

**A LEGAL ANALYSIS ON THE STATE OF LAND EVICTIONS IN UGANDA**

**BY**

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**A RESEARCH REPORT SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL  
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### DECLARATION

I, Irama Rashid Reg. No. 1153-01024-02238 declare to the best of my knowledge that this research report is truly my original and has not been submitted in the fulfillment for any award of a degree in any other Institution of Higher Learning or University, so it is entirely out of my own efforts.

Signature .....  .....

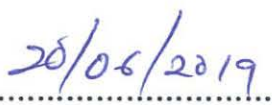
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### APPROVAL

This is to certify that this research report is done under my supervision and it is now ready for submission to the school of Law, Kampala International University with my approval.

Signature .....

Date .....

MR. AFUNADUULA ISAAC

## DEDICATION

I dedicate this work to my ailing father Mr. Haruna Taban who has injected numerous resources towards this particular undertaking. Admittedly, this course has enriched my experience and understanding, and you have done an incredible job. You have exactly done what a loving parent can ever do to his son. I wish to firmly state that you have displayed a true quality of fatherhood by starting a legacy to this chosen generation. The civilized world now sees the prudence of a father in you. It was not easy to acquire this legal personality amidst serious financial hiccups; but you hoped beyond pain and found this answer by your design rather than by accident.

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## CHAPTER ONE

### 1.1 Introduction

The increasing cases of eviction in Uganda cannot be accurately conceptualized in a vacuum; without looking at them as a ring in the global chain of evictions from land. They are partly fueled by the increasing demand for land for a number of reasons: The World Bank notes that there is need to boost agricultural production by 70% to cater for the increasing population which is estimated to shoot up by two billion by the year 2050;<sup>1</sup> secondly, international investors have a high demand for land in order to respond to and also reap from the steadily increasing food prices and demand for biofuels;<sup>2</sup> thirdly, the desires of governments to fast track development of their countries by encouraging foreign investment as opposed to small scale farming. With this, governments give away land to the investors.<sup>3</sup> Lastly, greed and increasing speculation about land in Uganda and the weak land governance structures on the land are among the factors fueling evictions.<sup>4</sup>

### 1.2 Background of the study

Globally, the number of protected areas has risen and a lot has been done to make commitments to biodiversity protection through establishment of National parks and protected areas. Most of them are located in the rural areas. A large number of Africa's population 'stands in the path of expanded protected areas'.<sup>5</sup> Protected areas and parks bring lots of benefits to the local people, in that people depend on the natural resources they offer and it's also a source of employment to some local people. When dealing with protected areas, it calls for a great attention for both the local people and the protected areas so as to be able to achieve its goal without undermining the local people or rather affecting their livelihoods (Brockington et al, 2008, Vangen, 2009).

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<sup>1</sup> The World Bank, Washington, Apr 8 2013 (IPS) available at: <http://www.ipsnews.net/2013/04/world-bank-to-strengthen-focus-on-land-rights/> (accessed on 7th July, 2015).

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Rose Nakayi, The Legal And Policy Framework On Emerging Trends of Large Scale Land Acquisition and Implications for Women's Land Rights in Uganda, Center for Basic Research, November 2015.

<sup>5</sup> Geisler & De Sousa, 2001, Vangen, 2009

The growth in the number of protected areas has come as a realization of , protected areas constituting an integral part of international community's response to global and environmental change taking ecosystem conservation as an important component in the pursuit of sustainable development (Cavanagh, 2012).

Encroachment in the protected areas is one of the major causes of degradation of ecosystem in many parts of the world (Cavanagh, 2012). In Uganda, it started way back in 1976 when people illegally entered the parks for settlement and agriculture and due to the breakdown of the law caused by civil wars in the 1970s and 1980s, the state failed to manage National Parks and Forest Reserves in Uganda (Cavanagh, 2012). This led to too much of the afro mountain rainforest zone on the lower slopes of Mt Elgon Forest Reserve to be encroached for agriculture, timber which was heavily exploited, moreover most of the wildlife was destroyed with unregulated access to the forest (White, 2002). This led to degradation of highly ecologically valued tropical forest in Mt Elgon. Up to now studies show that, there is still encroachment going on around Mt Elgon National Park (UWA, 2011, Cavanagh, 2012), but the extent or level of spatial and temporal scope of encroachment is not clear.

### **1.3 Problem statement**

Uganda has a robust legal regime and relatively progressive policy frameworks on land rights protection. These include the 1995 Constitution, the Land Act Cap 227, (as amended) and Regulations made thereunder, the Mortgage Act No. 08/2009 the Land Acquisition Act Cap. 226 and the National Land Policy 2013. At the same time, it is among the countries that have lately been responsive to new international framework initiatives aimed at improving land governance and protection of land rights for all.<sup>6</sup> This would ideally result into strong protections for land rights, good governance and accountability processes on matters touching land.

Realities on the ground however show increasing cases of land rights violations as a result of a number of factors including evictions from land and weak land governance. Uganda's legal

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<sup>6</sup> Examples of such are, Land Governance Assessment Framework, a tool that can be used by governments to assess their performance on various aspects of land tenure and related laws, and the U.N. Food and Agricultural Organization (FAO), called the Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security.

and policy frameworks have to a great extent remained on paper, and not been translated into reality to benefit potential victims and actual victims of evictions. Official rhetoric is usually to the effect that implementation is in its infancy, even after over fifteen years after the passing of the Land Act, 1998.

That aside, there have not been sufficient efforts at availing information to people about their land rights protections as embedded in the law, and how they can pursue them in the cases of breach. The institutional framework as laid down in the law is not necessarily on the ground; up and running, to avail remedies to victims of land evictions whenever the need arises. Yet, land governance and dispute resolution institutions in Uganda are among the arenas in which we see contestations over power and legitimacy among various players; trying to assert exclusive mandate. These are political verses judicial institutions (courts), courts versus Administrative institutions such as the Commissioner for Land Registration (especially in the exercise of the powers conferred under s. 91 of the Land Act)<sup>7</sup>, Courts versus ad hoc Committees such as the ‘committee on illegal land evictions.’<sup>8</sup>The Nantaba Committee set up in 2012/3 via presidential Directives to deal with urgent cases of land conflicts, some of which fall within the jurisdiction of established courts of Judicature.<sup>9</sup>

The politicization of issues to do with land by the various actors; each with a desire to assert/impose dominant positions therefore shapes the nature of legal challenges and likely outcomes from processes aimed at dealing with those challenges. Other strands of complication are added to the above situation by the increasing demand for land in Uganda locally and internationally and the government’s desire to fast-track development through land based investments.<sup>10</sup> Addressing legal challenges of evictees thereby becomes a question not only of

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<sup>7</sup> Edward Gatsinzi & Anor Vs. Lwanga Steven HCCS No. 690/2004.

<sup>8</sup> Generally and here in after referred to as the ‘Nantaba Committee’ ‘Nantaba land committee awaits new mandate’, 21 October 2013, available at, <http://www.newvision.co.ug/news/648624-nantaba-land-committee-awaits-new-mandate.html> (accessed 3rd June 2014).

<sup>9</sup> Ibid

<sup>10</sup> See, National Planning Authority of Uganda, Uganda Vision 2040 and, “a transformed Uganda Society from a peasant to a modern and prosperous country within 30 years.” Available at <http://npa.ug/wp-content/themes/npatheme/documents/vision2040.pdf>; Also see , Ministry of Lands, Housing and Urban Development, Uganda National Land Policy, February 2013 (herein after UNLP, 2013), available at [http://www.ektaparishad.com/Portals/0/Documents/the\\_uganda\\_national\\_land\\_policy-\\_february\\_2013.pdf](http://www.ektaparishad.com/Portals/0/Documents/the_uganda_national_land_policy-_february_2013.pdf) (accessed August 15, 2015).

law and policy, but law and policy and how power (both local and international) shapes or impacts on the implementation of law and policy.

At the same time, even though Uganda recognizes the rights imbued in the multiple tenures and those of special groups such as women, children, persons with disability; it is not a sufficient bar against evictions and neither does it guarantee remedies in cases of evictions of such groups. This is partly due to the perfunctory motivations to imbed some protections for the political expediency at any given time, without sufficient efforts to implement them. The situation is further complicated by the conflicting rights arising from the multiple tenure systems.

In addition, the legal challenges faced by victims of eviction are not purely legal, but intersect with other social economic factors that in the end sustain the challenges. Illiteracy and poverty for example inhibit peoples' ability to get information on their land rights, how to pursue them, and also keeps them out of the (relatively elite type) judicial structures from which they would get redress. Yet, efforts at addressing this are usually backtracked by increasing levels of corruption, leading to maintenance of the status quo.<sup>11</sup> At the same time, there are not many efforts aimed at empowering civil society to make government accountable to victims of evictions.

#### **1.4 Purpose of the study**

To make an analysis of diverse cases of evictions from land in Uganda with a view to ascertaining the trends, and assessing, in particular the legal needs of tenants by occupancy as victims and potential victims of evictions.

#### **1.5 Specific Objectives**

- i. To examine the legal, policy and institutional framework on land evictions in Uganda.
- ii. To examine status of land evictions and findings in Uganda.
- iii. To examine the analysis on causes on land eviction and weakness on laws in Uganda.

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<sup>11</sup> See, what is fuelling corruption in lower courts? The Monitor, July 2, 2014, about the Anti-Corruption Coalition (ACCU) Report entitled, "Temple of injustice: report highlighting alleged abuse of office in selected magistrates' courts in Uganda.

## 1.6 Scope of the Research

The study takes “from the general to the specific approach”. It looks at categorized cases of evictions within the geographical scope of Uganda, and then zero down to a specific case of evictions of tenants by occupancy within the central region; using examples from field research findings in Uganda. The selection of Uganda location and a relatively rural- urban area is to allow for comparison in the nature of cases and legal needs of the victims. As the literature shows; evictions have been widely studied. So this study is restricted to identifying the legal challenges of victims and not necessarily to offer a detailed report fashioned account of evictions in Uganda. Where necessary, reference was had to global trends, for purposes of showing how the local plays out in the context of the international and vice versa.

## 1.7 Methodology

Methodology utilized *Doctorial Legal Research* qualitative in nature as, according to Leedy, this methodology is aimed at description. By utilizing qualitative methodologies the research is able to evaluate both formal and normative aspects of political activity. The research was conducted using qualitative methods. The researcher(s) conducted desk review of relevant literature and interviews of key persons/ informants. The interviews were based on an interview guide. There is literature to the effect that research methodologies that involve key informant interviews result into good quality data, obtained in relatively short time frames.<sup>12</sup> The Key informants in this study were selected by nonrandom techniques. They were carefully selected from areas that have experienced high incidents of land conflicts, taking utmost care to speak to leaders and victims, potential victim and/or parties to contentious cases on land. Those interviewed included person(s) in authority such as Local Council personnel, and members of the community.

They were selected on the basis of their first-hand knowledge about the problem under investigation, by reason of their residence in the community or occupation of position of responsibility, or victims and potential victims of evictions from land. Face to face interviews were opted for since they allowed for a deeper discussion and understanding of the problem. In

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<sup>12</sup> Marshall, MN, The Key Informant technique, Family Practice, Vol. 13 No. 1, Oxford University Press 1996, available at, <http://fampra.oxfordjournals.org/content/13/1/92.full.pdf>, (accessed November 20, 2015). Marc-Adelard, Field Research, A Source Book and Field Manual, Institute of General Practice, Postgraduate Medical School, University of Exeter.

total thirty four (34) people were interviewed. All in all the above methodology was most appropriate since it enabled the researcher to make an assessment of what the real situation on the ground is, in order to understand the extent to which the laws have offered protection to the tenants by occupancy and the gaps that still exist in terms of legal needs. It should however be noted that all efforts to speak to the landlords in the cases discussed in this study failed. This does not affect the findings in this study since care was taken to verify and corroborate the information given by the tenants through comparing notes, and verifying it with persons in positions of authority in the community such as the Local Council chairperson. The recommendations in this study are therefore based on first-hand information from the victims about how the problem could be solved.

### **1.8 Literature Review**

According to the Longman English Dictionary, an encroacher is defined to be a person who gradually takes control of another person's possessions or right. Encroachment is also defined as 'illegal or unauthorized occupation or cultivation of forest lands' (Forest Conservation Case, WP No. 202\1995. This can be on temporal or permanent basis.

According to Gonza, Aloysius<sup>13</sup> eviction is the removal of a tenant from possession of premises in which he or she has a property interest done by a landlord either by reentry upon the premises or through a court action. Eviction also means a process of expelling a person or group of people from one's property or force to move out by legal process. Eviction can be in form of a physical removal of a person from the premises or disturbance of tenants' enjoyment of the premises by disrupting the services and amenities that contribute to the habitability of the premises, such as by cutting off all utilities services to an apartment. Resettlement refers to a process of moving people to a different place to live, because they are no longer allowed to stay in the area where they used to live.

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<sup>13</sup> Gonza, Aloysius: "Here is a good option to end land evictions in Uganda," The Daily Monitor, Monday 8th July, 2013, at.12.

## Related Literature

Many studies **Cotula Lorenzo et al**<sup>14</sup> show that, there is high number of protected areas rising up in most part of the world. Reasons being one way of protecting biodiversity of the ecosystem which is being degraded by human activities of encroachment for land for agriculture and livestock and many other forest resources.

