

Land Laws and their effect on Foreign Direct Investment in Uganda.

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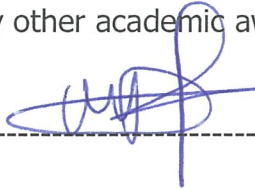
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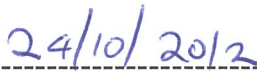


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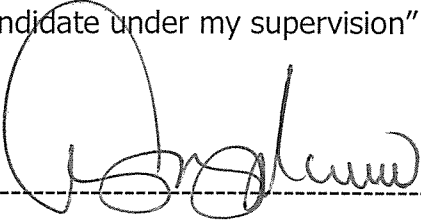
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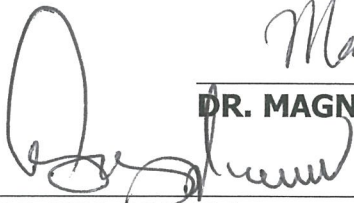
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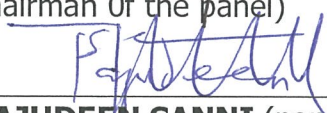
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APPROVAL SHEET

This thesis is entitled " Land laws and the effect on Foreign Direct Investment in Uganda "prepared and submitted by **Nyachieo N. Mary** in partial fulfillment of the requirements of the Degree of Master in Law(General) has been examined and approved by the panel on oral examination with a grade of PASSED


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DEDICATION

This work is dedicated to God and to my husband Evans Maganda, my son Darrel Hans Maganda, my mom Melanie Nyachio, My Dad Charles Nyachio to my brothers and sisters and my friends and colleagues in the School of Law . Thank you for your prayers and support and for always being there for me whenever I needed help.

ACKNOWLEDGEMENT

The researcher acknowledges the Almighty God for the gift of life and the zeal to do my research. The researcher is very grateful and indebted to Dr. Magnus Chima(Chairperson of the panel), Barr.EFG Ajayi, Dr.Kibiko, Mr. Godard Busingye, MS. Banenya Sarah, Mr. Tajudeen Sanni and all the members of staff in the school of Law for their intellectual guidance, moral support and inputs in all aspects of this study.

ABSTRACT

The benefits of Foreign Direct investment for economic development have been well established in the existing literature. Foreign investors need land to conduct their business when they move to invest in a certain locality. Yet little, if any, land in Uganda is vacant, idle and unclaimed. As a result, many companies experience difficulties securing land for their operations. The researcher therefore set out to examine the laws governing land, particularly in respect of access to land and land ownership by foreign investors in Uganda by answering the following research questions; (i) What are the laws governing land access in Uganda. (ii) What are the laws governing land ownership in Uganda. (iii) Is there a link between land access and land ownership and foreign direct investment in Uganda? This was done by reviewing the legal framework for land access, ownership and the institutions put in place for land administration and how they impacted FDI in Uganda. In particular, assessment was made of the policy and operational framework in terms of how to obtain access to land, which ownership rights accrue to foreign investors and what kind of protection is guaranteed to the rights acquired. Using interview Guide and Archival Analysis, has been established that there is no policy framework to lay down the framework for the implementation of the laws and that foreign ownership of land though prohibited does not influence FDI inflow. On the other hand, easy access to land can positively impact the inflow of FDI into the country, but this is not the only factor to be considered.

Table of Contents

DECLARATION A.....	i
DECLARATIONB.....	iii
APPROVALSHEET.....	iv
DEDICATION.....	v
ACKNOWLEDGEMENT.....	vi
ABSTRACT.....	vii
TABLE OF CONTENT.....	viii
LAW APPLICABLE.....	xiii
LIST OF CASES.....	xv
CHAPTER ONE.....	1
THE PROBLEM AND ITS SCOPE	1
BACKGROUND	1
Statement of the Problem	17
Purpose of the study.....	19
Research objectives	19
Research questions.....	19
Scope of the study.....	20
Significance of the Study.....	20

CHAPTER TWO: LITERATURE REVIEW.....	25
Land access	25
The concept of Land access	25
Importance of Land access.....	25
Modes of access to land	26
Inheritance and inter-vivo transfers	26
Access to land via communities' membership	28
Access to land via land sales and land rental markets	28
The Link between land access and FDI	30
Land Ownership	31
The Concept of Land Ownership	31
Importance of Land ownership	31
Systems of Land Ownership.	32
State Ownership of Land	32
Land Grants	33
Collective and Communal Ownership	33
Private Ownership of Land	34
Farm Tenancy	36
The Link between land ownership and FDI.....	38
Origins of land access and ownership.....	39
Related Studies	43
FDI Determinants Identified in Existing Literature.....	47

Research Design.....	53
Research Population	53
Sample Size.....	53
Sampling Procedure	54
Research Instruments	54
Validity and Reliability of the Instruments	54
Data Gathering Procedures.....	55
Ethical Considerations	55
Limitations of the Study	55
CHAPTER FOUR.....	56
The Legal and Policy Framework for Land and Foreign Direct Investment in Uganda.	56
International Legal Framework	56
The National Legal and Policy Framework for Land and Foreign Investment in Uganda.....	59
The 1995 Constitution of the Republic of Uganda.	59
The Land Act Cap 227.....	60
The Registration of Titles Act cap 230	64
The Investment Code Act Cap 92	65
The Mortgage Act 2009.....	67
The Land Acquisition Act Cap 226.....	68
The Policy Framework.....	70

The Land Sector Strategic Plan 2001-2011	70
The Draft Land Policy 2011	71
Roles and Responsibilities of Key Players.....	75
Ministry of Lands, Housing and Urban Development.....	76
Directorate of Land Management (DLM).....	76
Uganda Land Commission (ULC).....	77
District Land Boards (DLB)	77
District Land Offices (DLO).....	78
Area Land Committees (ALC).....	79
District Land Tribunal (DLT)	79
Office of the Recorder.....	80
Office of the Mediator	81
The Uganda Investment Authority	81
CHAPTER FIVE	83
ANALYSIS OF THE STUDY	83
DEMORAPHIC CHARACTERISTICS OF THE RESPONDENTS.....	83
Respondents' Perception of laws and regulations that governing access and ownership of land	83
Respondents' Perception on Land Access Procedures	83
Respondents' Perception on the land information and registration	86
Respondents' Perception on the Nature and content of land rights acquired by investors.....	87

The Link between Access to Land and Ownership of Land and Foreign Direct Investments	89
CHAPTER SIX	91
SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS.....	91
Summary of Findings	91
FINDINGS	94
Proposed Areas of Further Research	96
Conclusions	96
Recommendations.....	97
References	97
INTERVIEW GUIDE.....	101
Researcher's C.V.....	107

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Applicable Law

1. The Companies Act Cap, 130
2. The 1995 Constitution of the Republic of Uganda
3. The Expropriated properties (Repossession and Disposal) Regulation Statutory Instrument No.6 of 1993
4. The Expropriated Properties Act, (Act No. 9 of 1982
5. The Investment Code Act, Cap 92
6. The Land Acquisition Act ,Cap 226
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8. The Land (Amendment Act) of 2010
9. The Law of Property Act, 1925
10. The Mortgage Act, 2009
11. The National Forestry and Tree Planting Act, of 2003.
12. The Registration of Titles Act, cap 230
13. The Wild Life Act Cap, 200,

Repealed Laws

14. The Ankole Landlord and Tenant Law, 1937
15. *The Busuulu and Envujjo* Law, 1928.
16. The Constitution of Uganda, 1961
17. The Constitution of Uganda, 1967
18. *The Land Reform Decree* ,1975
19. The Public Land Act, 1962.
20. The Public Land Act, Cap 21.
21. The Uganda Order in Council, 1902.

22. The Uganda Order in Council, 1991.

23. The Tooro Landlord and Tenant Law, 1937.

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24. The Ankole Agreement ,1901.

25. The Buganda Agreement, 1900.

26. The East African Royal Commission (EARC) Report ,1955.

27. The Organization for Economic Cooperation and Development
(OECD) Code of Liberalization of Capital Movements.

28. The Rio Declaration at the Earth Summit in ,1992.

29. The Toro Agreement ,1900

30. The Treaty of Amsterdam ,1997.

31. The Treaty of European Union ,1992.

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1. Ernest Kinyanjui Kimani vs. Muira Gikanga (1965)EA 735 at 789,
2. Gokaldas Laximidas Tanna -Vs- Rosemary Muyinsa & Departed Asians Property Custodian Board Supreme Court Civil Appeal No 12 of 1992).
3. Kampala Bottlers Ltd vs Damanico Ltd. Supreme Court Civil Appeal No. 22 of 1992
4. Kampala District Land Board and Another vs National Housing and Construction Corporation Supreme Court Civil Appeal No. 2 of 2004.
5. Kampala Land Board & Another vs. Venansio Babweyaka & Others . Supreme Court Civil Appeal No. 2 of 2007).
6. Mitwalo Magyengo and Medadi Mutwabo (Supreme Court Civil Appeal No.11 of 1996),
7. Registered Trustees of Kampala Institute -Vs- DAPCB Supreme Court Civil Appeal No 421 of 1993).

