. However, the courts have not yet appreciated the full import of this provision. In **Byabazaire Grace v. Mukwano Industries**⁹⁷ the plaintiff alleged that the smoke from the respondent's factory was obnoxious, poisonous, repelling and hazardous to the community around and his healthy in particular was affected. In reply to the written statement of defense the plaintiff stated that his right to sue emanates from his right to healthy environment under **S.4** of the National Environment Act, Cap. 153. The court rejected the plaint on grounds that it does not disclose a cause of action, and observed that only NEMA has the power and duty to sue for violations committed under the Act⁹⁸.

⁹⁶ Zeemeijer, I. 2012. "Who gets What, When and How: New Corporate Land Acquisitions and the Impact on Local Livelihoods in Uganda". Masters thesis, International Development Studies, Department of Human Geography, Faculty of Geosciences, Utrecht University. Leiden: December 2011. Accessed 11 April 2012 at <http://igitur-archive.library.uu.nl/student-theses/2012-0214200726/SCRIPTIE%20GOED%20080212.pdf>

⁹⁷ Misc. Appl. No.909/2000, arising from Civil Suit No.446/2000 (High Court of Uganda.)

⁹⁸ Zen, Z., C. Barlow, and R. Gondowsito. 2006. "Oil Palm in Indonesian Socio-Economic Improvement: A Review of Options." *Oil Palm Industry Economic Journal* 6 (1): 18–29.

5.4 Recommendations for a new law

In view of the above weaknesses in the existing law that has caused untold suffering on the citizens especially the poor and vulnerable communities (where people have become landless, entire families have broken down, communities have lost their social fabric, health and education services of communities have died, etc), the country must put in place a new law as a matter of urgency to cure the above defects.

The proposed new law shall provide for the following:

Definition of public purpose,

The law shall define “public purpose” and list instances that constitute public purpose that is to say for strategic purposes relating to naval, military, air force and armed forces and for infrastructure projects beneficial to the public excluding private hospitals, hotels, educational institutions, projects for affected families etc and anything outside this does not justify acquisition. This is meant to limit the scope of undefined acquisitions in the name of public purpose.

Social Impact Assessment

That whenever the government proposes to acquire land, the land acquisition, Rehabilitation and Resettlement Authority shall undertake the social impact assessment in order to determine;

- The proposed acquisition serves public purpose;
- Estimation of affected families and the number of families among them likely to be displaced;
- Whether extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;
- Whether the extent of land proposed for acquisition is the absolute bare minimum extent needed for the project in question;
- Whether land acquisition at an alternate place has been considered and found not feasible; study of social impacts of the project, and the nature and cost of

addressing them and the impact of these costs on the overall costs of the project *vis-a-vis* the benefits;

NB. While undertaking a Social Impact Assessment, the Government shall, amongst other things, take into consideration the impact that the project is likely to have on various components such as livelihood of affected families, public and community properties, assets and infrastructure particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities such as electricity supply, health care facilities, schools and educational or training facilities, places of worship, land for traditional institutions and burial grounds.

Social Impact Management Plan

- The Government shall prepare a Social Impact Management Plan, listing the measures required to be undertaken for addressing the possible impacts.
- The Minister shall carry out public hearings alongside the Social Impact Assessment to ensure that communities participate in the land acquisition process.
- The Social Impact Assessment shall be prepared within a period of six months
- The Social Impact Assessment shall be translated local languages of the area in which the land is acquired to enable effective participation of local communities.
- In case of an Environmental Impact Assessment, it shall be carried out simultaneously with the SIA.

The National Land Acquisition, Rehabilitation and Resettlement Authority,

The law should provide for an independent authority as a body corporate to handle all matters relating to Government acquisition of land, compensations, rehabilitation and resettlement of people. The authority shall have the following functions under the new law;

- Determine the land needed for acquisition;
- Prepare the Social Impact Assessment and rehabilitation and resettlement scheme for the project affected people;
- Assessment of compensation for land and determine market value

- Pay compensation for land acquired and also receive complaints arising out of compensation.
- Provide rehabilitation and resettlement awards to affected families who are not necessarily land owners;
- Constitute the land acquisition, rehabilitation and resettlement tribunal. This will ensure that the sector is well regulated.

4. Rehabilitation and resettlement scheme,

The authority shall, based on the survey and census, prepare a draft Rehabilitation and Resettlement Scheme, as prescribed which shall include particulars of the rehabilitation and resettlement entitlements of each land owner and landless whose livelihoods are primarily dependent on the lands being acquired and where resettlement of affected families is involved-

- A list of Government buildings to be provided in the Resettlement Area;
- Details of the public amenities and infrastructural facilities which are to be provided in the Resettlement Area.
- The Rehabilitation and Resettlement scheme shall include time limit for implementing Scheme;
- The Rehabilitation and Resettlement shall be made known locally by wide publicity in the affected area and discussed in the concerned villages through a public hearing shall be conducted in such manner as may be prescribed, after giving adequate publicity about the date, time and venue for the public hearing at the affected area:
- This should include provision for housing units in case of displacements, details infrastructural amenities, like roads, safe drinking water, proper drainage system, hospitals, and schools to be provided in the resettlement area.

5. Assessment of compensation

Compensation shall be assessed according to the criteria below;

- Prevailing market value for the land and for purely Government projects shall be the average price for the same piece of land in the nearest vicinity. And for private

companies and Public private partnership projects shall be the consented amount of compensation between the land owner and the company;

- The compensation for land shall include things attached on to the land like buildings of a non permanent nature and crops.
- The compensation for rural areas shall be twice the market value for land in rural areas which is often undervalued.
- Compensation and rehabilitation for those dependents on land, since the Land Act recognizes the existence of other interests in land like tenants on mailo land⁹⁹.
- In case of land a similar piece of land shall be provided for those who opt for land. Similarly incase if family land both husband and wife shall be co signatories.
- The total compensation shall include a disturbance allowance equivalent to 50% of the entire compensation amount.

Prompt payment of compensation prior to acquisition;

The government shall only take possession of the acquired land after ensuring that full payment of compensation is made to the entitled people;

- The compensation shall be made within a period of 3 months from date of award;
- In cases of urgency government or its agent is entitled to tender payment of 80% of compensation of such land before taking possession. This should limit delays in compensation;

The law shall require government to return unutilized land incase government has acquired land but failed to utilize it for a period of one year.

The land acquisition, Compensation, rehabilitation and resettlement tribunal,

The new law shall establish a tribunal to handle disputes arising from inadequate compensation, delay in compensation and acquisitions that fall outside the scope of the law.

⁹⁹ Uganda Investment Authority. 2012c. List of agricultural properties held by the Uganda Investment Authority for allocation to private investors. Obtained 15 March 2012 in person.

The tribunal shall dispose of compensation complaints within a period of 6 months from the date of award. This will increase access to justice and also faster disposal of these cases.

Provision for offences,

The new law shall create offences on omissions by Government officials or bodies that steal or omit to provide compensation to the project affected people in a timely manner. And every one suspected of corruption regarding compensation money should step aside until investigations are over.

CONCLUSION

In line with the foregoing it is important that parliament enacts a new law to address the ongoing property violations facilitated by the existing law as a matter of urgency. Evidence suggests that, while the existing law helps the government to acquire land with ease, it will worsen the problems of land grabbing, family breakdown, make more people landless and generally increase the gap between the rich and the poor. The obvious end result may be civil wars, community conflicts and other social evils as many people may become desperate and thus willing to be recruited against the government. For a region like the Amuru district communities are susceptible to such up evils.