In the book of **Daniel**<sup>15</sup>, the degradation of the ecosystem caused by many forms of encroachment has led to people being evicted from these protected areas as to save the ecosystem for the current and future generations. However the eviction processes in many parts of the world have been characterized by forceful and violent processes which has affected the livelihoods of the most people who have been affected.

According to **Gelbspan, P.**<sup>16</sup> people have been evicted without other alternative means of compensation and some of them ended up in camps where they are subjected to absolute suffering with no land to build, grow crops for home consumption and for their livestock. Some of them moved to towns.

**Howard-Hassmann**<sup>17</sup>, in his book "*Reconsidering the right to own property*" the protection of people land rights in has been determined by different eras from colonial to post-colonial period. In spite of the land being controlled by the state, there have been several evictions since the Constitution of 1995 was passed. The Constitution as a supreme law and the land Act has provisions of guaranteeing security to the lawful occupants of the land but how these laws have been implement is questionable. Although the Land Bill 2007 provides security for the occupants so as to reduce on the rampant evictions still seen today (UWA, 2011). There is need to follow the existing laws that guarantee security to the occupants.

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<sup>14</sup> Cotula Lorenzo et al, *Land Grab or Development Opportunity?* Agricultural Investment and International Land Deals In Africa, IIED and IFAC, 2009.

<sup>15</sup> Daniel. S. & Mittal.A. *The Great Land Grab: Rush for World's Farmland Threatens Food Security for the Poor*, The Oakland Institute (2009).

<sup>16</sup> Gelbspan, P. and FGV *The Land in the struggle for social justice: social movement strategies to secure human rights* (2013) published by Terra de Direitos available at <http://www.terradedireitos.org.br> (accessed on 16 September 2015)

<sup>17</sup> Howard-Hassmann, R E *Reconsidering the right to own property* (2012) *Human Rights & Human welfare*, working paper no 68 5, <available at <http://du.edu/korbel/hrhw/workingpapers>> (accessed 20 August 2015).

## CHAPTER TWO

### EXISTING LAWS AND POLICIES ON ENCROACHMENT, EVICTION AND RESETTLEMENT

#### 2.1 Introduction

Uganda's land tenure system has since history allowed for overlapping interests in and simultaneous claims to the same piece of land, thereby increasing propensity to land conflicts.<sup>18</sup> Land conflicts, coupled with draconian land law reforms such as the Land Reform Decree of 1975 explain the tenure insecurity that characterized the pre-1995 era in Uganda.<sup>19</sup> The Land Reform Decree made all land in Uganda public land, controlled by the Uganda Land Commission, and converted all mailo land into leases of 99 years, thereby annihilating individual/perpetual private property rights to land in Uganda.<sup>20</sup>

This was to promote capitalist uses of land. The Post 1995 Land law reforms are therefore considered trail blazers in changing the status quo. The Constitution of Uganda Article 237 (1) and (2) makes provision for Ugandans to own land, under any of the recognized land tenure systems such as mailo, customary, etc. It is argued among others that the constitutional and legal regime aims at improving security of tenure; by returning land from being a public good held by the government to a commodity that individuals can own.<sup>21</sup> In addition, Rugadya argues that they should be seen as strides in the right direction at streamlining the relationship between land owners and their tenants; a relationship that has historically been fraught with friction and contestation.<sup>22</sup> Indeed, there is a causal relationship between such contestations and evictions from land, and therefore efforts at addressing them may have an effect on reducing evictions. In addition to the above, a number of scholars and commentators have praised the robust decentralized institutional framework anchored in the Constitution 1995, and fully laid out

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<sup>18</sup> Klaus Deininger, et al, Incidence and Impact of Land Conflict in Uganda, World Bank Policy Research Working Paper 3248, March 2004 at 5

<sup>19</sup> Ibid

<sup>20</sup> See The Land Reform Decree, of 1975, long title

<sup>21</sup> Margaret Rugadya, Land Reform; The Uganda Experience, Uganda Land Alliance, Paper at the Workshop on Land Use and Villagisation in Rwanda, by RISD (Rwanda Initiative for Sustainable Development) in partnership with Oxfam GB, Hotel des Mille Collines, Kigali, Rwanda. Available at <http://webcache.googleusercontent.com/search?q=cache:i3jcqgPnuwIJ:risdrwanda.org/spip.php%3Farticle32+land+reform+the+ugandan+experience+%2B+%22rugadya%22&cd=1&hl=en&ct=clnk> (accessed October 17, 2015).

<sup>22</sup> Ibid

in the Land Act 1998 (now Cap. 227), as among the grand initiatives at resolving the land related conflicts (leading to evictions) in Uganda.<sup>23</sup>

## **2.2 National laws on encroachment, eviction and resettlement**

The main national laws which are currently in place to ensure the protection of people against land evictions are the 1995 Constitution and the Land Act of 1998 with its Amendment Bill of 2007.

### **The Republic of Uganda Constitution as amended, 1995<sup>24</sup>**

The Constitution is the supreme law of Uganda. It has a binding force over all authorities and persons throughout the country. According to the constitution of Uganda 1995, it states that, all land belongs or is vested in the hands of the citizens of Uganda in accordance to land tenure systems provided in the constitution. The constitution also provides security to all people who owned land in terms of customary<sup>25</sup> tenure by allowing them acquire certificates of ownership in line with what the parliament prescribed. However, despite the supremacy of the Constitution, the extent to which its provisions are being upheld when it comes to eviction laws and resettlement remains questionable.

The constitution puts it clearly that, the government has control over all the natural resources on behalf of the citizens and as a trustee, government<sup>26</sup> has the right to protect all the natural resources including forests from degradation and encroachment which may appear in any form and it calls for sustainable utilization of forest resources among other natural resources for the present and future generations is stated in objective xxvii of the Constitution.

The constitution also provides for the protection of family<sup>27</sup>, provision for marginalized and vulnerable communities or groups to reduce the imbalances which exists against them.

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<sup>23</sup> Margaret Rugadya, Land Reform; *The Uganda Experience, Uganda Land Alliance*, Paper at the Workshop on Land Use and Villagisation in Rwanda, by RISD (Rwanda Initiative for Sustainable Development) in partnership with Oxfam GB, Hotel des Mille Collines, Kigali, Rwanda.

<sup>24</sup> The Uganda Constitution of 1995

<sup>25</sup> Article 237 of the Constitution of Uganda, 1995

<sup>26</sup> Article 237(3) of the Republic of Uganda Constitution, 1995

<sup>27</sup> Article 1(xix) of the Republic of Uganda Constitution, 1995

Consequently the evictions of the landless groups without alternative livelihood would be inconsistent with the spirit of constitution.

### **2.3 The Land Act of 2007 as amended**

The land Act provides security of tenure to all land users and this included customary tenants on public land and the lawful or 'bona fide' occupants. According to the Act, 'lawful occupants' is defined as a person who entered land with the consent of the registered owner including a purchaser, or a person who had occupied land as customary tenant but whose tenancy was not disclosed or compensation for by registered at the time of acquiring the leasehold certificate<sup>28</sup>.

Section 29(2) of the Act also gives a definition of 'bona fide occupant' as a person who before the coming into force of the Constitution had occupied or utilized or developed land unchallenged by the registered owner for the 12 years or more or a person who has been settled on the land by the government before 1995. And looking at the evictions which have taken place in the country, the victims have been bona fide or lawful occupants and therefore deserve to have been given protection in terms of the Land Act (Bako, 2009). These laws need to be implemented in line with the provision in the Act in order to give protection to the evicted people.

According to the Act, a person can only be evicted in terms of nonpayment of rent for more than 2 consecutive years and after the Land Tribunal has given an order<sup>29</sup>. Before any eviction takes place, the land owners has procedures to follow and this includes sending in notices to land tenants and land committee and give the tenant six months in which the tenant can respond as to why a tenant may not be evicted and after that the land owner can write to Land Tribunal to request for an order to allow him or her evict the tenant<sup>30</sup>. In spite of all this laws provided in the Act, the extent to which it has been implemented is not clear.

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<sup>28</sup> Section 29 (1) (b) of the Land Act 2007

<sup>29</sup> Land Act, 2007

<sup>30</sup> Land Act, 2007

## **2.4 The National Forestry and Tree Planting Act, 2003**

The Act puts it clearly that, all the forest reserves are under the control of the government which holds them in trust on behalf of the citizens of Uganda. Section 54 of the Act<sup>31</sup>, government delegates its managerial powers over the forest reserves to National Forests Authority (NFA) which is now in charge of all the kinds of forests. Encroachment in the forest reserves is prohibited according to the Act in section 14 hence encroachment in the forest reserve is an offense and is punishable.

## **2.5 The National Forestry Policy and the National Forest Plan, 2002**

The National Forest Plan has recognized the severe encroachment on the Permanent Forest Estate (PFE) which severely degraded the forest cover base. These led to the National Forest Plan calling for improvement in the protection of boundaries<sup>32</sup> as one way to control encroachment. National Forest Authority and Uganda Wildlife Authority (UWA) are two bodies with the authority and responsibility to 'ensure security of PFE boundaries.

Uganda Wildlife Authority and National Forest Authority carry out their duties, that is, through identification of boundaries that are not clear, surveying and agreeing on boundaries, ensuring legal instruments for boundary changes, rationalizing boundaries if necessary and resolving disputes, marking boundaries appropriately and enforcing the law with regular patrols and continuous monitoring. This was one measure of dealing with encroachment.

The plan calls for the redress of the problem of prevailing encroachment by adopting practices that are agreeable to all stake holders with the bottom line that, these practices must 'recognize the special circumstances of forest dwellers and pastoralists. It calls for formulation of guidelines for compensation and resettlement to minimize the suffering and to protect the rights of forest dwellers and communities living adjacent to the resource'.

Uganda wild life policy is to 'conserve in perpetuity the rich biological diversity and natural habitats of Uganda in a manner that accommodates the development needs of the nation and the

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<sup>31</sup> The National Forestry and Tree Planting Act, 2003

<sup>32</sup> The National Forestry Policy and the National Forest Plan, 2002

well-being of its people and the global community'<sup>33</sup>. The policy of protected areas was laid in 1900 With Buganda Memorandum of Agreements as one way of cementing the relationship between Buganda kingdom and the British who brought a vast area of forest land under the nominal control of the British Uganda Administration.

## **2.6 International laws relevant for under taking eviction and resettlement processes**

This are laws put in place internationally to ensure that, evictions are carried out in line with Human Rights Standards. They show procedures to be followed when carrying out evictions.

### **2.6.1 International law in Uganda**

International law does not form part of the recognized sources of law in Uganda. It can only be recognized when it has been enacted by an Act of the Uganda Parliament. This is as a result of Uganda being a dualist state.

Article 8 (A) of the Uganda Constitution<sup>34</sup> provides that, 'Uganda shall be governed on principles of national interests and common good enshrined in the national objectives and Directive Principles of State Policy (DPSP). This provision can be interpreted as making the foreign policy objective to be justifiable.

Uganda is a signatory to a number of international instruments obliging it to manage its natural resources in a sustainable way<sup>35</sup>. This include, 'the Convention to combat desertification 1994, International Convention on Biological Diversity, 1992, Bern Convention on Migratory species 1979, Convention on International Trade on Endangered species 1973 and Convention on Protection of World Cultural and Nutritional Heritage 1972 among others'.

Uganda has also signed international instruments that commit her to guarantee property rights to her citizens especially the poor and vulnerable people and it is also bound by the provision of Covenant on Economic, Social and Cultural Rights adopted by United nations General Assembly in 1996''. This means that the adaptation of the Constitution 1995 did not change these

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<sup>33</sup> Government of Uganda, 1999, Luzinda, 2008, Uganda Wildlife Authority, 2010

<sup>34</sup> The Republic of Uganda Constitution 1995

<sup>35</sup> Luzinda, 2008, Vangen, 2009, Uganda Wildlife Authority, 2012, Cavanagh, 2012

conventions, agreements and treaties which Uganda signed with international organizations early before the coming into force of the Constitution. These provisions still bind Uganda as a country although it is not now clear how the international law can be applied in the domestic courts<sup>36</sup>.

### 2.6.2 International instruments

The Universal Declaration of Human Rights (UDHR) adopted on 10 December 1948 by General Assembly of United Nations is the central instrument in highlighting people's and human rights'. It clearly states that as an individual everyone has right to property as well as right of being in association with others and it prohibit arbitrary deprivation of property (United Nations General Assembly Resolution<sup>37</sup>). Although UDHR is not a legally binding declaration, it can be referred to in courts because of its persuasive force. Section 15<sup>38</sup> provides that, 'nothing in this Act shall deprive High Court of the right to observe or enforce the observance of, or shall deprive any person of the benefit of any existing custom which is not repugnant to natural justice, equity and good conscience and not incompatible either directly or by necessary implication with any written law'.

This implies that, if a person is evicted from some piece of land, the following rights among others get affected; right to property, right to adequate housing, the right to live somewhere in peace, security and dignity. Although the Constitution of Uganda does not provide the right to adequate housing, it does not mean that, it cannot and to be claimed once it's been infringed by another person because there is a provision that can be interpreted as encompassing this right. Article 45<sup>39</sup> provides this hence making it clear that, as a fact that evictions affect the right to adequate housing even if it is not stated in the Constitution, one can go to court on the basis of his or her right being infringed once evicted from piece of land that he or she owned a house on.