CHAPTER ONE

THE PROBLEM AND ITS SCOPE

BACKGROUND

Land is a fundamental resource for human existence. Without land, without territory, there can be no state.¹ Housing, agriculture, natural resource use, and national security concerns are all based upon land management and use.²

In Uganda, land continues to be a critical factor, as it is the most essential pillar of human existence and national development. The land question³ in Uganda is one of the most outstanding unresolved national issues that threaten the peace and stability of the country.⁴ It is apparent that past attempts at land and legislative reforms both during the colonial period as well as in post colonial Uganda have failed to resolve the question once and for all.⁵

According to the International Monetary Fund, FDI is a category of cross-border investment that involves residents of one economy obtaining a lasting interest in an enterprise located in another economy. A lasting interest is commonly understood to involve at least

¹ R. Jennings and A. Watts, eds., *Oppenheim's International Law* (London, 1992) (hereafter, "Oppenheim"), at 121.

² Stephen Hodgson, Cormac Cullinan and Karen Campbell., LAND OWNERSHIP AND FOREIGNERS: A COMPARATIVE ANALYSIS OF REGULATORY APPROACHES TO THE ACQUISITION AND USE OF LAND BY FOREIGNERS, *International FAO Legal Papers Online December 1999*

³ Relating to the law and politics on land ownership, control and use.

⁴ Patrick McAuslan, *Bringing the law back in: essays in land law and development*, 2003 at page 280 agrees that "The history of Uganda's independence has been a troubled one and at the heart of the troubles has been the land question".

⁵ See 1900 Agreement; Obote's 1967 Constitution and the 1969 Public Lands Act; Idi Amin's 1975 Land Reform Decree and the 1998 Land Act sponsored by both the World Bank and the British DFID.

10% of ordinary shareholding or voting power. In effect, FDI need not entail much transfer of funds and can involve a firm bringing its brand, technology, management, and marketing strengths to bear on its local interest.

The benefits of FDI for economic development have been well established. A global network of 80,000 multinational corporations and 800,000 foreign affiliates has helped create millions of jobs, transferred technology, upgraded skills, fostered competition, and contributed to the fiscal standing of many economies. Through capital spillovers, FDI has encouraged the adoption of new production technologies. Foreign companies have also stimulated knowledge transfers by training local workers, developing their skills, and introducing new management practices and better organizational arrangements. Foreign investment has also helped break up cozy local oligopolies and cartels.

Opponents of FDI point out that its impacts are often limited and in some cases detrimental— the consequences of crowding out local competition, enclave production with limited forward and backward linkages, and “race to the bottom” effects often related to labor and environmental issues. While the main social argument for FDI is that it generates employment, job creation may be limited and work opportunities may even decrease if local firms are driven out of the market by increased competition, or if acquired companies are restructured. Critics also cite cases of severe pollution and environmental destruction caused by companies in the extractive and energy sectors. While the potential drawbacks of individual investment projects should not be underestimated, most research and empirical evidence finds that, on balance, FDI helps foster development in recipient economies. The benefits of FDI are particularly amplified in

economies with good governance, well-functioning institutions, and transparent, predictable legal environments.

There are a number of reasons identified for firms investing across national boundaries. It is difficult in reality in many countries to isolate the different motives, as one motive may overlap into another. The major motives often identified that have particular relevance to Africa are⁶:

- Natural-resource-seeking investment, which aims to exploit the natural resource endowments of countries. Companies extracting oil (in Nigeria and now in Uganda), gold (in Ghana) and diamond (in Botswana) belong to this category.
- Market-seeking investment, which aims to access new markets that are attractive as a result of their size and/or growth.
- Efficiency-seeking investments, which aim to take advantage of special features in a certain area such as the costs of labour, the skills of the labour force, and the quality and efficiency of infrastructure.

For investors, key land issues of concern are likely to include: i) ease of access to land for investment; ii) nature of the land rights that can be acquired; and iii) safeguards against arbitrary deprivation of the land rights acquired. Access to land has been identified as one of the considerations taken into account by foreign investors. The ability to access land or buildings with secure ownership rights, at transparent prices, and with limited restrictions can be critical to a foreign investor's decision on whether or not to invest in a new market.

⁶Basu, A. and Krishna Srinivisan. 2002. "Foreign direct investment in Africa: Some case studies". IMF Working Paper WP/02/61. International Monetary Fund, Washington, D.C.

The nature, scope, content and duration of the land rights that investors, particularly foreign investors, can acquire varies across countries. In some countries, land ownership is vested with the state, and land users (whether local people or incoming investors) can only acquire long-term land-use rights. Some countries treat domestic and foreign investors differently. Legislation allows nationals to acquire land ownership, but restricts foreign investors' acquisition of land, ownership or even long-term use rights. Where foreign ownership is restricted, key issues from the investor's perspective are likely to include the duration of the lease and the possibility of its renewal; the possibility of transferring the lease or of subleasing the land to third parties (and the conditions attached to this, such as government approvals); and the possibility of using the land leased as security for credit (namely to finance the investment project).⁷

Once investors have acquired land rights, the protection of these rights from arbitrary interference is a fundamental tool to manage risk and shelter business interests. Ways to protect the land rights acquired by investors may be provided by national and international arrangements, including the booming number of international investment treaties and national legislation investment codes and sectoral laws. Experience suggests that even the most effective protection regimes achieve little against determined political will to revise the terms of the investment or even expropriate it altogether.

It is therefore imperative to note that efficient laws governing land transactions, a functioning land market and secure ownership rights play an important role in economic development and growth. The

⁷ **FAO.** 2008. *Compulsory acquisition of land and compensation*, Rome. (Available at: <http://www.fao.org/docrep/>)

exchange of land, including the purchase of land by foreigners, will improve productivity, enhance access to capital, technology and knowledge, and, hence, stimulate economic development.

Historical Background of Land Law in Uganda

In pre-colonial times, communities in today's Uganda, Tanzania and Kenya each had their own legal system based on their customs and practices. These customs were enforced by elders, clan leaders (and in some areas kings) who performed both civic and spiritual duties. The community determined the powers exercised by the clan elders. These powers included keeping peace, settling disputes (involving marriage, divorce, the marital status of women, the rights of children, inheritance, election of customary heirs and land), performance of rituals, protection of gods and shrines and guarding against drought, famine and other disasters.⁸

Land tenure systems were communal: communities shared land under the authority and advice of community elders, clan heads and/or kings. Bundles of rights (including access and grazing rights) in the same land could be held by different persons, and group rights in particular areas of land or common property rights also existed. These different rights in land could be transferred from one generation to the next. Decisions about who farmed a particular piece of land were made by clan heads but often resulted from discussions in the family and clan, guided by customs that took into account the needs of various

⁸ In the kingdoms the land was vested in the kings who held the land in trust for their people who in turn enjoyed occupancy rights.

persons in the group. Gender, age and position in the clan and the family were all factors that played a role in these discussions.⁹

The advent of colonialism left a historical legacy structured around land relations and management. Initially, colonialists introduced individualized ownership of property rights in land previously held either communally or on the basis of sovereign trustees, in the process, an intricate system of political relationships was legitimized.¹⁰ The newly introduced system of property ownership was superimposed to either supersede existing indigenous land rights systems or formally confirm pre-existing customary arrangements as the case for kingdom areas. In other parts of the country outside the kingdom areas, customary tenure was left to continue existing with moderation but without chance to evolve properly. This duality of property rights systems resulted in land tenures, whose maintenance has turned cumbersome and confusing in the current social, economic and political circumstances.¹¹

Perhaps the most critical and challenging elements of Uganda's land question, courtesy of a colonial legacy, are to do with disentangling the multiple and conflicting tenure rights and interests, often overlapping in the same piece of land. At the time of creation of mailo and native freeholds, pre-existing private interests of smallholders, mainly land use rights were not legally recognized. Despite attempts to rectify this, with the enactment of the *Busuulu* and *Envujjo* Law of 1928 for Buganda and similar laws in Ankole and Tooro in 1938, the multi-layered structure of rights persisted and has become a defining

⁹ Smokin C. Wanjala, (ed) *Essays on Land Law*, Nairobi, 2000, p. 4.

¹⁰ East African Royal Commission (EARC) Report 1955.