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<sup>36</sup> The Uganda Constitution as amended, 1995

<sup>37</sup> No 217 A (III) of 10<sup>th</sup> December 1948

<sup>38</sup> The Judicature Act

<sup>39</sup> The Republic of Uganda Constitution, 1995

## **2.7 International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, 1976**

Uganda as a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) which was ratified on 21 January 1987 and International Covenant on Civil and Political Rights (ICCPR) ratified on 21 June 1995. There is no provision on how to deal with land evictions in ICESCR but Article 11(1)<sup>40</sup> provides for adequate housing.

It also puts much emphasis on the Right to property in that it states that, ‘ the state party to the present Covenant recognize the right of every one to an adequate standard of living for himself and his family including adequate food, clothing and housing, and to the continuous improvement of living standards’’. This shows that once a person is evicted from land, his right to adequate housing is automatically affected which is in line with the right to live in peace and dignity often violated when it comes to land evictions. The Covenant on ICESCR goes ahead to call all the state parties to always take immediate measures aimed at providing protection to people who are lacking it and no right should be interfered with one’s privacy.

## **2.8 African Charter on Human and Peoples Rights and Indigenous and Tribal Peoples Convention, 1989**

The African Charter on Human and Peoples Rights also provides for the right to property and further puts it clear that if there is any one dispossessed of their property rights, such a person or people have right of full recovery of their property (African Charter Article). And looking at the eviction processes, people have always lost their right to property some which is against the Charter.

The Indigenous and tribal Peoples Convention, 1989(No.169), provides recognition of ownership rights of land and resources that indigenous and other tribal people occupy.

The Convention makes it a responsibility of the governments to develop coordinated and systematic actions to protect property rights of tribal peoples and respect their integrity. In that

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<sup>40</sup> International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, 1976

respect, eviction of tribal groups or vulnerable communities from the forestry resources they have been occupying for long periods of time without alternative source of livelihoods does not only violate the provisions of Conventions but is also a negation of primary responsibility of Governments as provided as under the Convention (International Labor Organization 1989).

Also connected to the above, Kisekka has attributed the occurrences of evictions from land in Uganda to the government's failure to empower institutions that have mandate to intervene in land matters. Such institutions include: Sub-county, urban and district land tribunals; and in his opinion if these were facilitated, they would settle disputes on land in their areas. Unfortunately, not all these institutions are still of relevance today. Land Tribunals no longer legally exist. After the expiration of their statutory mandate, Magistrates courts were given mandate to take over what the Tribunals used to handle. This was following a Practice Direction No.1 of 2006 which provided that following the expiry of contracts of chairpersons and members of the District Land Tribunals, Magistrates' courts presided over by a Magistrate Grade 1 and above shall continue to have jurisdiction in land matters in accordance with section 95(7) of the Land Act. This Practice Direction was made to enable Magistrates' Courts to exercise jurisdiction in land matters until new chairpersons and members of District Land Tribunals are appointed or otherwise. *Sarah Nakku vs. Commissioner for Land Registration* HCCA No. 064/2010. These have not been appointed yet and mandate is with the Magistrates Courts.

## 2.9 The capitalist era in Uganda and Evictions

The craws of capitalism have been extended into Uganda's space with a number of implications for regulation of rights to land and land governance initiatives. The deprivation of people of their land for other capital production activities most likely portrays a neocolonial rather than a development dimension.<sup>41</sup>

Capitalism has led to intensification of the language of land based investment that requires use of huge chunks of land.<sup>42</sup> In this context, there is preference for large scale agriculture as

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<sup>41</sup> Beth Robertson, Per Pinstrup-Andersen, Global Land Acquisition: neo-colonialism or development opportunity?, Food Security, Vol.2. Issue 3, pp 271-283 (September 2010)

<sup>42</sup> Examples from Uganda include the palm oil sector.

opposed to small scale farming and other non-commercial uses of land.<sup>43</sup> The movement from small scale subsistence agriculture to large scale commercial agriculture has in some instances led to use of underhand methods of land acquisition, aimed at benefiting the large scale farmer at the expense of the local subsistence farmer and land owner.<sup>44</sup> This is more so since provision of free land to either national or international investors is viewed as a strategy to incentivize them such that they can invest in the country.<sup>45</sup> The consequence of this is the eviction of the subsistence user and takeover of his/her land by the investor, in default of set standards of fairness to the subsistence user.<sup>46</sup>

It should also be noted that with a push from the era of capital at the global level, there have been a number of land rights certification efforts in Uganda.<sup>47</sup> Issuance of certificates of title to offer evidence of who has rights to land is invaluable. Certification has greatly hinged on increasing the value of land rights as collateral for loans from financial institutions in a land tenure system such as the mailo land system in Uganda could be problematic. Ideally, since both the land owner and the lawful and bonafide occupants may have certificates of title (albeit of varying classes and strength) with the ability to use them as collateral, and a failure to fulfill the conditions for the loan may result into eviction of the other with substantive valid rights to land.

The shift of capitalism from the global to localized spaces of state and society has meant increasing incidents of evictions in an effort to acquire more and more. The question that still stands is whether the law is in position to protect person from evictions or it has joined the capitalist route of facilitating the evictions. Scholars such as Mabikke have argued that land thefts/grabs (and the resulting evictions) are a result of the intrinsic deficiencies in the land tenure system that makes it unable to cope with increasing land markets and also guarantee investment security.<sup>48</sup> This situation, he argues, is also exacerbated by loopholes in the land

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<sup>43</sup> An example is the contention in Baleke Kayira Peter, Sebato Patrick, Mugerwa Antonio, Nanjaye Lusi, Kansiime Godfrey vs. Attorney General of Uganda, Kaweri Coffee Plantations Ltd. Engineer Emanuel Bukko Kayira (Landlord), Civil suit No179 of 2002, (here in after "Baleke Kayira's case")

<sup>44</sup> Ibid

<sup>45</sup> National Association of Professional Environmentalists and Friends of the Earth International, supra Note 8.

<sup>46</sup> See for example Baleke Kayira's, supra note 45

<sup>47</sup> Facilitated through the law such as the Constitution and Land Act

<sup>48</sup> Mabikke, S.B: Escalating Land Grabbing in Post-Conflict Regions of Northern Uganda: A need for strengthening good land governance in the region (2011). A paper presented at the International Conference on Global Land Grabbing at the Institute of Development Studies, University of Sussex.

governance systems;<sup>49</sup> that are not easily adaptable to changes in various economic, social circumstances that affect land governance. Some of these are of a global nature with local implications in the land sector that may result in evictions.

At the International scale, for example Serwajja contends that land grabbing and evictions in the period post food crisis of 2007 to 2008 could be attributed to the need to increase acreage acquisitions and food production to curb the crisis.<sup>50</sup> Similarly, he argues that the projected increase in the population of the world from 7 to 9 billion people calls for a strategy to ensure a steady supply of food.<sup>51</sup> Therefore, high food importing countries have had to rush to countries where it is assumed land is underutilized, to acquire land and grow food to feed their people.<sup>52</sup> In the same spirit, the World Bank has justified some land acquisition as a way to curb a repeat of global food crises with their negative consequences.

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<sup>49</sup> *Ibid*

<sup>50</sup> Eria Serwajja, *The Quest for Development through Dispossession: Examining Amuru Sugar Works in Lakang-Amuru District of Northern Uganda*, Paper presented at the International Conference on Global Land Grabbing, Oct. 17-19, (2012), hosted by the Department of Development Sociology at Cornell University, Ithaca.

<sup>51</sup> *Ibid*

<sup>52</sup> Klaus Deininger et al; *Rising Global Interest in Farmland; Can it Yield Sustainable and Equitable Benefits?*, The World Bank (2011), Washington, DC.

## CHAPTER THREE

### THE HUMAN RIGHTS, LEGAL, POLICY AND INSTITUTIONAL FRAMEWORKS AND EVICTIONS

#### 3.1 International Human Rights Law and Eviction: A Brief

International human rights law does not contain an explicit right to land, but abhors evictions. International human rights instruments to which Uganda is a party such as the Universal Declaration of Human rights<sup>53</sup> and the African Charter on Human and Peoples' Rights<sup>54</sup> provide for the right to property. The UDHR goes ahead to provide against arbitrary deprivation of property<sup>55</sup> and in the language of the African Charter, encroachment on the right to property is only allowable "... in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."<sup>56</sup> Although international human rights law does not contain an explicit right to land, the right to land is seen as a part of the right to property.<sup>57</sup> In principle, state parties to the African Charter such as Uganda are according to article 1 obliged "to recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them".<sup>58</sup> Similarly, under article 2 of the UDHR, the rights in the UDHR have to be availed to the people without any discrimination as to race, color, sex, religion, property, etc. In short, Uganda has an obligation to respect, protect and fulfill the right to property (And Land).

Protection of the rights to access land is invaluable in international human rights law, since other protected human rights such as the right to housing, water, food and work can be affected by access to land.<sup>59</sup> It is therefore acknowledged that protection of rights to land is a prerequisite for

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<sup>53</sup> Universal Declaration of Human Rights 1948 (Adopted by the United Nations on December 10<sup>th</sup>, 1948 here in after "UDHR" article 17 (1).

<sup>54</sup> African Charter on Human and people's Rights, (June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986) and herein after "ACHPR", here in after referred to as "ACHPR", Article 14

<sup>55</sup> UDHR, a, supra note 80, Article 17 (2).

<sup>56</sup> ACHPR, supra note 81, article 14.

<sup>57</sup> Poul Wisborg, Is Land a Human Rights Issue: Approaching Land Reform in South Africa, Noragric Working Paper No. 24, 13 (Noragric Agricultural University Norway, February 2002).

<sup>58</sup> ACHPR, supra note 81, Article 1,

<sup>59</sup> Elisabeth Wickeri and Anil Kalhan, Land Rights Issues in International Human Rights Law, Institute for Human Rights and Business, Malaysian Journal on Human Rights, Vol. 4, No. 10, 2010. Available at

enjoyment of other rights, as further emphasized in the case of *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) vs. Nigeria*.<sup>60</sup>

There is a connection between enjoyment of land rights to: (i) human dignity<sup>61</sup> and, (ii) food security.<sup>62</sup> Besides that, there is a co-relationship between access to land and eradication of poverty and promotion of social development for people.<sup>63</sup> It is therefore no wonder that international human rights law has taken effort to emphasize legal security of tenure as a key component to enjoyment of the right to adequate housing article 11 (1) of the International Covenant on Economic Social and Cultural Rights.<sup>64</sup> The United Nations human rights framework jurisprudential trends have gone further to abhor forced evictions, and set guiding principles on evictions under General Comment No. 7.<sup>65</sup> General Comment No.7 has defined forced evictions as;

*[...] the permanent or temporary removal against their will of individual, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the international Covenants on human rights.*

The General Comment calls upon states to “use all appropriate means” that may include adopting legislations aimed at protecting rights including protection from eviction.<sup>66</sup> In international human rights law, breach of state obligations to protect human rights is not only

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<sup>60</sup> [http://www.ihrb.org/pdf/Land\\_Rights\\_Issues\\_in\\_International\\_HRL.pdf](http://www.ihrb.org/pdf/Land_Rights_Issues_in_International_HRL.pdf) (accessed November 7th, 2015).

<sup>61</sup> Commission on Human and Peoples' Rights, Comm. No. 155/96 (2001), where in after “the SERAC case.”

<sup>62</sup> P Gelbspan and FGV Thea Land in the struggle for social justice: social movement strategies to secure human rights' (2013) published by Terra de Direitos available at <http://www.terradedireitos.org.br> (accessed on 16 September 2015).

<sup>63</sup> Commission on Human Rights, Report of the Special Rapporteur on the right to food, Jean Ziegler, U.N. Doc.A/57/356 (Aug. 27, 2002) (Ziegler Report) para 22.

<sup>64</sup> R E Howard-Hassmann Reconsidering the right to own property (2012) Human Rights & Human welfare, working paper no 68 5, <available at <http://du.edu/korbel/hrhw/workingpapers>> (accessed 20 August 2015).

<sup>65</sup> Committee on Economic social and Cultural Rights, General Comment No. 4, The Right to Adequate Housing , (art.11 (1), 13/12/91 .

<sup>66</sup> See, Committee on Economic social and Cultural Rights, General Comment No. 7, Id.

<sup>67</sup> Id., para .8

as a result of commission but also omission to protect people from violations by third parties.<sup>67</sup> The Ugandan government would therefore not be exonerated from violations of the prohibition against forced eviction perpetrated by individuals/third parties.

In sum to the above, the situation of evictions of the tenants by occupancy in Uganda may not be successfully tackled with purely legal tools; a human rights approach may add nuance to the legal approaches in an effort to find lasting solutions.

### **3.2 A Historical prelude of the Legal, Policy Frameworks and Evictions**

In developing economies such as Uganda, land is an indispensable raw material for development, and at the same time an object with political significance. Developing policy and legislating on land rights therefore becomes a highly technical exercise that requires the need to strike a balance among various imperatives such as; protection of rights of all land rights holders irrespective of their mode of land use, promote land use for capital development, derive political mileage.