¹¹ *The Uganda National Land Policy, 2011*

characteristic of the complexity of land relations in Uganda today. It has been largely blamed for the escalating land conflicts and evictions in the central region where resolving dual interests of ownership between the registered owner and the lawful or *bonafide* occupants is nearly impossible, in addition to mediating and sustaining relations for harmonious co-existence, that is untenable.¹²

Under the 1962 Constitution, administration of Uganda was not unitary. Rather, article 2 provided for Uganda to consist of; Federal states (kingdoms of Buganda, Ankole, Bunyoro, Toro and the territory of Busoga), the territory of Mbale, and the Districts (Acholi, Bugisu, Bukedi, karamoja, Kigezi, Lango, Madi, Sebei, Teso and West Nile).

As regards Land, former Crown land in Uganda became public land. Article 118 (1) created for Uganda a Land Commission and each Federal State and each District a Land Board. The functions of the Land Commission and Land Boards included inter alia ; the Land Commission was mandated to hold and manage any land vested in it by any law or acquired by the Government of Uganda and shall have such other powers and duties as may be prescribed by Parliament and The Land Board of a Federal State or of a District were mandated to hold and manage, for the benefit of the people of the State or District, any land vested in it by any law or acquired by the Government of the State or the Administration of the District, as the case may be, and shall have such other powers and duties as may be prescribed by

¹² The question of who constitutes a bonafide occupant on land was extensively addressed in the case of Kampala District Land Board and Another vs National Housing and Construction Corporation Civil Appeal No. 2 of 2004 (UGSC). In that case the respondent had utilised the suit land unchallenged since 1970. The Court of Appeal held that it was indeed a bonafide occupant having utilised the suit land unchallenged for 25 years. The Supreme Court upheld the position of the Court of Appeal.

Parliament or, in the case of the Land Board of the Kingdom of Buganda, by any law in force in that Kingdom¹³

Pursuant to their powers, the respective Land Boards made grants in freehold and leasehold under the provision of the Public Lands Act. A lot of land was developed under these grants, most of it by citizens. under the *Public Land Act 1962*, indigenous Ugandans had a right to occupy any unalienated public land without prior consent, the Act provided that the relevant government body 'shall not be prevented from making a grant in freehold or leasehold of public land ... merely by reason of the fact that such land or any part thereof is occupied by persons holding under customary tenure.' As under the colonial legislation, customary tenants had a right to remain on the land until arrangements were made and carried out for them to be settled on another area equally suitable for their occupation and or compensated for the improvements.¹⁴

However, subsequently, the legal status of customary landowners received a boost following the enactment of the *Public Land Act* [Cap 21]. Under this Act, the government was prohibited to grant in freehold or leasehold any public land that was lawfully occupied under customary tenure without the consent of the customary occupants.¹⁵ Applicants for land occupied by customary tenants had to furnish the government with evidence that the occupants consented to the application and the compensation payable to them. Failure to provide such evidence, or to pay the customary occupants compensation approved by the Minister, was a ground for revocation of the grants.

¹³ Article 118 (7)-(10) 1962 constitution of Uganda

¹⁴ Section 22(1), *Public Lands Act 1962* (repealed).

¹⁵ Ibid section 24(2).

Perhaps, ironically, considering the political rhetoric at the time, the same Act gave customary occupants of land a right to apply for a lease over the land they occupied.¹⁶ All leases of public land were granted subject to standard development conditions, breach of which could result in forfeiture of the land.¹⁷ It has been suggested that the object of the provision was to facilitate “progressive farmers” who wished to use their land more productively or use it as security for a loan, convert their customary title to leasehold. The inference being that they could not do so under customary tenure.¹⁸ If this was the objective, it demonstrates that the independent government, like the colonial administration, felt that economic development was not achievable under customary land tenure. The only difference between the two governments was that the independent government did not take any active steps to promote the conversion of customary tenure to leaseholds. It was much left to individual landowners to decide whether or not to convert their titles.

In 1975, Idi Amin, out of the blue enacted the *Land Reform Decree 1975*, which essentially sought to overhaul the country’s land tenure system. Under the Decree all land in Uganda was declared to be public land. Land owned in freehold was converted to leases held from the government subject to development conditions. With respect to customary land tenure, the Decree removed the protection customary landowners had previously enjoyed under the *Public Lands Act 1969*. The Decree empowered the government to lease any land occupied by

¹⁶ Section 25, *Public Lands Act 1969*.

¹⁷ Sections 22 and 23, *Public Lands Act 1969*.

¹⁸ Judy Adoko and Simon Levine, ‘A Land Market for Poverty Eradication? A Case Study of the Impact of Uganda’s Land Acts on Policy Hopes for Development and Poverty Eradication’ http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/lemu_land_market_for_poverty_eradication.rtf (Accessed June 2012)

customary tenants to any person (including the occupants) without the consent of the occupants. The government's only legal obligation was to pay compensation for the improvements. The Decree also abolished the right hitherto enjoyed by indigenous Ugandans to occupy in accordance with their customary law any unalienated public land (outside urban areas) without prior permission.¹⁹ The Decree made occupation of any public land without consent a criminal offence. If anyone was in doubt as to the status of customary tenure, section 3(2) of the Decree expressly declared that: 'For the avoidance of doubt, a customary occupation of public land shall be only at sufferance²⁰ and a lease of any such land may be granted to any person, including the holder of such a tenure, in accordance with this Decree.' Customary landowners retained a right to sell or donate their land, provided the transfer did not vest title in the transferee except over improvements over the land. Any agreement purporting to transfer customary tenure as if it were an actual title was void and constituted a criminal offence punishable by up to two years imprisonment.²¹

The object of the Decree was to make security of land tenure dependent upon land use, which, supposedly, would promote agricultural development. This, however, put customary landowners in a difficult dilemma. On one hand, if they wanted security of tenure over their land they had to apply to the government to convert their tenancy to leasehold with a risk of forfeiting the land if they failed to

¹⁹ Section 3(1) of the Decree (this is the effect of repealing s24 (2) of the *Public Lands Act 1969*).

²⁰ The term "tenant at sufferance" refers to a person who initially entered in possession with the consent of the landowner, and remains in possession, after the period for which the consent was given expires, without the consent or dissent of the landowner (*Butterworths Australian Property Law Dictionary* (1997)).

²¹Section 4, *Land Reform Decree*.

comply with the statutory development conditions. On the other hand, if they did not apply for a lease they risked the government alienating the land to others who could demonstrate to the government the capacity to develop it. Reportedly, some customary landowners took advantage of the legislation to convert their titles to statutory leases. However, they were not "progressive farmers" but relatively wealthy business people whose motive was for 'prestige, land hoarding or for collateral for loans for their other business.'²²

The Decree failed to stimulate agricultural development. Part of the reason for this was the difficulty of identifying on a national or even regional level appropriate development conditions to suit all manner of land and circumstances. For example, it was impossible to specify the percentage of land that had to be cultivated in a particular period or crops to be planted because there were many variables such as the ecology of the land, weather patterns, and value of the land. Moreover, the cost of enforcing the conditions was likely to be disproportionate to the benefit.²³ The other main criticism of the Decree was that it rendered the status of customary tenants vulnerable.²⁴ Indeed, the Decree caused panic throughout the country, with landowners fearing losing their land to the rich and well connected people. In the event, the Decree remained largely unimplemented partly because it was politically unpalatable, even for dictator Idi Amin's regime, and partly because for ten years the country was in political turmoil.

²² Judy Adoko and Simon Levine, above n 13.

²³ *Report on Land Tenure and Agricultural Development in Uganda* (Makerere University Institute of Social Research and Land Tenure Centre, University of Wisconsin-Madison, 1989).

²⁴ Judy Adoko and Simon Levine, above n 13

As we have seen, the drastic land law reform measures introduced by the military regime in the mid-70s were never implemented. Effectively, customary land tenure was left to develop on its own. This was not necessarily by design; rather it had to do with the political turmoil that engulfed the country in the 1970s to mid-80s. Once political stability was established, the government, with the encouragement of the World Bank, made land tenure reforms its priority agenda. There were two areas of major concern for the government. First, the government needed to develop a land policy that would promote agricultural and economic development as well as poverty eradication in the country. Second, there was the issue of land rights. The government was aware that the latter was of primary concern for most ordinary Ugandans. With the assistance of the World Bank and several donor countries, the government commissioned various national and international consultants to assist with formulating the most appropriate land tenure policy.²⁵

In the end, it was agreed to change the system of land holding in Uganda. The new Uganda *Constitution* of 1995 vested land in Uganda in the citizens of Uganda owned in freehold, *mailo* (quasi-freehold), leasehold and customary tenure.²⁶ With the exception of Buganda (central region) and urban areas, most land in Uganda is held under customary tenure.²⁷ As may be recalled, hitherto customary

²⁵ John Mugambwa, A COMPARATIVE ANALYSIS OF LAND TENURE LAW REFORM IN UGANDA AND PAPUA NEW GUINEA. *Journal of South Pacific Law* (2007) 11(1).

²⁶ Article 237(1) & (3).

²⁷ In the case of **Kampala District Land Board & Another vs. Venansio Babweyaka & Others Appeal No. 2 of 2007 (UGSC)** the Learned Chief Justice held that occupation under customary tenure must be proved by the party intending to rely on it. He cited with approval the decision of Duffus JA in the case of **Ernest Kinyanjui Kimani vs. Muira Gikanga (1965)EA 735 at 789**, who held as follows:

landowners were legally 'tenants at will' on government land. Under the *Land Act 1998*) customary tenure, like freehold tenure, entails ownership of land in perpetuity.²⁸ Article 237(4) of the *Constitution* empowers all Ugandan citizens owning land under customary tenure to acquire certificates of customary ownership in respect of their land in a manner prescribed by legislation. The *Land Act 1998*, reiterates the constitutional right of individuals, families or communities owning land under customary tenure to apply for a certificate of customary ownership in respect of their land.²⁹ The certificate of customary ownership is deemed by the Act to be conclusive evidence of the customary rights and interests endorsed thereon.³⁰ Subject to any restrictions endorsed on the certificate, generally, a certificate holder – individual or group – has a right to deal with the land just like any other landowner. Thus, he or she may mortgage, lease or sell the land, except where such right is precluded or restricted by the certificate.³¹

Interestingly, the legal recognition of customary land tenure did not necessarily translate into a pro-customary land tenure policy. Indeed, the position is quite the contrary. The *Constitution* gives customary landowners a right to convert their title to freehold in accordance with any law enacted by Parliament. That law is the *Land Act 1998*. Section 10(1) of the Act provides that any person, family, community, communal land association, holding land under customary land tenure may convert their tenure to freehold by following the prescribed

"As a matter of necessity, the customary law must be accurately and definitely established. ...The onus to do so is on the party who puts forward the customary law. ...This would in practice usually mean that the party propounding the customary law would have to call evidence to prove the customary law as he would prove the relevant facts of his case."

²⁸ Section 4(1)(h) and 4(2).

²⁹ Section 5(1).

³⁰ Section 8(3).

³¹ Section 9(2) (c), (d) and (f).

procedure. The normal practice is for customary owners to apply for a certificate of customary ownership and later, if they wish, apply to the relevant authority to convert their customary title to freehold. However, it would seem from the Act that possession of a customary certificate of ownership is not a prerequisite for conversion to freehold; applicants may fast-track the process by directly applying to the authority to convert their customary tenure to freehold.³² Although the provision for conversion is mainly aimed at individuals, landowning groups or communities could also apply to convert their customary title to freehold.³³

Land and Foreign investment in Uganda

In 1972, the Amin regime enacted various obnoxious decrees as a result of which about 80,000 residents of Uganda of Asian origin were brutally expelled from Uganda. Their properties were taken over by government and then allocated to Africans through a government agency called the Departed Asians' Property Custodian Board. In 1982, the Uganda Government enacted the Expropriated Properties Act, (Act No. 9 of 1982) under which the expelled Asians were authorized to return to Uganda and reclaim their former properties. Ever since 1982, many repossessionings of valuable properties have taken place under Act No. 9 of 1982. The resolution of the Asian property issue may seem like one isolated incident but it certainly has great value as a precedent in connection with the possibility of restitution and compensation of property losses incurred in the course or wake of gross violations of human rights.

³² This is implied in s 12(4) and 13(2) of the *Land Act 1998*.

³³ Section 23, *Land Act 1998*.

In the cases of **Gokaldas Laximidas Tanna -Vs- Rosemary Muyinsa & DAPCB (SCCA 12/1992)** and **Registered Trustees of Kampala Institute -Vs- DAPCB (SCCA 421/1993)**, it was held inter alia that the Expropriated Properties Act was a _ remedial statute.

However under the constitution 1995, the Government of Uganda has a duty to attract private investment both domestic and foreign, into productive sectors of the economy. This duty includes creating an enabling investment climate, as well as facilitating investors to access land. One of the major concerns in the land sector at present is the allocation of government land, public land, and natural resources held by the State in trust for the citizens, for private investment.³⁴

According to the Constitution and the Land Act, Foreign companies or individuals may not own land, but they may hold it under long-term lease of a term not exceeding 99 years.³⁵ Foreigners must seek Cabinet approval through the Uganda Investment Authority to lease land over 50 acres to be used for agricultural or animal production purposes.³⁶ Uganda has not initiated any changes to allow foreign investors to purchase freehold property.

Businesses generally deem acquisition of land with a clean title as one of their biggest challenges in Uganda. According to the International Finance Corporation's 2010 Doing Business Survey, Uganda's property registration process ranked near the bottom, at 150 out of 183

³⁴ The Draft Uganda National Land Policy 2011.

³⁵ Article 237(2)(c) of the 1995 Constitution Of the Republic of Uganda and Section 40 of the Land Act Cap 227.

countries surveyed. It is estimated that there are more than 8,000 fake land titles in Uganda.

The issue of land and title in Uganda is complicated by the existence of four different land tenure systems: customary, mailo land, freehold, and leasehold. Customary land refers to rural land governed by the unwritten, customary laws of a specific area. Customary land is difficult to use because no titles or surveys of such land exist and contracts are difficult to enforce in courts of law. Further, banks do not accept customary land as collateral. Mailo land is land that was granted to individuals and churches mostly in central Uganda during the colonial period. Mailo land cannot be owned by foreigners and the use of such land is subject to the agreement of bonafide or lawful occupants, who may not own the land but have the right to reside there. Mailo land is also problematic for foreign investors seeking secure, court-enforceable use of land. The Land Amendment Act 2010 complicated this further by giving occupants and squatters increased rights on mailo land at the expense of owner rights. Freehold land is the system in which registered land is owned permanently. It is only available to Ugandan citizens, though it can be leased to foreigners. It can be also used as collateral for bank loans. Leasehold land is land leased by freeholders and is most commonly used by foreign investors. Foreigners may obtain contracts for leases of between 49 and 99 years on leasehold. It can be used as collateral on loans, depending on the length of the lease. In addition, According to the Constitution, all land in Uganda shall vest in the citizens of Uganda making Uganda the first State in Sub-Saharan Africa to vest its 'radical title' in its Citizens. The issue then is how easy it is for investors to access land in the hands of private individuals for investment, what is the nature, content and

cent of the sample firms in Ethiopia and 25 per cent in Kenya reported access to land as their main obstacle³⁸.

Although there has been a survey on land access and FDI, the survey was mainly concerned with the role of Investment Promotion Agencies in securing access to land and a lot of time has passed and therefore there has been change in circumstances. In addition, the survey was not country specific, thus there is a temporal and geographical gap.

The nature, scope, content and duration of the land rights that investors, particularly foreign investors, can acquire varies across countries. In some countries, land ownership is vested with the state, and land users can only acquire long-term land-use rights. Some countries treat domestic and foreign investors differently. Legislation allows nationals to acquire land ownership, but restricts foreign investors' acquisition of land, ownership or even long-term use rights. Where foreign ownership is restricted, key issues from the investor's perspective are likely to include the duration of the lease and the possibility of its renewal; the possibility of transferring the lease or of subleasing the land to third parties (and the conditions attached to this, such as government approvals); and the possibility of using the land leased as security for credit. Once investors have acquired land rights, the protection of these rights from arbitrary interference becomes a fundamental concern for investors.

As such, the research examined the legal and institutional framework put in place to govern land ownership and access in Uganda and how they impact foreign direct investment inflow in the country and if there

³⁸ **World Bank, 2005.**

are any loopholes in the law and the land administration institutions which ought to be bridged in order to facilitate FDI inflow.

1.3 Purpose of the study

The purpose of this study was to establish gaps that exist in the existing literature and to test the theory of relationship between land laws and foreign direct investment in Uganda.

1.4 Research objectives

The aim of the study was to investigate the relationship between land laws and their effect on foreign direct investment in Uganda. The following specific objectives were addressed.

- 1) The study sought to establish the laws governing land access in Uganda.
- 2) To establish the laws governing land ownership in Uganda.
- 3) To establish the effect of land access and land ownership on foreign direct investment in Uganda.

1.5 Research questions

The study was based on the following research questions.

- (i) What are the laws governing land access in Uganda.
- (ii) What are the laws governing land ownership in Uganda.
- (iii) Is there a link between land access and land ownership and foreign direct investment in Uganda?