The above is not only relevant today, but has been significant since historical times. Uganda has had a checkered history of relations over land and regulation of the same through legal and policy frameworks. The duality of claims to the same land by landlords and tenants has roots in Uganda's history on land.<sup>68</sup> Regulating these relationships called for the need to choose or strike a balance among protection of rights, promotion of land use for development and also assertion of political leverage. Indeed, there is historical evidence that legal frameworks have the potential to tilt power relations of people on land. For example, the signing of the 1900 agreement tilted the Kabaka's exclusive leverage on land matters in Buganda. The British became a party in the making of the decision that about 8,000 square miles of land should be given to about 1,000 Buganda chiefs.<sup>69</sup> By this, some people became landlords with entitlement to access peasant labor from those that were declared tenants by the agreement.<sup>70</sup>

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<sup>67</sup> Commission nationale des droits de l'Homme et des libertés vs. Chad, Commission on Human and Peoples' Rights, Comm. No. 74/92 (1995)

<sup>68</sup> NyangabyakiBazaara, Civil Society and the Struggle for Land Rights for Marginalised Groups: The Contribution of the Uganda Land Alliance to the Land Act 1998, at . 4-20.

<sup>69</sup> The Buganda Agreement of 1900

<sup>70</sup> Nyangabyaki, supra note 68

Landlordism bestowed upon the landlord a spirit of entitlement; leading to exploitation of the tenant through exorbitant rent and commodity taxes leading to the Bataka federation in protest.<sup>71</sup> A legal approach was taken; via the passing of the Busulu and envujjo laws to prescribe the rent and commodity taxes and also deal with other matters incident. The lesson from this is that law can be a good instrument to streamline relationships on land. Law may however not be the magic bullet to land related problems. Despite the passing of the busulu and envujjo law 1928, tenants remained at the risk of exploitation by the landowner/ chiefs; e.g., all big trees on any given tenant's kibanja belonged to the landlord.<sup>72</sup> The landlord was intended to derive economic benefit from a kibanja, despite the tireless efforts of the tenant in say; taking care of such trees. This is also evidence that laws have to be closely monitored to close the gaps between it and the practice, if tenants are to benefit from the protections embedded in the law.

The historical times also indicate a preference for protection of rights contingent upon capital production. The Busulu and Envujjo Laws, by implication only secured tenure up to 3 acres, subject to the holders continued participation in producing export crops.<sup>73</sup> Through this, the British colonial government introduced a system of decentralized land use monitoring for economic gain; the landlord could only secure tenure as above mentioned if the tenant contributed to economic growth, by avoiding insignificant production for subsistence but export.

The above historical trends are of contemporary relevance. Legal and policy initiatives in Uganda have not only been aimed at streamlining the relationship of land lords and tenants, but also promote use of land to contribute to development of Uganda. A failure to strike a balance among interests creates losers and beneficiaries, a situation that may at times lead to evictions. This section of the paper delves into the various protections embedded in the legal and policy frameworks and their implications for evictions.

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<sup>71</sup> Nyangabyaki, supra note 68

<sup>72</sup> Nyangabwaki, supra note 68

<sup>73</sup> Nyagabyaki, supra note 68

### 3.3 The Contemporary Legal and Policy and Institutional framework Analysis

This section makes an analysis of a number of laws in Uganda that have a bearing on protection from eviction.

#### **The normative essence of the Constitution of 1995 and Land Act Cap.227**

Among the central laws and policies that contain norms and principles on regulation of rights to land are the Constitution of Uganda 1995, Land Act Cap. 227 and the Uganda National Land Policy. These do not stand without a pedestal but are in a way connected to key historical legislations and policy formulation trajectories.

Among the most significant historical laws of Uganda with contemporary significance is the Land Reform Decree of 1975. This Decree made individual ownership of land obsolete, by vesting it in the state. The post 1975 constitutional and legal regimes therefore become significant since they challenge the status quo set by the above Decree.

Most significant is article 237(1) & (3) of the Constitution that reinstates individual ownership of land by recognition of the four land tenure systems i.e., customary; freehold; mailo; and leasehold. The same are provided for under Section 2 of the Land Act, Cap. 227. Since “ownership” is the most revered source of rights to land, there is a tendency for people to seek to own as much as possible and to be able to exclude others. This does not however displace the fact that land evokes the concept of “bundles of rights”; various rights can be enjoyed by a diverse category of people over the same piece of land.<sup>74</sup> These range from use rights such as rights of access (e.g. to walk on land)<sup>75</sup>; right to remove something from land (profits a prendre/ withdrawal rights).<sup>76</sup> They also extend to control rights that include rights to exclude others, transfer/alienate the land or make decisions about the management or mode of use of land.<sup>77</sup>

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<sup>74</sup> Kevin Gray & Susan Francis Gray, The Idea of Property in Land in LAND LAW: THEMES AND PERSPECTIVES 15-41 at 40 & 27 (Susan Bright & John Dewar, eds. 1998).

<sup>75</sup> Re Ellenborough Park [1956] Ch. 131.

<sup>76</sup> See, Duke of Sutherland vs. Heathcote [1892] 1 Ch. 475 at 484 per Lindley LJ.

<sup>77</sup> Bomuhangiet al, Who Owns the Land? Perspectives from Rural Ugandans and Implications for Land Acquisition, Faculty of Forestry and Nature Conservation, Makerere University Journal, April 2012, at.8

Streamlining the relationship of landlords and tenants on registered land: protection from evictions?

A number of constitutional provisions and sections of the Land Act Cap. 227 are geared towards streamlining the relationship of landlords and tenants, and ultimately stop/prevent evictions of the tenants by landlords. The question that still looms is how far as the above been achieved.

The Constitution article 237(8) makes a general provision that guarantees security of occupancy for lawful or bonafide occupants on mailo land, freehold, leasehold. The Land Act Cap. 227 is a product of the requirement of Article 237 (9), which called upon Parliament to pass a law regulating the relationship between the landlord and the lawful and bonafide occupants on land, and also processes through which the occupants could acquire registrable interests in land.

Delimitation of who is a lawful and a bonafide occupant is an important initial step to determine who is entitled to the protection. The Land Act section 29(1) defines them as:

A “lawful occupant” means-

- a) a person occupying land by virtue of the repealed-
  - i. Busuulu and Envujjo Law of 1928,
  - ii. Toro Landlord and Tenant Law of 1937,
  - iii. Ankole Landlord and Tenant Law of 1937;
- b) a person who entered the land with the consent of the registered owner, and includes a purchaser;...(etc.)

Section 29 (2)

‘Bonafide occupant’ means a person who before the coming into force of the Constitution-

- a) had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or
- b) had been settled on land by the Government or an agent of the Government, which may include a local authority[...]

The security of tenure of a tenant by occupancy is guaranteed under section 31 (1) of the Land Act. Although the law recognizes the tenant as a tenant of the registered owner of land (section 31 (2) of the Land Act); their landlord tenant relationship cannot be regulated outside of the Land Act. It is subject to stipulations in the Act as discussed below:

### **3.4 Payment of nominal ground rent and termination of tenancy**

First the Land Act 1998 recognized the need for the tenant to pay some sort of consideration to the landlord in return for using the land. Section 31 (3) provided for the payment of nominal ground rent. Under the Land (Amendment) Act 2004 section 14 (3C) “nominal ground rent shall mean reasonable ground rent- (i) taking into consideration the circumstances of each case; and (ii) in any case, of a non-commercial nature.” This provision does not cast the ground rent in stone, but leaves it fluid such that differently situated tenants donot end up having obligations to pay a uniform rent that might unfairly burden the poor tenant. It allows for different rates of ground rent in accordance with the location of the land (peri urban or rural area) and size.

It should further be noted that the Land Act 1998 section 31 (3) put the responsibility to determine the rent on the Land Board. To avoid leaving issues about nominal ground rent to the Board, the Land (Amendment ) Act 2004, section 14 substitutes the above provision with another that introduces the requirement for the minister to approve the rent determined by the Board, and according to the new section 31 (3A), within sixty days. The minister’s silence or failure to approve the rent in the stipulated period is interpreted to mean approval of the rent that was presented to him/her by the Land Board.<sup>78</sup>

In 2010, the Land Act 1998 was subjected to yet another amendment. Section 31 (3D) was introduced requiring the Minister to set the rent if the Board does not do so within six months from the commencement of the Act.<sup>79</sup> The new section 31 (3e) stipulates that rent; either stipulated by the Board and approved by the minister or set by the minister shall be payable within one year of its stipulation.

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<sup>78</sup> See the Land (Amendment) Act , 2004

<sup>79</sup> The commencement date of the Land (Amendment ) Act 2010 is February 12, 2010

The Land Act, 1998, section 31 (4) provides for the tenant's right to appeal the decision of the Board to the Land Tribunal, in case s/he feels aggrieved. The Tribunal in this case may "confirm, reverse, vary or modify the decision or make such other orders as it is empowered to make in this Act."

Despite the fact that the rent is "nominal", the Land Act envisages a situation where the tenant might fail to pay. It provides under section 31(6) and also under the Land (Amendment) Act 2004, that the land owner may give the tenant notice in a prescribed form; "...to show cause why the tenancy should not be terminated for nonpayment of rent..." if the rent is outstanding for a period exceeding one year (formerly two years).<sup>80</sup> The presumption here is that if the tenant does not give valid justifiable cause, then the tenancy can be terminated for nonpayment of rent; following due process of law before the land tribunal (Chief magistrate/Grade 1)<sup>81</sup> as stipulated in the Land Act section 32 (1) and (2).

In the law of property, landlord and tenant relationships are normally (and at common law) regulated either by contract or statutory law.<sup>82</sup> The nature of relationship between the tenants by occupancy and their landlords on registered land in Uganda is atypical, entrenched in historical developments in Uganda, and greatly regulated by statute for political and other reasons. Statutory law (the Land Act in particular) attempts to exclude any other reasons upon which a tenancy may be terminated; in order to protect the tenant from eviction on those grounds. The Land (Amendment) Act 2010, introduces a new section 32A (1) – (4) under which it is stipulated that a tenant by occupancy can only be evicted on grounds of failure to pay the annual nominal ground rent and on order of court. The court that finds the tenant liable for eviction has to give him/her not less than six months to leave the land. Masalu Musene has argued that even though it is said that the Land (Amendment) Act 2010 is intended to prevent evictions, it does not go beyond the provisions of the Land Act 1998 and the 2004 amendment.<sup>83</sup> He further observes and rightly so that in executing its role under article 237 (9), parliament diluted the security of tenure

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<sup>80</sup> The Land (Amendment) Act 2010, Section 1 (b), amending 31 (6).

<sup>81</sup> The Land (Amendment) Act 2010, Section 32A (4)

<sup>82</sup> Land lord and Tenant Law, <http://www.hg.org/landlord.html> (accessed November 20, 2015) or the Restatement of the Law, 2nd edition.

<sup>83</sup> See, Masalu Musene Wilson, The effectiveness of the courts of judicature in promoting security of occupancy of lawful and bonaafide occupants on registered land in Uganda, (Un published LL.M dissertation, School of Law Makerere University 2014)at 36-37.

that the constitution envisaged.<sup>84</sup> They did this by making it contingent upon payment of rent; however nominal.<sup>85</sup>

A plain reading of the Land Act Cap 227 and both the 2004 and 2010 amendment indicates a desperate (although unrealistic) desire to; through legislation protect the tenant by occupancy on registered land. The law in some instances ends up being unrealistic. If the tenant is only to pay nominal ground rent, what is the incentive for the landlord to waste his time incourt against such a tenant, to first of all; as section 31(6) show cause why s/he should not be evicted, send it/refer the matter to the Committee, and then obtain an order from court prior to eviction?