1.6 Scope of the study

The research sought to review the legal framework for land access, ownership and the institutions put in place for land administration and how they impacted FDI in Uganda. In particular, assessment was made of the policy and operational framework in terms of how to obtain access to land, which ownership rights accrue to foreign investors and what kind of protection is guaranteed to the rights acquired. The study specifically analyzed the Constitution of the Republic of Uganda 1995, The Land Act Cap 227 as amended, The Registration of Titles Act Cap 230, The Investment Code Act, Land Acquisition Act, the Mortgage Act, the draft National Land Policy 2011 and some other laws which the researcher deemed incidental to ownership and access of land. The study also looked at administration institutions like Uganda Investment Authority, the ministry of Trade and Investment and the Land Ministry. The study mainly concentrated on two specific sectors; agribusiness and manufacturing industries.

The study adopted Dunning's eclectic theory³⁹ with emphasizes on the locational advantages in terms of economic conditions or fundamentals of the host countries relative to other countries as determinants of cross-country pattern of FDI with focus on government policies in addition to economic conditions as a determinant of FDI.

1.7 Significance of the Study

The expected benefit of the study included;

³⁹ Dunning, J. (1980): Towards on Eclectic Theory of International Production: Some empirical Tests, *Journal of International Business Studies*, 9-31

- Since it has been established that secure rights of access to land are a prerequisite for productive investment, the Research will help the government to come up with policy reforms which makes access to land easier. Easier access depends on effective, accessible land administration systems. Also required are proper regulation, transparency and an end to bureaucratic discretion and corruption⁴⁰.
- The study will help us understand the conceptions of ownership which is of fundamental importance in understanding the nature and direction of development in Uganda.
- Property rights over land are important for a whole host of reasons, especially in rural areas where agriculture and natural resource-dependent livelihoods are the mainstays of the economy. In addition to providing incentives for investment and careful management of resources, property rights provide the authority to decide on investments in the land and to regulate what others do with the resource. As a result, the land issue is has to be given the due consideration it deserves.⁴¹
- Lastly, the study will contribute to the existing stock of knowledge on the link between land access, ownership and use and Foreign Direct Investment.

⁴⁰ Hanstad T, Nielsen R, Bown J 2004 *Lands and livelihoods: making land rights real for India's rural poor* FAO Livelihood Systems Programme Paper, RDI, Seattle / FAO Rome; and Srivastava RS 2004 *Land reforms and the poor in India: an overview of issues and recent evidence* in Gazdar H and Quan J 2004 *Poverty and Access to Land in South Asia: a study for the Pakistan Rural Support Programmes Network* NRI Chatham

⁴¹Allan Bomuhangi ,Cheryl Doss ,Ruth Meinzen-Dick :Who Owns the Land? Perspectives from Rural Ugandans and Implications for Land Acquisitions. IFPRI Discussion Paper 01136 November 2011.

Operational Definitions

Agency - The person, agency, authority or other type of organization with which foreign investors or their legal representatives are required to interact in order to set up and run the company. It includes government agencies, municipal authorities, professional associations, auditors, notaries, courts, etc.

Cadastre - A cadastre is normally a parcel-based and up-to-date land information system containing a record of interests in land (i.e. rights, restrictions and responsibilities). It usually includes a geometric description of land parcels linked to other records describing the nature of the interests, and ownership or control of those interests, and often the value of the parcel and its improvements. (Please note that the cadastre is more common in civil law jurisdictions than in common law jurisdictions).

Conveyance - A method whereby rights in land are transferred from one owner to another. The rights may be full ownership or a mortgage, charge or lease, etc

Customary tenure- The holding of land in accordance with customary law. That is, the right to enjoy some use of land that arises through customary, unwritten practice rather than through written or codified law.

Deed - A legal document laying out the conditions which land is transferred.

Foreign Direct Investment (FDI) - According to the International Monetary Fund, FDI is a category of cross-border investment that involves residents of one economy obtaining a lasting interest in an enterprise located in another economy. A lasting interest is commonly understood to involve at least 10% of ordinary shareholding or voting

power. In effect, FDI need not entail much transfer of funds and can involve a firm bringing its brand, technology, management, and marketing strengths to bear on its local interest.

Land - land has been defined by the **Registration of Titles Act** to include messuages, tenements and hereditaments corporeal or incorporeal; and in every certificate of title, lease and transfer issued or made under the Act, land also includes all easements and appurtenances appertaining to the land described therein or reputed to be part of that land or appurtenant to it⁴². The **Law of Property Act 1925** 'Land' includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; . . . and 'mines and minerals' include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same . . . ; and 'manor' includes a lordship, and reputed manor or lordship; and 'hereditament' means any real property which on an intestacy occurring before the commencement of this Act might have devolved upon an heir⁴³.

Lease- A lease is a contractual agreement between a landlord and a tenant for the tenancy of land. The period of the lease is known as the "term" of the lease. The lease should be for a definite period, or for a period that is capable of definition. The date of commencement should

⁴² The Registration of Lands Act Cap 230, Laws of Uganda.

⁴³ Law of Property Act 1925 (LPA 1925), s. 205(1)(ix). LPA 1925 is one among the body of statutes that makes up the 1925 property legislation: an impressive attempt to rationalize and codify the law relating to land.

be fixed, and the date of termination either fixed, or capable of being fixed. The lease should offer the tenant the right to exclusive possession of the land, thus giving the lessee the right to exclude others, including the landlord, from the land.

Investment - Investment is taken as the total project cost, funded by equity and debt. Net working capital financing should not exceed 3 months. Cost of land should not exceed 25% in the case of property development.

CHAPTER TWO

LITERATURE REVIEW

Land access

The concept of Land access

Land access has been defined as the ability to use land and other natural resources, to control the resources and to transfer the rights to the land and take advantage of other opportunities. It refers to the processes by which people, individually or collectively, gain rights and opportunities to occupy and use land (primarily for productive purposes but also other economic and social purposes), whether on a temporary or permanent basis. These processes include participation in both formal and informal markets, land access through kinship and social networks, including the transmission of land rights through inheritance and within families, and land allocation by the state and other authorities with control over land⁴⁴.

Importance of Land access

Access to land, and the conditions under which it happens, play a fundamental role in economic development. This is because how the modes of access to land and the rules and conditions of access are set, as policy instruments, has the potential of increasing agricultural output and aggregate income growth, helping reduce poverty and

⁴⁴ Cotula L., Toulmin C. & Quan J., 2006. BETTER LAND ACCESS FOR THE RURAL POOR. LESSONS FROM EXPERIENCE AND CHALLENGES AHEAD IIED, FAO.

inequality, improving environmental sustainability, and providing the basis for effective governance and securing peace⁴⁵.

Land is not only a factor of production, and as such a source of agricultural output and income, it is also an asset, and hence a source of wealth, prestige, and power. Because it is a natural asset, its use affects environmental sustainability or degradation. For these reasons, the link between access to land and development is quite multidimensional and complex, with many tradeoffs involved.

According to Waldron and Dias⁴⁶, the issue of access to land is critical to the avoidance of social conflict and therefore becomes transcendent as priority of governmental policy, rather than simply a juristic concern. Africa's state of underdevelopment and abject poverty necessarily propels the issue of land to the forefront of its development agenda because most Africans are directly or indirectly dependent upon the land for their survival and advancement⁴⁷.

Modes of access to land

Inheritance and inter-vivo transfers

Access to land via intra-family transfers is of fundamental importance. Indeed, it is the case that, where land frontiers are closed, large-scale redistributive land reform programmes have not been implemented,

⁴⁵ A. Janvry and E. Sadoulet: Access to Land and Development¹ University of California at Berkeley August 2005

⁴⁶ J. Austin, 'Lectures on Jurisprudence' quoted in R. W. M. Dias, *Jurisprudence*, Butterworth, p. 301, note 10.

⁴⁷ J. Pottier, *Land Tenure and Land Reform in sub-Saharan Africa: Towards a Land Reform Agenda* in African Centre for Technology Studies (ACTS): *Report of the Conference on Land Tenure and Conflict in Africa: Prevention, Mitigation and Reconstruction – 9th–10th Dec. 2004*, ACTS Press, Nairobi (2005),

and land markets are yet poorly developed, most farmers have gained access to land through intra-family transfers. Even where land markets are well developed and land reform has been extensive, such as in the central region of Nicaragua, access to land through inheritance remains fundamental: in the province of Masaya, 40 per cent of the land has been acquired through inheritance, 35 per cent through the land reform, and 25 per cent through the land market.⁴⁸

However, this mode of accessing land has its own shortfalls, for instance: there often exist external constraints to division. Such constraints can be imposed by landlords who prohibit peasants from transmitting the land to more than one descendant in order to make tax collection easier, the community may restrict transmission to more than one heir of the rights of access to common property resources to refrain over-extraction, The state may prohibit inheritance transfers to more than one heir to avoid atomization of the land and a return to explosive rural poverty. This is the case in the Mexican land reform sector, the '*ejido*', created as a response to the peasant-led revolution of 1910 and finally, there are situations of extreme population pressure on the land (e.g., in Uganda and Rwanda) where the farm has already reached the minimum size needed to sustain the household.