This procedure seems to be more cumbersome than the reward thatthe land owner may get at the end of it. Opting out of the landlord tenant relationship (according to our findings) is considered by some as a cheaper option. Indeed, the law does not stop the title holder from selling his interest:

*subject to this section, a change of ownership of title effected by the owner by sale, grant and succession or otherwise shall not in any way affect the existing lawful interests or bonafide occupant and the new owner shall be obliged to respect existing interests.*<sup>86</sup>

Although the owner is by law authorized to sell, the land is considered encumbered and finding purchasers for it can be cumbersome. In addition, land law jurisprudence in cases such as *Uganda Post and Telecommunications v. A.K.M Lutaaya*<sup>87</sup> holds to the effect that purchasers of such land are considered to have constructive notice of the tenants on the land, and therefore take it subject to their interests. So purchasers would inherit all the huddles that the landlord had on the land, regarding interlocking simultaneous rights to it. Even though the above makes the land un attractive, there is evidence from our findings that powerful and fearless purchases normally go ahead to purchase it, and act contrary to requirements of the law by either evicting tenants, or unfavorably treating them or cheating them in negotiations, as our findings from

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<sup>84</sup> Ibid

<sup>85</sup> See, Land Act, Cap. 227 section 31 and the Land(amendment) Act 2004, Section 31 (3)

<sup>86</sup> Land (Amendment)Act 2010, Section 35 (8)

<sup>87</sup> Supreme Court Civil Appeal No. 36 of 1996

Wakiso show.<sup>88</sup> This is also in contravention of the spirit of the UNLP which makes the new landlord a mere replacement of the old one, taking on rights and obligations of the old landlord.<sup>89</sup>

*I Buy you out or you buy me out ; a haggle over the land*

The Land Act creates room for both the title holder and the tenant by occupancy to sell his/her interest in the land to the other. Whoever decides to sell his interest has to give the other the first option to purchase. The tenant can sell his/her assignment to the title holder and the title holder can sell his/her reversion to the tenant.<sup>90</sup> The law stipulates that such transactions are on the basis of willing buyer willing seller.<sup>91</sup> The erroneous presumption here is that there is equality of arms between the tenant and the landlord to allow for balanced/fair negotiations. Even though the law recognizes rights for both tenant and landlord, these are separate and unequal in reality. Our findings show that the landlords have better leverage to buy out the tenant than the tenant can to sell out the landlord.<sup>92</sup>

Section 35 (4)-(7) further provides for some safeguards. The detail of the offer to buy or sell has to be communicated and an acceptance or rejection communicated in three months from the date of the offer.<sup>93</sup> The period of three months is objectively sufficient time for the negotiations between the parties to take place. The law makes provision for a mediator to help the parties come to a conclusion of the sale, failure of which the sale can be made to another party.<sup>94</sup> Our findings will reveal that in many instances, the low levels of literacy and the feeling of powerlessness on the part of the tenants at times keeps them away from evoking these provisions for their benefit.<sup>95</sup> In other instances, the land deals are rushed leaving no time to evoke the law.

In as much as it is perceived that the above provisions are intended for the protection of the tenant, the penalty for noncompliance is harsher for the tenant than the landlord. The Land (Amendment) Act 2010 introduces section 35 (1) (1A) which makes it an offence for the tenant

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<sup>88</sup> Interview with male adult, in Wakiso, July 5<sup>th</sup>, 2015

<sup>89</sup> UNLP- 2013, supra note 15, strategy 46 (v).

<sup>90</sup> See Section 35 (1) and (2) respectively

<sup>91</sup> Land Act Cap. 227, Section 35 (3)

<sup>92</sup> See, Interviews in GoberoWakiso, May 27, 2015

<sup>93</sup> Land Act Cap. 227, Section 35 (5)

<sup>94</sup> Land Act Cap.227, Section 35 (6) and (7)

<sup>95</sup> See the section 2 of the paper with findings

to sell without giving the first option to the landlord. If the offence is proved against the tenant, s/he is liable to imprisonment for a maximum of four years, a fine of a maximum of ninety six currency points<sup>96</sup> or both punishments. According to that section, the sale of interest is invalidated and the landlord has a right to take the reversion of the land. There is no equilibrium between the landlord and tenant in this particular case, since the Land (Amendment) Act 2010 which criminalizes the actions of the tenant as above, allows the landlord to pass on a title (however encumbered by the tenants) to a new purchaser without committing a crime.<sup>97</sup>

The provision giving the tenant an opening to apply for an interest that can be registered (freehold, Mailo, lease, etc.) is at first sight seems to be an attempt to shift the pendulum a bit in the interest of the tenant.<sup>98</sup> The fact that the application is to the landlord reinstates his/her the predominant position. Not even does the provision for a mediator in case of a disagreement in this case help, considering that all the transactions are not monitored by anyone else but the parties involved.<sup>99</sup>

Although presented as negotiations, the above are haggles over land between the landlord and the tenant, in an asymmetrical way in which the landlord has an upper hand. This creates room for manipulation of the tenant.

#### ii) Mutual agreements to share or become joint proprietors

Another section in the Land Act that offers a certain level of protection is section 36 (1)-

*[...]A registered owner and a tenant by occupancy may mutually agree that the land in which a tenant by occupancy has an interest be subdivided in such portions as the parties may agree with each party having exclusive occupancy or ownership of such portions as may be agreed or that the parties become joint proprietors of the land either as joint tenants or as tenants in common and where they agree to be tenants in common, the shares of each in the land on such terms and conditions as they may agree.(emphasis added by author)*

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<sup>96</sup> The Schedule to the Land Act puts a currency point at UGX 20.000 ( twenty thousand shillings)

<sup>97</sup> See the Land (Amendment )Act 2010 Section 3, introducing section 35 (8).

<sup>98</sup> Land Act Cap. 227, Section 38

<sup>99</sup> Land Act Cap 227, Section 38 (5)- (6)

From the above provision (*italicized options*), it cannot be concluded that the result of the mutual agreement for the tenant would be absolute “ownership” of land. It is mere exclusive occupancy with the right to exclude the title holder and not perpetual ownership for the tenant by occupancy. In that case, the dual and overlapping rights on the land with all its complexities remain on foot. The mutual agreement leading to each party absolutely owning a portion of the land individually, or accepting to be joint tenants or tenants in common would grant the tenant better protection. In case of subdivision and ownership of portions of land and in the case of joint tenancies or tenancies in common, under the Land Act section 36 (2) (a) and (b) the tenant would be entitled to a certificate of title. The strength of the tenant’s protection in this case would arise from the recognized indefeasibility of title under section 59 of the Registration of titles Act, cap 230. This has further been endorsed in a wealth of land cases such as *Kristopher Zimbe verses Tokana Kamanza*<sup>100</sup> that holds that such a certificate is indefeasible and can only be defeated in the case of fraud. The case of *Kampala Bottlers Ltd. v. Damanico (U) Ltd* Wabuzi C.J as he then was held among others that fraud may be “attributable either directly or by necessary implication...[t]he transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.”

As much as the above are good provisions, the tenant mostly in rural areas are not aware of them, and do not have the bargaining power to push for better deals. In the end, there is a gap between the law and practice.

All in all, there is a minimum level of protection of the tenants by occupancy which includes; secured occupancy on payment of rent, option to purchase the landlord’s reversion, mutual agreement to subdivide such that the landlord and tenant each acquires exclusive rights, becoming joint tenants or tenants in common. Lack of knowledge of all these, limited bargaining power and a feeling of “we are being helped” keeps the tenants mostly in the rural areas away from benefiting from the provisions.<sup>101</sup>

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<sup>100</sup> (1954) ULR 68.

<sup>101</sup> Interviews conducted in Wakiso, July 5<sup>th</sup>, 2015.

### 3.5 Compulsory Land Acquisition and Compensation

The 1995 Constitution of Uganda under Article 26(2) empowers the Central Government or a Local Government to acquire land in the public interest provided the acquisition is necessary for public use or is in the interest of defense, public safety, public order, public morality or public health. The taking of such property has to be subject to prompt payment of a fair and adequate compensation; before the taking of possession or acquisition of the property. To guide this acquisition process, the Land Acquisition Act, Cap. 226 was enacted, and according to its long title, the Act is meant to make provision for the compulsory acquisition of land for public purposes and any other matters that are incidental to and connected therewith. Section 3 of the Act empowers the Minister to declare that any land is needed for a public purpose while Section 2 empowers a person authorized by a minister to enter upon and examine any land.

After confirmation that the land assessed has to be taken, an award of compensation is provided for under section 6 of the Land Acquisition Act. Any person affected by such acquisition can challenge the amount of compensation awarded in the courts of law.<sup>102</sup>

The Land Acquisition Act, Cap. 226, is generally intended to facilitate acquisition of land by government; by implication reduce any glitches that could delay such processes. Also, having existed before the 1995 Constitution, it does not provide for or emphasize compensation before compulsory acquisition of the land. It rather bestows entitlement to the relevant authorities to compulsorily acquire land, without first paying adequate compensation to the owner. This does not auger well with the post 1995 Constitution period and has been cleared by the Constitutional Court. In the case of *Advocates for Natural Resources & 2 Others Vs. AG* Constitutional Petition No. 40/2013; it was held although the Land Acquisition Act existed before the 1995 Constitution, its provisions have to be read in the context of Article 274 and 26 (2) of the Constitution, in which case it is subjected to necessary modifications and qualifications in order to afford land owners prior compensation before their land is compulsorily acquired. This is the spirit of the 1995 Constitution.

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<sup>102</sup> 130 Section 6 (5) and 13, Land Acquisition Act, Cap. 226

The legal framework on compulsory land acquisition and compensation in Uganda is relatively weak and does not adequately uphold the rights of persons that may be adversely affected by compulsory taking by government. What amounts to public purpose or interest as the rationale for the taking is not so clear. It therefore becomes a fluid notion whose definition can be couched in subjectivities to justify taking for any purpose disguised as “for the public”. The absence of clear guidelines on compensation and unguided valuation practices may lead to unconscionable outcomes arrived at through corrupt tendencies. Examples include: the alleged compensation of ghost claimants in the acquisition of land for the Kaiso-Tonya Road;<sup>103</sup> a compensation award of 4.1 billion shillings for land in a government forest reserve (for constructing of the Entebbe express highway) to three men claiming to have inherited the land from their grandparents, yet the three are not at all related. Monies for compensation are released from the government coffers for that purpose.<sup>104</sup>

### 3.6 The Uganda National Land Policy and Evictions

Uganda has a robust policy framework on land, although this section reveals that beyond the on-the-paper stipulations, they have not, thus far, been able to provide sufficient bar to evictions from land. Key among these policies is the Uganda National Land Policy 2013 (UNLP).<sup>105</sup> This paper has added perspective to the multiple tenure systems in Uganda, and also highlighted the literature showing that the overlaps in the rights on mailo land are among the causes of eviction for the tenants by occupancy. The UNLP under policy statement 32 (a) provides that the country will maintain the multiple tenures as stipulated in the Constitution. Among the objectives of the policy is to “harmonize and streamline the complex tenure regimes in Uganda for equitable access to land and security of tenure.”<sup>106</sup>

It should be noted that speculative accumulation is among the causes of evictions from land. The UNLP puts in place strategies intended to curb this. Under strategy 37 (v), the government intends to take measure of a legislative and other nature to among others; “ensure that all tenure

<sup>103</sup> See., How UNRA, MAPCON cheated Residents in Hoima Tonya Road Compensation, available at <http://thehookug.com/how-unra-mapcon-cheated-residents-in-hoima-tonya-road-compensation/>

<sup>104</sup> See., How UNRA, MAPCON cheated Residents in Hoima Tonya Road Compensation, available at <http://thehookug.com/how-unra-mapcon-cheated-residents-in-hoima-tonya-road-compensation/>

<sup>105</sup> 133 Joel Owing, Government resumes compensation of property owners, The New vision August 6, 2014, available at <http://www.newvision.co.ug/news/658435-gov-t-resumes-compensation-of-property-owners.html>

<sup>106</sup> Id., Section 2.4 ; Strategy 4 (ii).

regimes do not promote speculative accumulation of land or deprive the poor of their access rights.” One however wonders what mechanisms will translate the above into practice, especially if the underlying power disparities and levels of poverty among the population are not tackled.

The UNLP further recognizes that the relationship between the landlords and tenants cannot be categorized as harmonious, and therefore requires streamlining.<sup>107</sup> The targeted legislative and administrative measures intended to bring about amicable relationships between landlords and tenants include:<sup>108</sup> fixing annual ground rent and subjecting it to periodic review, allowing sub- county headquarters to, on behalf of absentee landlords, receive ground rent for land in their locality, ensure that eviction of the tenants is only for non- payment of rent, ensure that purchases of land on which there are tenants take it with all rights and obligations of the former owner. Empowering sub-county headquarters to receive money without clear details about how long they are to hold it, what to do when they receive it, to whom and how often they will account for the money and what happens if the absentee landlord is perpetually absent in essence will most likely create an avenue for the officers at the headquarters to misappropriate funds.

Subjecting annual ground rent to periodic review as noted above is important. The rates fixed by the government have been castigated as too low by the landlords, yet there is a need to keep it nominal and affordable for the tenant. Some districts such as Masaka, Luwero, Rakai have fixed rates, to which there have been mixed reactions.<sup>109</sup> For example in Masaka, it was reported that the minister fixed 5000 for the rural area and the district set it at 2500.<sup>110</sup> For the Municipality it was fixed at 12, 000, by the district and 40,000 by the minister.<sup>111</sup> The provisions in the UNLP if implemented might streamline the conflicts in rates and attempt to settle the contentions about rent.

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<sup>107</sup>Id., Strategy 46 (i) to (v)

<sup>108</sup> See, John Semakula and John Masaba, *Government sets ground rent rates amid mixed reactions*, The New Vision June 12,2012

<sup>109</sup> See, John Semakula and John Masaba, *Government sets ground rent rates amid mixed reactions*, The New Vision June 12,2012

<sup>110</sup> Ibid

<sup>111</sup> Ibid

In addition to leaving both landlord and tenant on the land and streamline their relationship, the UNLP envisages strategies aimed at resolving the dual ownership by promoting measure that would among others;<sup>112</sup> promote land sharing between landlord and tenant, avail funds from the land Fund for tenants to purchase their interests from landlords, set up administrative land committees to mediate between landlords and tenants about land sharing, come up with guidelines on mediating such cases, enable government to purchase the landlord's and to sell it to the tenants.