In Sub-Saharan Africa, as land markets tend to develop with the individualization of property rights, access to land via inheritance is also altered. Land that has been acquired by parents through the market, instead of having been inherited through lineage relationships, is not subjected to traditional inheritance rules. This new freedom is a source of discretion in transmitting land that can be used to exclude some and favour others. Fathers can transmit freely this land, including

⁴⁸ De Janvry and Sadoulet 2000.

to daughters if they choose to do so, and sons who want to set up their own households cannot pressure parents to distribute land early (as they can with lineage land)⁴⁹.

Access to land via communities' membership

Access to land via membership in communities that have control over resources remains very important. In corporate communities, land is accessed through community membership and is allocated to individual households through the community governance structure. In Mexico, 70 per cent of the land in the *ejido* sector is in common property, most particularly lands for grazing and forestry, and extraction from these resources follows community rules. If user rights are so incomplete that the community cannot exclude others from encroaching on the land, the open-access nature of the resource leads to the well-known tragedy of the commons, with under provision of services (e.g., for maintenance of irrigation canals or the repair of fences) and over-appropriation of resources (e.g., an excessive number of animals per hectare in herding and over-logging in forestry) leading to exhaustion of the resource.

Access to land via land sales and land rental markets

Under increasing population pressure, a more mobile population, and growing market integration, access to land via family lineage and community membership tends to give way to individualization of property rights, and to access to land via land sales and land rental markets. This long-term regularity had been identified by Ester

⁴⁹ De Janvry and Sadoulet; Access to Land and Land Policy Reforms, Oxford University Press 2001

Boserup in her classical work on historical patterns of agricultural change⁵⁰. Otsuka analyse the details of this transformation in the forest frontier areas of Ghana and Sumatra. They find that, even when property rights remain informal, active land rental and land sales markets can exist with high endowments in social capital are observed to sustain active land markets without formal titling. By contrast, in communities of recent colonization and of more extensive population movements, social capital is insufficient to deter moral hazards in land transactions and informal land markets cannot\ operate. In this case, formal titling is necessary to provide the legal basis for the recognition of property rights and to sustain the emergence of land markets.⁵¹

As land markets become perfected through better established property rights and lower transactions costs, they will become the main mechanisms through which land is transferred across owners and between owners and users. If all markets worked perfectly, land sales and land rental markets would be equally effective in providing access to land to the rural poor since, as economic theory tells us, asset ownership is, under these conditions, unrelated to use of the assets in production.

However, in a context of market failures and missing institutions, land sales markets may not be effective for this purpose. And, even if access to land in ownership is achieved, the continued existence of market failures and missing institutions may jeopardize the

⁵⁰ Boserup Ester: *Conditions of Agriculture Growth; economic of Agrarian change under population pressure*. New York, Aldine publication.

⁵¹ Hayami, Yujiro and Keijiro Otsuka: *The Economics of Contract Choice*. Oxford. Clarendon press.

competitiveness of beneficiaries, compromising their economic viability.

Land rental markets, by contrast, may be friendlier⁵².

The Link between land access and FDI

The ability to access land or buildings with secure ownership rights, at transparent prices, and with limited restrictions can be critical to a foreign investor's decision on whether to invest in a new market. Secure rights of access to land are a prerequisite for productive investment. Difficult access discourages enterprises of all sizes in both urban and rural areas. Easier access depends on effective, accessible land administration systems. Also required are proper regulation, transparency and an end to bureaucratic discretion and corruption. Governments must also reduce any risks of conflict and promote effective partnerships through proper dispute mechanisms. Restrictions on foreign ownership of land, or forcing foreign investors into joint ventures with nationals, do not necessarily undermine investment flows: long-term renewable leases are adequate for most if not all business purposes, and all that is needed is a proper land access procedure.⁵³



⁵² De Janvry and Sadoulet above.

⁵³ UN-HABITAT (2003) 'Handbook on best practices, security of tenure and access to land' United Nations

Land Ownership

The Concept of Land Ownership

The concept of ownership is a complex one and ownership has a multiple of meanings. The Roman concept of ownership, for example, is absolute – ‘the right to use, abuse and dispose of’ property⁵⁴. Similarly, John Austin expresses the idea in equally absolute terms: ‘A right, indefinite in point of user, unrestricted in point of disposition, and unlimited in point of duration, over a determinate thing’⁵⁵. The prevailing jural conceptions of ownership in most jurisdictions today are derivatives of this Roman idea but purged of its absolutist characterization. For example, Pollock articulates the concept with a limitation which, arguably, claims universal validity today: ‘The entirety of the powers of use and disposal *allowed by law*’⁵⁶.

Importance of Land ownership

The conceptions of land ownership are of fundamental importance in understanding the nature and direction of development in any given society. For example, within the market economy, the conception of the ownership of property is essentially private, and provides the ideological support base for the contract device – the ultimate expression of relations of production within the market economy⁵⁷. Consequently, policymakers within a system based on the

⁵⁴ I. G. Shivji, *Class Struggles in Tanzania*, Tanzanian Publishing House (1975), p. 5.

⁵⁵ J. Austin, ‘Lectures on Jurisprudence’ quoted in R. W. M. Dias, *Jurisprudence*, Butterworth, p. 301, note 10.

⁵⁶ F. Pollock, *Jurisprudence & Legal Essays*, Selected and Introduced by A. L. Goodhart,

Macmillan (1961), p. 97 (emphasis supplied).

⁵⁷ P. Richards, *Law of Contract*, Pearson Edu. Ltd (2002), pp. 3–11

market philosophy need to promote a conception of property ownership which is essentially private. In this sense, the specific content of a given society's conception of property is crucial to the question of resource generation and allocation – matters that are critical to such society's stability and development.⁵⁸

Systems of Land Ownership.

Various systems of land ownership have developed throughout the world under the influence of historical, cultural, and economic factors. These systems are exposed to a continual process of change and include the following;

State Ownership of Land

As a consequence of conquest, purchasing, gifts, and seizure, land belongs to the state in many countries in the same way as other areas belong to private people. In the USSR, the majority of the land has been turned into state property - in other socialist countries, only a part until now. This was done to prevent exploitation resulting from private ownership of the land as well as unearned income derived from ground rent. Otherwise, state ownership plays a large role if public interests cannot be satisfied by private ownership, or if the land is not of interest to private people from an economic standpoint (catchment areas, waste land, forest, frontiers, experimental farms, etc.). The state partially cultivates its own land (government farms, government forests) and also partially leases it out. In some countries, the church likewise has a great deal of landed property. The process by which the

⁵⁸ Supra note 45.

church gained possession of the land and its function is similar to that in the case of state land.

Land Grants

In Islamic countries, land is granted to schools, mosques, orphanages, and similar institutions. This type of grant is often called a "waqf." The beneficiary receives an irrevocable right of use that is carried out by government organizations, generally in the form of being leased out. The institution that is granted the right of use receives the profit. The lands are frequently in very bad condition as hardly any investments are made.

Land is sometimes established as a private 'waqf'. The irrevocability of the grant, which is established in court, prevents eventual changes in ownership and protects the family against property losses. The family receives the income derived from the yield. This type of grant is also found in the south of Europe and existed in Eastern Germany until 1945 where it was called "Fideikommiss."

Collective and Communal Ownership

In this type of ownership, the right of disposition is in the hands of kinship or political groups that are larger than a single family. In the forms of communal ownership found in Africa (a widespread phenomenon south of the Sahara), the land rights are generally controlled by the tribe, and the use of the land is regulated by the chieftain or priest serving the land and earth deities. Every member that is born into the group has a lifelong right to a piece of land for his own usage. The tribes regard themselves as custodians of the land for future generations rather than proprietors.

In Mexico, former 'latifundia' were transferred into a form of communal land called "ejido." The members of the community are granted land on a heritable basis for their usage, while pasture land and waste land are used commonly. In various countries such as Taiwan, India, and Jamaica, land belongs to minorities in the form of common land. The purpose behind this is to give protection against loss of the land.

In socialistic countries, land was collectivized in accordance with the political doctrine in order to prevent exploitation resulting from private ownership of land. At the same time, this measure simplifies controlling agricultural production and the process of adapting to the goals of rapid industrialization and overall development. Based on a different ideology, but with similar motives, various religious communities have also abolished private ownership of land and collectivized it. Physical and/or psychological coercion and pressure or a critical situation has always played a great role in collectivization.

Private Ownership of Land

In non-socialistic countries, the right of disposition is often in private hands – regarding agricultural land, less so in the case of forests. In face of the positive experience in European history and its great ability to adapt to changing economic and technological systems, private ownership of land was introduced in many of the former colonies. In the process, however, it became obvious that the positive outgrowths of private ownership were dependent upon certain specific preconditions that were not always present. The decrease in the size of the farms resulting from population increase and the differences in the success achieved in the process of adaption to changing conditions - especially of an economic nature - led in part to property losses,

whereas other people were able to gain control of large areas and, thus, economic and - consequently - political power. As a result of this process, today there are several widely differing forms of private ownership.

Small-scale agricultural property, or smallholdings, is a widespread form throughout the world and is the target of most of the non-socialistic agrarian reforms. Family farms have proved to be an expedient form of agricultural organization, both regarding agrarian production as well as the social conditions, as long as the farm size is large enough. The incentive ensuing from the farmer's freedom to make his own decisions and the knowledge that he will receive the fruits of all his labour and investments have always been a tremendous inducement, especially if the attitude towards work and investments was positive and the concomitant institutions (extension services, credit system) were advantageous. In order for family farms to guarantee the continuation of yields from their land, it is necessary for them to observe the preservation of the ecological balance. As soon as the precondition of sufficient farm size no longer exists, the situation becomes less favorable and the living standard of the farmers' families drops, the farms become indebted, property is lost, and the ecological balance is endangered.

Large holdings are in many cases not farmed by the owner himself. If there is a large demand for land, the owner is in a position to let others work for him and still receive a sufficient income. He, therefore, leases the land out, and, although he exercises his influence regarding farm management, this is more to control the farm rent payments than to foster agricultural production. The rent is usually not reinvested, but rather used by the owner to cover his own living expenses as well as

other purposes. Thus landed property becomes a source of rent while the agricultural economy remains static.

As soon as the owner becomes more interested in the cultivation of his land, he generally switches to centrally controlled farming as this makes it possible to control the cropping more closely and, thus, guarantee economic success. This form is not only found on plantations and commercial farms. In the course of the Green Revolution, many former lessors started cultivating the land themselves as this appeared to them to be more profitable under the new circumstances than the traditional forms of leasing the land to tenants.

Farm Tenancy

An increasing population, while at the same times the job opportunities outside the agriculture) sector develop only slowly, has forced a growing number of people to look for land that they can rent from someone for their usage for a period of time. In densely settled countries with private land ownership, in some cases more than half of the land is cropped today by tenants. One can differentiate between various forms of renting the land according to the type of payment that is demanded.

1. *Occupational tenancy*: in way of payment, the tenant works for a specific number of days on the landlord's farm in order to pay for the land he rents. In some cases, he uses his own draught animals and implements. This form, is particularly found in Latin America where it is called a colonate. Until a few years ago, it also existed in Westphalia, Germany, under the name Heuerling.

2. *Cash tenancy*: the tenant pays a fixed rent for the land he rents and, thus, bears the full cropping and marketing risk himself; however, he also receives all the proceeds growing out of his labors. This form demands the ability to face a risk and is, thus, found in the case of tenants who are economically sound.
3. *Rent in kind*: is a form of tenancy in which the tenant pays a fixed quantity of produce and, therefore, does not have to take the marketing risk himself. This form is found especially among landowners who rent out small parcels of land and who consume the rent in their own household.
4. *Share tenancy* is a specific form of rent in kind. It is widely spread, particularly in the developing countries. In this case, the gross output is divided between the landlord and tenant. While the original size of the share was determined by the reciprocal obligations and the productivity of the land, the great demand for land has led increasingly to shares equaling 50/50. Under these conditions, each side receives only half of any proceeds resulting from additional inputs. There is little incentive, therefore, to increase productivity by means of working harder or making larger investments. Moreover, the contract is often drawn up for only one year. Even though it is often prolonged by tacit agreement, it leads to insecurity and a state of dependence. This has, along with the normally extremely small size of the plots under tenancy, resulted in many farmers being indebted and living in very poor economic and social conditions.

Although tenancy can fundamentally bring about flexibility in the structure of land ownership and allows making adoptions to changing

economic and social (family) conditions, under the circumstances in the developing countries (with a one-sided advantageous position on the market for land available for tenancy in favour of the landlords), tenancy leads to stagnating agricultural production, dependence, and an economically poor situation for the tenants and their families.

The Link between land ownership and FDI

A survey of existing literature shows that it is not necessary to allow foreign land ownership to attract FDI. Studies by the World Bank have shown that land ownership is not a critical consideration for FDI attractiveness provided that the country has a strong rule of law and the law provides for foreign companies to operate their business on leased land. For example, Thailand and Indonesia do not allow foreigners to own land. Thus foreign companies lease land from private citizens. All the land in Tanzania and Zambia is held by the government on behalf of the people. Thus, foreign companies cannot own land and must get the land on long term lease from the government⁵⁹.

The experience of Vietnam and China demonstrate that land ownership is not the most critical factor to attract FDI. These two countries have attracted billions of dollars in investment and created employment for their population without allowing FDI companies to own land.

The World Bank conducted "Enterprise Survey" also indicates FDI companies seek to own land where it involves capital intensive investment in heavy industries such as chemical and heavy metal industries, heavy machinery etc. Experience from other countries show that, wherever lease hold is an option, FDI businesses prefer to lease

⁵⁹ World Bank Enterprise Survey: <http://www.enterprisesurveys.org/>.

land to protect against: expropriation risk (as experienced in Venezuela) and currency devaluation an economic risk and long term exposure to economic crises(as experienced in Dubai).⁶⁰

Origins of land access and ownership

Much of the current day land use ideas and practices in the world take their inspiration from John Locke's theory of property. When advocates of private property rights defend their natural right to do as they choose with their own land, and argue that they should not have to take into account any one else's interests in making those choices, they base their arguments on concepts originally expressed by Locke. However, there is a great difference between the social context in which his argument was originally developed and the pervasive demands of consumer culture on ecological systems of the present time. Furthermore, the mutation from his original theory to the concept of private property as it exists today is remarkable.⁶¹

Locke's theory of property begins with the concept of self-ownership. By being our own masters and exercisers of our capacities, in this sense we belong to ourselves by being...

Proprietor of his own Person ... [he] had in himself the great Foundation of Property; and that which made up the great part of what

⁶⁰ Dubai Property "Investors Could Lose Everything"
<http://www.thedubailife.com/home/news/businessfinance/dubai-property-investors-could-lose-everything>.

⁶¹ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1967).

*he applied to Support of Comfort of his being was perfectly his own, and, did not belong in common to others".*⁶²

Locke leads from this argument to the suggestion that labor produces not only a sense of entitlement but also an actual title of property, which grants possession. Possession of property entails two things. First is exclusion—within the limits of natural law, freedom from seizure or invasion of property. Second is control—to use and arrange holdings as the titleholder sees fit. These are applied not only to physical property, but also to oneself, the body and mind. The concept of self-ownership of one's labor, ability, and energy leads to the ownership of the improvements one effects on raw materials. These improvements then become one's property which excludes the common right of other people.⁶³

For Locke, one's engagement with the land conferred ownership of that land, as well as the products of his or her labor. "Subduing or cultivating the Earth, and having Dominion ... are joined together. The one gave Title to the other. So that God, by commanding to subdue, gave Authority so far to appropriate. And the Condition of Humane Life which requires Labor and Materials to work on, necessarily introduces private Possessions."⁶⁴

In Locke's view, appropriation of private possessions was naturally limited by the individual taking ownership of merely what could be used, and they would take no more than could be used because that

⁶² *ibid*

⁶³ Elizabeth Michelle Grant, B.A., B.S; PRIVATE PROPERTY IN AMERICA: LAND USE AND THE ETHICS OF OWNING LAND. UNIVERSITY OF NORTH TEXAS ,December 2005

⁶⁴ John Locke above at, p. 119.

would generate spoilage and be wasteful. Because of his emphasis on utility and production, and the moral obligation to not be wasteful, "the exclusionary right to use land [is] conditional upon, and entailed by, cultivation or other forms of making useful products."⁶⁵

Locke carefully distinguished between "having Dominion, which a Shepherd may have, and having full Property as an Owner."⁶⁶ This distinction is taken to mean that a rights holder may have property in utilization of the land, but not full property as in ownership. Locke anticipates a division between full possession of and authority over what happens to an entity.