The 1995 Constitution and the Land Act, Cap.227 put in place institutional structures aimed at protecting land rights. Under Article 50 of the Constitution, the courts of law are given powers to protect people's rights in case they have been violated. The Constitution also establishes bodies to assist in land matters for example, the Uganda Land Commission under Art. 238, the District Land Boards under Art. 240 and the defunct Land Tribunals under Art. 243.<sup>113</sup> However, the main setback here is that there are access to justice issues which arise and render many average Ugandans unable to access the courts and the statutory bodies. This can mainly be attributed to widespread poverty, making many people unable to afford court expenses; and ignorance of the law about the options available in case of land disputes.

Besides the above general constitutional bodies, the Land Act sets out another robust structure of institutions in a decentralized fashion. They are mandated to deal with some specific land rights matters arising from the dual ownership of land between the landlords and tenants as below:

i) Land Committee

These are established under section 64 of the Land (Amendment) Act 2010. Members of the Land Committees are appointed by the District Council following advice of the sub-county or the Division Council. The appointed committees then serve at the sub-county or the Division level.<sup>114</sup>

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<sup>112</sup> 141 UNLP,-2013, supra note 15, strategy 45 (i)- (v).

<sup>113</sup> 142 See, Sarah Nakku vs. Commissioner for Land Registration HCCA No. 064/2010

<sup>114</sup> Land(Amendment) Act 2004, Section 64 (1)

The detail on qualification for membership, remuneration and how the committee conducts business is set out in sections 65-67 of the Land Act Cap 227. The Land Act cap 227 goes ahead to stipulate a number of functions for the Land Committees and these include: ascertaining rights to land and acting as adviser to the Land Board;<sup>115</sup> act as mediator to parties in a land dispute pursuant to section 89 of the Land Act Cap 227;<sup>116</sup> in case of default on the part of the tenant to pay rent for over one year, a copy of the notice by the landlord to the tenant to show cause why the tenancy should not be terminated is issued to the Committee as well;<sup>117</sup> get involved in verification processes and adjudication of disputes in process leading up to issuance of certificates of occupancy, where the tenant by occupancy has applied for the certificate.<sup>118</sup> The interviews in Wakiso revealed that these institutions are not established on the ground.

#### ii) The Recorder

This is established under section 68; in the rural areas, the sub county chief is the recorder, in the urban areas the town clerk and the assistant town clerk in the division of a city are the recorders in those respective areas.<sup>119</sup> It is a statutory duty of the recorder to issue a certificate of occupancy to the tenant by occupancy after the landlord has granted consent and to also notify the registrar to register the interest of the tenant as an encumbrance on the title of the land lord.<sup>120</sup> The recorder is a record keeper, who keeps the certificates of occupancy issued to the tenant by occupancy.<sup>121</sup>

#### iii) Land Tribunal

They were intended to be decentralized structures within the local governance hierarchy whose functions and mode of operation was stipulated in the Land Act cap 227 sections 74-87. Specifically, their functions included to determine disputes to land and those relating to compensation.<sup>122</sup> In addition, they had the mandate to issue orders terminating the tenancy of the

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<sup>115</sup> Id., Section 64 (7).

<sup>116</sup> Id., Section 64 (8).

<sup>117</sup> Land Act Cap. 227, Section 31 (6).

<sup>118</sup> Land Act Cap. 227, Section 33

<sup>119</sup> Id., Section 68 (1) (2).

<sup>120</sup> Id, Section 33 (8) & (9) and Land (Amendment) Act 2004 section 68 (4).

<sup>121</sup> Land (Amendment) Act 2014, Section 68 (4).

<sup>122</sup> Id., Section 76.

tenant by occupancy for nonpayment of rent or issue any other orders relating to payment of rent;<sup>123</sup> receive appeals from tenants on denial of certificate of occupancy.<sup>124</sup> The establishment of Land Tribunals across the country and the sustainable running of a few that were set up was met with high financial constraints, leading to transfer of their mandate back to the courts in order to avoid a pile up of cases.<sup>125</sup> Indeed, at the moment, Land Tribunals are substituted for Magistrate Grade 1 or the Chief Magistrate Court.<sup>126</sup>

This therefore means that land disputes ought to be handled by the above courts and other courts such as the High Court up to the Supreme Court.

The institutions above have specific mandate, much of which is handling disputes associated with procedures leading to issuance of certificates of occupancy. Considering that disputes over land in the studied areas make people so desperate, rarely are these statutory bodies resorted to since the disputants are in need of quick fixes that can only be got from manipulation of other institutions such as the Police, UPDF RDCs and resort to powerful individuals as discussed in section three of this paper. This also encourages forum shopping since they are no strict requirements as to where land cases have to be filed first. Rather, each litigant runs to where they hope to get a favorable outcome; including- to powerful individuals or political offices such as RDCs.

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<sup>123</sup> *Id.*, Section 31 (7) and 32 (2).

<sup>124</sup> *Id.*, Section 33 (7).

<sup>125</sup> *Sarah Nakku vs. Commissioner for Land Registration* HCCA No. 064/2010.

<sup>126</sup> Land (Amendment ) Act 2010 Section 32 A (4).

## CHAPTER FOUR

### EFFECTIVE ANALYSIS OF CASES OF EVICTION FROM LAND IN UGANDA

#### 4.0 Introduction

The above legal, policy and institutional framework has not been able to stop the floodgates of the increasing cases of eviction from land in Uganda. Actions of a number of actors have resulted into evictions of various categories of people from land as seen below.

#### 4.1 The international dimension and players

Land grabbing from the locals to avail it for projects dubbed as development is reported as one of the causes of evictions in Uganda.<sup>127</sup> Uganda's vision 2040 is to have a transformed economy, and commercialized and mechanized agriculture is among the conduits through which the above is expected to be achieved.<sup>128</sup> It is within this context that legislative and policy reforms in the land sector have been spearheaded, to reorient the land sector to contribute to economic development.<sup>129</sup> This in part explains the push to avail land for agricultural investment to foreign and local investors.

International standards such as the Basic Principles and Guidelines on Development-Based Evictions and Displacement<sup>130</sup> provides a framework on human rights, mainly within the context of evictions that are linked to development. These include pre eviction prerequisites such as consultation, access to information, and at other stages; provision of alternative land, compensations etc. All these are intended to safeguard rights of the evicted. Situations of taking land away from people for purposes of promoting development investment that fall short of the basic human rights requirements at both national and international levels result into land grabbing.

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<sup>127</sup> See , National Association of Professional Environmentalists & friends of the Earth International, *supra* note 8.

<sup>128</sup> See Uganda's vision 2040, *supra* note 15 at 82

<sup>129</sup> See , UNLP- 2013, *supra* note 15 at 12

<sup>130</sup> Passed within the auspices of the United Nations, See, Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living A/HRC/4/18, available at, [http://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf). (herein after " Principles and Guidelines on Development based evictions")

According to the National Association for Professional Environmentalists, the various cases that have taken place in Uganda include: the kalangala palm oil growing case, land grabbing in Mt. Elgon National Park, in Bukaleba Forest Reserve and Mabira Rain Forest among others.<sup>131</sup> Land grabbing through the kalangala palm oil project shows that just like in the other countries, the Uganda cases has a development dimension and in some instances international players have been involved. The Kalangala project was supported by the International Agricultural Development (IFAD) and the World Bank.<sup>132</sup> The involvement of such powerful actors makes it very difficult for the locals to resist, even where they would have.

In addition to the above Okello states that in 1992, the government of Uganda signed an agreement with the Libyan government to allocate three large chunks of land i.e. Bukaleba Beef Ranch (4000ha), Aswa Ranch (46,000ha) and Maruzi Ranch (16,376ha).<sup>133</sup> Meanwhile, Kugelman and Lowenstein state that the Egyptian government planned to establish grain farms on land totaling to 840,000ha;<sup>134</sup> and according to Mabikke, Agri-SA holds about 170,000ha of arable land in Uganda. All these land acquisitions have led to displacements of people who were initially living in those areas.<sup>135</sup> He therefore postulates that even though some of these cases have been driven by a development cause and in some instances environmental preservation where land is needed to grow trees for carbon off sets, they have had tremendous effects on the people including, denied access to land(displacements), forest products, firewood etc.<sup>136</sup>

The pursuit of development through investment is a valid argument, but care ought to be taken to ensure that its consequences do not over burden the people. If they do, the negative outcomes of such agendas pursued without respect for the international human rights safeguards for victims outweigh the benefits.

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<sup>131</sup> Ibid

<sup>132</sup> Ibid

<sup>133</sup> 162 Okello-Okello, Statement to Parliament on the issues of Acholiland(2006). Available online at [www.upcparty.net/memboard/acholistatement.html](http://www.upcparty.net/memboard/acholistatement.html) (accessed 17<sup>th</sup> February 2015).

<sup>134</sup> KUGELMAN, et al, *supra* note 29

<sup>135</sup> Mabikke, *supra* note 73.

<sup>136</sup> Mabikke, *supra* note 73.

## 4.2 The Local dimension

### 4.2.1 Infrastructure development driven evictions& city facelift

The desire to improve order and build a city to international standards has led to some drastic measures resulting in to displacement of people to pave way for construction of modern markets, taxi parks, revamp railway transport, and also facelift the city by removing makeshift structures.<sup>137</sup> The methods employed can be characterized as revolutionary modernity that defies traditional protectionist norms in favor of the poor city dwellers that are seen as least contributors to the development agenda. The need to revamp a railway network and upgrade it to a standard gauge railway that goes as far as Rwanda led to evictions by Kampala Capital City authority(KCCA) of many dwellers close to the railway.<sup>138</sup> Official narratives from government and KCCA generally refer to all evicted and those facing eminent evictions as encroachers.<sup>139</sup> Yet, a number of them believe they are bonafide occupants entitled to protections under the Land Act cap227.<sup>140</sup> A number of lessons can be drawn from the railway eviction case: (i) the demolition of structures and eviction of the railway dwellers affected their livelihoods as well, since a number of them engaged in petty business for survival.<sup>141</sup> (ii)Unlike the other cases discussed from Wakiso, the city dwellers were in position to mobilize them and file a case against KCCA and others. In fact, they acquired an injunction from court to halt the evictions.<sup>142</sup> (iii)Courts of law have the potential to offer protection if prompted. Indeed, as the legal maxim goes- equity aids the vigilant and not the indolent. The construction of the southern by pass is another area that raised more issues around evictions where land is needed in the public interest, and issues to do with compensation.

<sup>137</sup> FarahaniMukisa and HahdiSsenkabirwa, KCCA Razes Taxi Park Kiosks, Traders Cry Foul, The Monitor, January 26, 2015, available at <http://mobile.monitor.co.ug/News/News/KCCA-razes-taxi-park-kiosks-traders-cry-foul/-/2466686/2602496/-/format/xhtml/-/2scw25/-/index.html>; Construction of Kisekka Market delayed by the presence of Hooligans at the Site , April 27,2015<http://ugandadrone.com/construction-of-kisekka-market-delayed-by-the-presence-of-hooligans-at-the-site/>.(accessed February 17, 2015)

<sup>138</sup> <http://www.galaxyfm.co.ug/2014/07/29/kampala-authorities-clear-air-evictions-demolition-along-rail-lines>

<sup>139</sup> Ibid

<sup>140</sup> Ephraim Kasozi&JaliraNamyalo, Court Blocks KCCA from Evicting People on Railway Reserves, The Monitor August 13 2014, available at , <http://www.monitor.co.ug/News/National/Court-blocks-KCCA-from-evicting-people-on-railway-reserves/-/688334/2417820/-/kirshvz/-/index.html>(accessed August 15, 2015)

<sup>141</sup> FlaviaNassaka, Living Off Kampala's Railway Reserves, The independent , September 22, 2014

<sup>142</sup> Ibid

The proposed New Kampala – Entebbe Highway is consistent with the recommendations and objectives of the Master Plan of the Greater Kampala Metropolitan Area by providing an efficient mass transit route between two vital cities in the region. This

*project forms a crucial part of Government's overall strategy for decongesting Kampala through construction of an inner beltway comprising the Kampala Northern and Southern Bypasses as well as an outer beltway along the edges of the Great Kampala Metropolitan Area.*<sup>143</sup>

This case shows that where there is a clash between protection of private rights and the public interest, the balance tilts more in favor of the public interest. There is evidence that the officials believe that individuals should not be adamant about issues to do with compensation where the perceived public interest is at stake. The former premier, Amama Mbabazi expressed government's intolerance for delays on the construction of the road caused by individual's insistence on compensation and other property related rights to land on which the road is constructed.<sup>144</sup>

In addition to above, the nomenclature "evictions" is also widely applied in Kampala in reference to the vendors that were initially operating on Kampala streets. There is evidence that KCCA came up with multi billion market projects; to construct markets to house the evicted vendors in various places such as Wandegaya, Usafi, Busega etc.<sup>145</sup> The issues of evictions in such situations are not a subject of deeper investigation in this paper. They are however pertinent to show the complicated nature of the eviction cases in the city. Evictions have been perpetrated or threatened against persons that claim to be bonafide occupants within the laws of Uganda, and persons whose claims to land is not necessarily legal or anchored in law, but somehow legitimate.

The illegitimate category includes persons that encroached on the railway land and stayed for over 12 years, paying dues to KCCA for their business, and those that set up business in the

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<sup>143</sup> [https://www.unra.go.ug/index.php?option=com\\_content&view=article&id=263:entebbe-express-highway&catid=43:on-going-projects&Itemid=66](https://www.unra.go.ug/index.php?option=com_content&view=article&id=263:entebbe-express-highway&catid=43:on-going-projects&Itemid=66), (accessed July 20, 2015).

<sup>144</sup> See, Mbabazi Orders Evictions Along Entebbe Highway Route, ChimpReports, January 12, 2014 <http://chimpreports.com/15836-mbabazi-orders-evictions-along-entebbe-highway-route/> (accessed July 20, 2015).

<sup>145</sup> See, KCCA, Issue Management, case of Evictions of street vendors, <https://namarajus.wordpress.com/2015/04/23/kcca-issue-management-case-of-evictions-of-street-vendors/>, (accessed July 21, 2015).

city without legal claims to land but whose license fees were over time accepted by KCCA.<sup>146</sup> This category may be referred to as the “faceless” victims<sup>147</sup> of eviction- unknown to the law, but unofficially known to the authorities. The neoliberal exploitative trend seen in the relationship between the authorities and this group is that license fees are collected from them without reference to their illegal existence and operations, yet, when the areas in which they operate are needed for other better purposes, they can be evicted even if the license fees were collected the day before. This is not so much the case for those with genuine claims to land. The owners of land along the Southern by pass can have recourse to the courts of law to pursue their genuine claim. The protracted haggles over the land, reluctance to compensate them and the delays associated with such processes almost puts them in a close category to the “faceless” victims of evictions in the city. The Kasokoso case is evidence of this. The National Housing and Construction Corporation (NHCC) claims to have acquired a reversion of a lease that it acquired from Kireka estates limited in 1966 and 1968.<sup>148</sup> This means that at the end of the lease, NHCC became a freehold owner of the land measuring 292.6 acres and occupied by about 30.000 residents. The residents were expected to vacate the land such that the NHCC would develop a modern housing estate, but they resisted. The residents claim to be bonafide occupants, amidst denial of this fact by the NHCC.<sup>149</sup>

This case brings to the fore a number of issues: (i) the laxity of government to always monitor its land can lead to encroachment by persons who get to believe that they are genuine owners thereby complicating incidences of eviction by government (ii) it is sheer negligence for the government to acquire land that is heavily encumbered without contemplating and preparing for compensation or alternative land.<sup>150</sup>

<sup>146</sup> See, Justus Lyatu, Deadline looms large for Ndeeba Timber dealers, The Observer March 26, 2015

<sup>147</sup> James Nkuubi, in a PILAC proposal review meeting, School of Law Board room ( August 2015)

<sup>148</sup> Ephraim Kasozi and Andrew Bagala, Why guns won't go silent in Kasokoso, The New vision, November 19, 2013.

<sup>149</sup> Ibid

<sup>150</sup> Umaru Kashaka, Kasokoso Land Safa: Officials Grilled over shs 13Billion, The New Vision , June 23, 2014; In other jurisdictions such as South Africa provision of alternative land for persons evicted even where they were unlawful occupiers is a must in such cases of eviction. See, Blue Moonlight Properties 039 (Pty) Ltd v Occupiers of Saratoga Avenue and Another 2009 (1) SA 470 (W).

#### 4.2.2 Environmental conservation and development verses land rights protection

There have been cases where the imperative for environmental conservation and development have been used to evict people with valid rights to land in environmentally sensitive areas.

In accordance with the Constitution and the Land Act, government and local governments can hold land (environmentally vital resources) as public tenure in trust for the people as provided for under Article 237 (2) (b). Such may be natural lakes, rivers, wetlands forest reserves, national parks, land reserved for ecological or touristic purposes.<sup>151</sup> The Intention is the preservation of the “common good” for all citizens. In order to fulfill this, the Land Act section 44 (4) provides that “[t]he government or a local government shall not lease out or otherwise alienate any natural resource referred to in this section”. However, the government or local government is allowed; section 44(5)”... to grant concessions or licenses or permits in respect of a natural resource such as those mentioned above.

There are instances in Uganda where the environmental conservation has been used as an excuse to evict people. The indigenous communities of the Batwa in southwestern Uganda were driven out of the Bwindi impenetrable National Park, to the detriment of their rights as indigenous community whose livelihoods/survival was sourced from the forest.<sup>152</sup> This in the absence of viable alternatives to this community.

Yet, environmental conservation has in some cases not been heeded in the face of investment opportunities for development that require offering environmentally sensitive areas such as forests. The government’s infallibility in the protection of the public trust is put to in test these cases. Among the most publicized was the government’s attempt in 2007 to degazette one fourth of the Mabira forest and give it to an investor company; Sugar Cooperation of Uganda Limited (SCOUL) for cane growing.<sup>153</sup> The government’s refuted logic in this case was that increasing agricultural investment creates more jobs for Ugandans.<sup>154</sup> Clearly, such is a

<sup>151</sup> See, the Land Act, Cap 227, Section 44 (1) and (2)

<sup>152</sup> Rose Nakayi, Historical and contemporary land laws and their impact on indigenous peoples ‘ land rights in Uganda: The case of the Batwa, in Land Rights and the Forest Peoples of Africa: Historical , Legal and Anthropological Perspectives, The Forest Peoples Program, June 2009 , at 1, 3 & 6.

<sup>153</sup> Patrick Hönig, *Civil Society and Land Use Policy in Uganda: The Mabira Forest Case*, Africa Spectrum 2 (2014) GIGA, at 3

<sup>154</sup> Id., at 6

neoliberal embedded argumentation that promotes everything capital even at the expense of the environment. Another example where this comes out quite clearly is the case *Advocates Coalition for Development and Environment vs. Attorney General*.<sup>155</sup> Advocates Coalition for Development and Environment (ACODE) challenged the governments' issuance of Kakira Sugar Works Limited with a 50 year permit to grow sugar cane in Butamira Forest Reserve, without carrying out the requisite Environmental Impact Assessments. Although Justice ApioAweri held that the respondents were in breach, his words to some extent herald the above neoliberal reasoning that puts development as the horse (in front) and environmental conservation as the cart (at the back). He wrote in his judgment:

There is no doubt that environmental law must be seen within the entire political, social, cultural and economic setting of the country and must be geared towards development vision. In other words, it must act as an aid to socio-economic development rather than a hindrance...

Development through investment has also been used in other instances leading to eviction of multitudes of tenants on registered land. *Baleke Kayira Peter and others vs. Attorney General of Uganda*.<sup>156</sup> The plaintiff tenants were evicted from land to avail it to a German investor for coffee growing. The eviction, allegedly by the military and the unconscionable manner in which it was done without following due process of law, compensation of some tenants and or offering alternative land left the tenants at a loss.

The above case shows how power can play out to entrench dominant State narratives in promotion of investment at all costs, even at the expense of her peoples' right to property (land). The fight against the state in such cases where the poor land owners assert their rights becomes a complicated perfunctory battle in which the prize is already awarded to the powerful winner even before the fight day. The case of *Hon. Ocula Michael & others vs. Amuru District Land Board, Major General Oketa Julius, Christine Atimango and Amuru Sugar Works Ltd*<sup>157</sup> offers evidence for the above.<sup>158</sup> The customary claimants to the land in issue lost

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<sup>155</sup> Miscellaneous Cause No.0100 of 2004

<sup>156</sup> Civil suit No179 of 2002

<sup>157</sup> *Hon. Ocula Michael & others Verses Amuru District Land Board, Major General Oketa Julius, Christine Atimango and Amuru Sugar Works Ltd*. Hct-02-Cv-Ma- No. 126 OF 2008Hct-02-Cv-Ma- No. 126 of 2008, herein after referred to as "the OCULA" case.

it to the respondents whose case would indirectly endorse the government's logic of promotion of investment for post conflict development.

The hallmark of the above is that, there is selective application of principles depending on what benefits accrue to the government and supposedly the citizens for which it holds agency. Environmental conservation can be cited to defeat rights of people in environmentally sensitive places- the Batwa example above cited. Yet, development can also be used to defeat environmental conservation.

#### **4.2.3 Mineral prospecting, oil exploration and exploitation related eviction**

Mineral and oil prospecting in recent times in Uganda is another avenue that leads to eviction of people from land.<sup>159</sup> In addition to the Constitution and the Land Act Cap 227, the legal regime that governs the above includes: the Mining Act<sup>160</sup> and the Access to information Act.<sup>190</sup> Among the highlights of the above laws are: Article 244(1) of the Constitution, that says that minerals and petroleum that are found under any land are the property of the government of Uganda to hold on behalf of all Ugandans; Section 3 of the Mining Act with a relatively similar content. Due to the increased mining activities in places such as Karamoja, there have been a number of human rights violations and increased cases of evictions.<sup>161</sup> In the interest of the people, section 82 (1) of the Mining Act creates room for the lawful occupier of land beneath which are minerals to demand for payment (from the holder of the mineral rights) for reasonable compensation "for any disturbance of the rights of the owner or occupier; and for any damage done to the surface of the land by the holder's operation..." such claims for

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<sup>158</sup> Rose Nakayi, The Challenge of Proving Customary Tenure in Courts Of Law in Uganda: A Review of The Case of Hon. Ocula Michael & others Verses Amuru District Land Board, Major General Oketa Julius, Christine Atimango and Amuru Sugar Works Ltd. Hct-02-Cv-Ma- No. 126 OF 2008, 451-478 East African Journal of Peace and Human Rights, Vol. 19, NO. 2 (2013)

<sup>159</sup> Human Rights Watch, How Can We Survive Here? The Impact of Mining on Human Rights In Karamoja, Uganda, February 3, 2014 (here after "HRW Report"); Uganda Land Alliance, Land Grabbing and its Effects on the Communities in the Oil Rich Albertine Region of Uganda: The Case of Hoima, Buliisa and Amuru, Report submitted to Is Academy, September 2011 <http://landgovernance.org/system/files/ULA%20Land%20Grabbing%20Study%202nd%20October%202011.pdf>, accessed August 3rd 2015; Edward Sekika, Oil-rich Hoima struggles to solve the Land Question, The Observer

<sup>160</sup> The Mining Act, 2003 Of 2005

<sup>161</sup> HRW Report, supra note 189

compensation have to be made within a period of one year and have to be at the market value of the land.<sup>162</sup> This is in addition to a demand for royalties under section 98 (2).

In the Albertine Graben, the discovery of oil mean that the government would take over the land beneath which is the oil, and there would be need for more land to construct a refinery, oil waste treatment plants, and other infrastructure such as roads to improve access to the oil wells.<sup>163</sup> Oil discovery meant burgeoning expectations and hope for the residents.<sup>164</sup> The very high demand for land in the region has however led to frustrated expectations and new vagaries of suffering arising from land evictions. These are of varying categories: (i) evictions by the powerful locals in order to avail land for international companies e.g., Tibagwa clearing land for McAlester Energy Resources, an American company from Texas<sup>165</sup>

(ii) evictions to clear land for the oil refinery. It is reported that 7,081 people have been victims of this eviction to set up an oil refinery in Buseruka Hoima<sup>166</sup> (iii) for infrastructure development such as the construction of Kaiso-Tony Road project, in west Nile etc., people numbering 1500 have been affected;<sup>167</sup> evictions by land speculators who collect land to benefit from expected more demand and increasing price for land.<sup>168</sup>

The government has been at the center of many of the evictions, since it needs land for the development projects in the region.<sup>169</sup> This amidst complaints: about the compensation for only a handful of victims, unscrupulous valuation methods; compensation has been reported to be in defiance of national standards as set out in the Constitution of Uganda; requiring fair, prompt

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<sup>162</sup> See, The Mining Act, 2003, section 82 (1) (ii) and (3)

<sup>163</sup> Economic Policy Research Center, Natural Resource Management in the Albertine Graben Region of Uganda: Baseline Survey Report, Research Report No 12, February 2015 at 2. Available at [http://www.eprc.or.ug/pdf\\_files/Natural\\_Resource\\_Management\\_Albertine\\_Gaben\\_Uganda.pdf](http://www.eprc.or.ug/pdf_files/Natural_Resource_Management_Albertine_Gaben_Uganda.pdf), (accessed July 28, 2015)

<sup>164</sup> See, Lawrence Bategeka, et al, Oil Discovery in Uganda: Managing Expectations, at 2, Economic Policy Research Center and Makerere University, available at <http://mak.ac.ug/documents/EPRCUDICPaper.pdf>, (accessed November 29, 2014).

<sup>165</sup> Elizabeth Paulat, Land Eviction Breeds Violence in Oil Rich Hoima, Uganda, Voice of America, available at <http://www.voanews.com/content/land-eviction-breeds-violence-in-oil-rich-hoima-uganda/2460974.html>, accessed July 22, 2015.

<sup>166</sup> See, Wycliff Sebunya, *Over 8000 have been evicted from their land Country wide*, available at <http://radioonefm90.com/over-8000-have-been-evicted-from-their-land-countrywide/#more-4433>, (accessed July 22, 2015)

<sup>167</sup> *Ibid*

<sup>168</sup> *Ibid*

<sup>169</sup> *Ibid*

and adequate compensation.<sup>170</sup> The existence of official discomfort about the set standards and the belief that the requirement of compensation prior to taking curtails development is frustrating.<sup>171</sup> It is therefore proposed that the law should be amended to remove such requirements on compensation.<sup>172</sup> Yet doing this would cleanse the law of its goal of protecting human rights in that regard- to compensation prior to taking. Care should be taken to ensure that oil exploitation and related activities do not cause gross human rights violations. Uganda needs to take lesson from other African countries such as Nigeria where the above has previously happened.<sup>173</sup>

#### **4.2.4 Consequences of eviction and Constrained access on the livelihoods of the evicted people.**

##### **4.2.4.1 User rights**

People suddenly lost their user rights in the park when they were evicted. They were forced to adapt new policies and pursue new livelihood activities (Uganda Wildlife Authority 2008, White, 2002, Vangen, 2009). Unfortunately people were not prepared for the sudden loss of rights to their farms, grazing land and homes and this has affected their livelihoods and their relationship with the park (Norgrove, 2003, White, 2002, Vangen, 2009).

##### **4.2.4.2 Resource access**

According to the group discussion in all the parishes I conducted interviews; it was revealed that most of the people have changed their way of accessing forest resources. When asked why, they said, it was due to the presence of the rangers who keep monitoring them. They have no idea of rangers being part of the law enforcement of the park regulations (Vangen, 2009).

House hold interviews and group discussions also reveal that it is now very difficult for them to access resources from the park, because Uganda Wildlife Authority is strict on them although

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<sup>170</sup> See, Article 26 (2) (b) (i).

<sup>171</sup> 201 Nelson Wesonga, Owners will lose rights over mineral rich land- Museveni, Daily Monitor, October 2, 2014

<sup>172</sup> See, Uganda Oil, Why Museveni won't Compensate Mineral-Rich Land Owners, available at <http://ugandaoil.co/2014/10/why-museveni-wont-compensate-mineral-rich-land-owners/>, accessed July 22, 2015.

<sup>173</sup> 203 See, SERAC CASE, supra note 87.

some of them snick into the park to pick resources in the name of being poor and not able to afford to buy resources from people who could risk going into the park.

Eviction has led to constrained access to the natural resource people used to have free access to while still living in the park.

According to group discussions 'Since Uganda Wildlife Authority brought in the rangers or rather the park soldiers, it is now very difficult for us to go into the park to collect some resources but before that, we used to go there freely at any time but now we go there stealthily with fear of being caught (one of the members in the group discussions in Amnang on 12<sup>th</sup> may 2019).

This statement clearly shows that due to strict restrictions from Uganda Wildlife Authority. There has been constrained access to the forest resources which the people used to enjoy freely and this has affected their livelihood.

This is where the sustainable livelihood approach comes in, the reduced access to the forest resources and inability to achieve and sell resources is an indication that an essential item has been deprived from people which negatively affects livelihood outcomes as it leads to food insecurity and increased vulnerability (Ellis, 2000, Vangen, 2009).

#### **4.2.5 Collaborative Resource Use Agreement**

This can be adaptive for UWA, how many house hold have accessed CBM

This was initiated in 1996 so as to reduce on encroachment, achieve biodiversity conservation and improve on the relationship between the park management and the local people (Uganda Wildlife Authority, 2002, Vangen, 2009). The agreements provide access to certain resources that have been agreed upon between Uganda Wildlife Authority and the local communities. Access is also limited to certain days and hours. The resource use committee control and monitor resources and they deal with law breaking but the agreements can be changed by Uganda Wild Authority if they were not followed.

However, not all these communities have signed these agreements. By the time the research was carried out some committees were just being formed in parishes of Bukwo, Kween, Sironko.

#### **4.2.6 Access to land (natural asset)**

In rural areas, land is a very important asset 'upon which, people's productive systems, commercial activities and livelihoods are constructed' (Cernea, 1997, Ellis, 2000, Vangen, 2009). According to the group discussions and informal discussion in the study area, it's revealed that, people who have been living in the park got used to large and fertile pieces of land where they used to grow any type of crops they liked in large amounts. Since eviction took place, people have been denied this opportunity and it has led to the cramming of people in the outreaches of the park which has also affected people's access to land in several ways hence affecting their livelihood (Vangen, 2009).

Land is the most critical asset for the people in the rural communities and in the 1980s they had more open access to the park compared to now (White, 2002, Vagen, 2009,). Land is the most important asset in the community when we talk about vulnerability and asset ownership (Ellis, 2000, Vangen, 2009). Even if they apply different livelihood strategies like nonfarm activities, still all this are linked to land in one way (Ellis, 2000, Vangen, 2009). For example some of the people used to run their own businesses like restaurants, vegetable selling but still the source of these products were their own land (Vangen, 2009). According to group discussions and household interviews, it was revealed that land is considered as the greatest constrain to improved livelihoods.

The eviction of people from the park has led to reduction in the land for cultivation and grazing and this is keeping people from cultivating what they find necessary for them and even what they used to cultivate in large amounts they are not able as revealed by the group discussions hence affecting their livelihoods.

This land reduction has led to few farmers practicing zero grazing as an alternative, because their land which they used to have in the park for grazing was caught up within the park boundary and they were forced out or evicted by Uganda Wildlife Authority (Gosamalang, et al, 2008, Vangen, 2009). People who always live adjacent to areas of biodiversity value, depend on

natural resources for making their living and grazing and grass harvesting is one of their activities they practice ( Vedeld, 2002, Vangen, 2009).

#### 4.2.7 Copying strategies of the evicted people

The households have diversified their livelihoods as a way of reducing vulnerability and increase income (Chambers, 1997, Ellis, 2000). Entitlement are made up of assets like land and labor and always determined by an individual or house hold use of all entitled rights and opportunities. Livelihoods strategies are always shaped by seasonality and perceived risk, and may be applied willingly or unwillingly (Ellis, 2000).

According to the key informants, some people are now engaged in food production rather than depending on cattle keeping only, they have joined groups like NAADS so as to benefit from the government. Some of the people have resorted into drinking because they don't have land to cultivate and animals which used to take their time were no longer there. Here is what one of the respondents in kapkwata parish said when interviewed,

*' We have decided to be drinking now with the little money we get from working on peoples firms because we no longer have anything to keep us busy, we used to work hard when we were still at the park because we had land to cultivate and animals to look after but now there is nothing to do, we have to drink ' .*

Most of the people in kapkwata parish at the camp have resorted in to drinking as one of their livelihood strategy. People begin drinking right from the morning hours just because they no longer have anything to occupy them like that time when they were in the park, they herd cattle to look after and land to cultivate and this would keep them busy.

Most of the families have experienced change in use of forest resources since the retrace of the park boundary. Although some of them still use the forest resources in the name of hunger in the family (Vangen, 2009) as stated by Ellis (2000) as 'necessity' for households to diversify their livelihood strategies as they use forest resources for consumption and income in times they find it safe, necessary and feasible. Ellis (2000) also, differentiates between people who pursue diversification as a strategy as their own choice and will and those who pursue it or do it because

of the circumstances surrounding them (Ellis, 2000, Vangen, 2009). According to the interviews with local people, it was revealed that, some people went straight to casual labor after being evicted as one means of feeding the family something which they used not to do while at the park. They did this as a way of feeding the family while they were looking for a place to settle.

#### **4.2.8 Where other people ended up after eviction took place**

According to the interviews with the local people, some people spent some time staying with the relatives and in the nearby centers before going to their own homes where they live now, others went to nearby towns like Mbale. Some of them migrated to other places as one alternative for livelihood to find land because they had become landless. I was told of some people who migrated to other areas in search for land for cultivation but it was hard to trace the places they moved to although I wanted to.

According to the results, it was revealed that, Communities or households pursue different livelihood strategies based on their access to different livelihood assets, difference in vulnerability contexts and ability to recover from shocks and stress factors (resilience). More vulnerable people (poor), have taken long to recover from the shocks and therefore find it difficult to access livelihood assets like land elsewhere compared to the rich who have hence leading to difference in livelihood strategies and adaptation in the study areas.

#### **4.2.9 Risk strategies and Buffers**

Forest resources always provided safety for the people who lived within and close to the park. Even before the Park was established the forest provided buffer when it came to time of cattle raiding, local conflicts and natural disasters such as droughts and floods (Vagen, 2009). It also provided grazing zone for the farmers who used to take their animals there and up to now people still keep the forest as buffer in times of sudden shocks although it has reduced due to the restrictions imposed by Uganda Wildlife Authority.

The evictions and restricted access to the forest have made people resort to other means of living. People have diversified their livelihoods as a coping strategy. According to the interviews, it was revealed that people now depend on farming for consumption and sales, some of them have

opened some small restaurants, engage in casual labor, and livestock keeping, market trade as their coping strategies of boosting their income and living too. As one of the respondents responds in an interview, 'since I was evicted, I had to begin the business of cooking food to sell as one way of getting income in this new place. Although it's not enough but we are surviving like that, because we don't have any land to cultivate food' one of the respondents in kapkwata camp. It is noted that, households respond to breakdown of regular source of living by resorting to new strategies of earning a living. I observed this as I saw some of them selling cooked food in open place and sell of local brew.

#### **4.2.10 Comparison of livelihoods before and after the eviction**

According to Uganda Wildlife Authority Officials, District Forest Officers in the study area, their livelihoods have improved because they have schools now, health centers, good infrastructure, good housing, they can grow some other crops which they used not to, they are self-reliant, girls now go to school freely, they have income and they can move freely compared to when they were still in the middle of the park.

However, this contradicted with the information I got from the group discussions where the respondents complained of lack of land to cultivate, lack of access to their medicinal herbs from the forest, lack of access to firewood, exposure to so many diseases including HIV\ AIDs which they were not faced with while they were still at the park.

Here is what one of the respondents narrates in a group discussion, 'We are no longer healthy as we used to when we were still at the park because we don't have enough food to eat, we don't have any access to honey and herbs, fruits which used to boost our immunity, we are suffering instead of improving'.

This means people's livelihoods have been affected since they were evicted from the park. Instead of improving, it is worsening something which affects development in a place.

## CHAPTER FIVE

### CONCLUSIONS AND RECOMMENDATION

#### 5.1 Conclusion

The increasing and dynamic trends in cases of eviction from land in Uganda cannot fully be deciphered in isolation of the geopolitical facts and circumstances in addition to the local. This mainly increase demand for land for agricultural investment in order to provide food for western countries, while at the same time aiding African countries such as Uganda achieve their goal of commercialized agriculture for development. This is in addition to high demands for environmental conservation. From the analysis in this study, evictions set in such environs are vertical, and have a unique power dimension, capable of pursuing the land taking as a development imperative that should not be curtailed by laws. There is a wide margin within which national legal enactments on protection from eviction remains a perception without practical relevance, especially where the public interest is fronted in justification.

On the other hand are cases between tenants by occupancy and their landlords, which are relatively vertical, but may at times involve power play from powerful third parties. Evictions in such cases cannot be understood in a vacuum; they are interconnected with various aspects of an economic social and political nature at both the national and geopolitical levels. In this case, the increasing demand for land, increasing population, capitalist pursuits that shape speculation on land, present an arena within which conflicts overland and evictions become rife. This, in an environment where the provisions of the Land Act Cap. 227 (as amended) do not make it attractive for the landlord to leave the tenant on the land in return for a nominal pay.

Against the above backdrop, Uganda has a relatively robust legal framework (and relatively new policy framework) on land. Despite the fact that the legal framework attempts to streamline the relationship between the tenants by occupancy and the landlords on land, evictions still take place.<sup>174</sup> The protections in the law therefore, to a significant extent remain on paper without necessarily benefiting the people on the ground. This is partly due to the fact that although the law has been in place for some time, the pertinent amendments are as young as 2010, and their

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<sup>174</sup> Land (amendment) Act, 2010

implementation is still in its infancy. The findings of this study however show that there is no guarantee that full implementation of the law in its as-is form would deliver protection to the tenants by occupancy. More so since it tends to protect both landlord and tenant and is some times ambivalent about tenants' protection especially where this would consequently stand in the way to land based investment or development and achievement of greater goals such as those in Uganda's Vision 2040.

The trends in both Wakiso and Kampala indicate breach of law or challenges: sale of land by landlords without giving the tenants a first option to purchase, unfair outcomes from negotiations between tenants by occupancy and new (purchaser) landlords, use of power or connections to power to intimidate tenants by occupancy, insufficient information about land rights, limited access to land justice institutions, for Wakiso due to lack of financial resources and knowledge about them. Protection of tenants would therefore require extra efforts through; say, addressing their legal needs in order to equip them with the tools to benefit from the protection of the law. This paper has highlighted the legal needs of the tenants by occupancy at the various stages ranging from need for information on land rights, need for assisted negotiations with land lords, and access to courts for an appropriate remedy. Within the wider context of limited application of the law, it is likely that a proactive evictee that seeks a remedy may be put in a better position in terms of other remedies that may not necessarily be restitution of land. The challenge however remains that this might not put an end to the floodgates of evictions that might happen if the law remains a scare crow with limited practical application. The ultimate solution lies in merging interests on land by availing the tenants with registrable rights to land, and also making effort to introduce non land based survival and livelihoods for majority poor in Uganda.

## **5.2 Recommendation**

The multiple land administration, management and conservation agencies be merged into two super bodies.

District land boards and area land committees be dissolved and their mandate passed on to the proposed Land Authority.