There is, according to Locke, another way in which an individual is said to have property without possessing an entity. If we consider this approach in the context of land use, claims of rights to use land in particularly defined ways are applicable here. A use right is similar to property abstracted from possession, since the user barely retains, but does not possess, the land he uses. But it also contains the attributes of possession and alienation appropriate to property in its proper meaning. The right holder possesses his right, but not the land over which it obtains.⁶⁷

According to Eugene Hargrove, present-day private property owners who assert their right to do as they wish with their own property appeal to a history of rights that refer to early European traditions. Such a landowner is "appealing to the rights that he has informally inherited from his political ancestors, Saxon or German freemen—specifically, the right to do as he pleases without considering any

⁶⁵ Ibid., p. 123

⁶⁶ Locke, *Two Treatises of Government*, Treatise I, sec. 39.

⁶⁷ Tully, *A Discourse on Property*, p. 113.

interests except his own.”⁶⁸ The freemen were the most commonly found people in early Teutonic society, and they usually followed no religious or political authority, but handled their own affairs independently. In this tradition, Hargrove asserts that land was held rather than owned on freehold farmsteads. Possession of these lands would change hands regularly, as freemen moved about the land to establish new farmsteads and Germanic expansion across Europe continued.

Some have argued that Teutonic farmsteading was an early form of community ownership of land because the farmsteads were not boundaried and possessed in a conventional sense. Historian Denman Ross states, *It is often argued that because there were no fixed limits, no boundaries, to individual holdings, the land must have been owned collectively or communalistically. It is said that the statements of Caesar go to prove the existence of community of land; Feldgemeinschaft, the Germans call it. The argument is inconclusive. The absence of fixed limits and boundaries proves simply that the land was undivided property; it does not prove that it was common property.*⁶⁹

⁶⁸ Eugene C. Hargrove, *Foundations of Environmental Ethics* (Denton, Tex.: Environmental Ethics Books, 1989), p. 55.

⁶⁹ Denman W. Ross, *The Early History of Land-Holding Among the Germans* (Boston: Soule and Bugbee, 1883), p. 17.

Related Studies

Although there is evident lack of literature on land ownership and access and FDI, a survey of existing literature shows that it is not necessary to allow foreign land ownership in order to attract FDI. Studies by the World Bank have shown that land ownership is not a critical consideration for FDI attractiveness provided that the country has a strong rule of law and the law provides for foreign companies to operate their business on leased land. For example, Thailand and Indonesia do not allow foreigners to own land. Thus foreign companies lease land from private citizens. All the land in Tanzania and Zambia is held by the government on behalf of the people. Thus, foreign companies cannot own land and must get the land on long term lease from the government.⁷⁰

Experience from other countries show that, wherever lease hold is an option, FDI businesses prefer to lease land to protect against: expropriation risk (as experienced in Venezuela)⁷¹ and currency devaluation an economic risk and long term exposure to economic crises(as experienced in Dubai).It has also been indicated that FDI companies seek to own land where it involves capital intensive investment in heavy industries such as chemical and heavy metal industries, heavy machinery etc.⁷²

In 2001, the Multilateral Investment Guarantee Agency of the World Bank conducted a study to assess the following:

⁷⁰ World Bank Enterprise Survey: <http://www.enterprisesurveys.org/>.

⁷¹ Venezuela Nationalizes French retail Chain, January 2010.
<http://online.wsj.com/article/SB10001424052748703569004575009420323919964.html>

⁷² Xiaolun Sun, Foreign Direct Investment and Economic Development, What Do the States Need To Do?
Foreign Investment Advisory Service, 2002

- Key business objectives behind FDI decisions;
- Countries and regions of the world that are most attractive to investors; and
- Key factors and considerations that influence companies' location strategies.

The findings of the study, which covered 191 companies, revealed that there are more important considerations other than land ownership when companies make investment decisions:

TOP 20 CRITICAL LOCATION FACTORS, percent cited as "very influential" for investment decisions.

1. Access to customers -----	77
2 Stable social and political environment-----	64
3 Ease of doing business -----	54
4 Reliability and quality of infrastructure and utilities -----	50
5 Ability to hire technical professionals-----	39
6 Ability to hire management staff -----	38
7 Level of corruption -----	36
8 Cost of labor -----	33
9 Crime and safety-----	33
10 Ability to hire skilled laborers-----	32

11 National taxes -----	29
12 Cost of utilities -----	28
13 Roads -----	26
14 Access to raw materials-----	24
15 Availability and quality of university and technical training ---	24
16 Available land with all services in place -----	24
17 Local taxes-----	24
18 Access to suppliers-----	23
19 Labor relations and unionization -----	23
20 Air service-----	23

Source: FOREIGN DIRECT INVESTMENT SURVEY, A Study Conducted by Multilateral Investment Guarantee Agency and Deloitte & Touché LLP, January 2002

On the other hand, Access to land has been identified as one of the considerations taken into account by foreign investors. The ability to access land or buildings with secure ownership rights, at transparent prices, and with limited restrictions can be critical to a foreign investor's decision on whether to invest in a new market. *Investing Across Borders* project's Accessing Industrial Land indicators find that foreign companies cannot own land in some economies. In others,

leasing land can take up to 5 months.⁷³ The Accessing Industrial Land indicators comprise the following 3 components:

1. Strength of land rights: These indicators compare economies on the types of land rights available and the strength of legal rights they offer to investors—for instance, land-holding options that are available to foreign companies, whether or not there is different treatment for foreign and domestic companies and whether the land can be sub-leased, subdivided, mortgaged, transferred or used as collateral.

2. Access to and availability of land information: These indicators benchmark economies regarding the access to and availability of key pieces of land information.

3. Ease of leasing land: These indicators measure the time it takes to lease land from both a private holder and the government.⁷⁴

Recent surveys of firms investing in Africa have identified gaining easy access to land as a critical factor in investment decisions. For instance, in a survey from Mozambique, 27 per cent of the sample firms identified land access as a major problem. According to the survey, the average time for acquiring land was 12 months, and the average total cost US\$18,000. These constraints on land access were considered to be a major reason why potential investors shy away from Mozambique.⁷⁵ Similarly, a recent World Bank survey found that 57 per

⁷³ <http://www.investingacrossborders.org>: Indicators of foreign direct investment regulation in 87 economies. Investment Climate Advisory Services I World Bank Group.

⁷⁴ Ibid. Pg 51.

⁷⁵ Nasir, J., G. de Barros, D. Wagle, M. Kedia Shah, C. Leechor, P. Srivastava, A. Harding, V. Ramachandran (2003), *Pilot Investment Climate Assessment* –

cent of the sample firms in Ethiopia and 25 per cent in Kenya reported access to land as their main obstacle.⁷⁶

Following Uganda's rapidly growing, liberalized economy and favorable investment climate, land acquisitions by foreign private companies have increased. These land acquisitions have been supported by the Constitution of the Republic of Uganda 1995 (and as amended in 2005), which provides a legal policy and physical infrastructure for private investment to flourish. For example, the Ugandan Government has adopted a policy of converting public land to private use to encourage investment and economic growth. However, this process, known as *degazetting*, has become a source of conflict between the government and local communities over ownership and rights to use the land.⁷⁷ One example of a land acquisition that has provoked conflict is that by Bidco Oil Refineries, a Nairobi-based firm with interests in oil and food processing in Kenya, Uganda, and Tanzania. The firm has acquired about 26,500 hectares of land in Bugala Island, Kalangala district, for the production of palm kernel oil.⁷⁸

FDI Determinants Identified in Existing Literature.

The vast literature on FDI identifies a number of reasons for firms investing across national boundaries. It is difficult in reality in many countries to isolate the different motives, as one motive may overlap

Mozambique Industrial Performance and Investment Climate 2003, CTA, CPI, FPED, Africa Private Sector Group, World Bank.

⁷⁶ World Bank (2005), *Doing Business 2005: Removing obstacles to growth*, Oxford University Press, Oxford.

⁷⁷ Rugadya, M. 2009. "Escalating Land Conflicts in Uganda: Review of Evidence from Recent Studies and Surveys." Report to the International Republican Institute (IRI) and the Uganda Round Table Foundation. Kampala Uganda. Mimeo.

⁷⁸ World Rainforest Movement. 2006. "Oil Palm: From Cosmetics to Biodiesel, Colonization Lives On." Montevideo, Uruguay. www.wrm.org.uy.

into another. The major motives often identified that have particular relevance to Africa are:⁷⁹

- Natural-resource-seeking investment, which aims to exploit the natural resource endowments of countries. Companies extracting oil (in Nigeria), gold (in Ghana) and diamond (in Botswana) belong to this category.
- Market-seeking investment, which aims to access new markets that are attractive as a result of their size and/or growth.
- Efficiency-seeking investments, which aim to take advantage of special features in a certain area such as the costs of labour, the skills of the labour force, and the quality and efficiency of infrastructure.

Two recent studies also concentrate on Africa. The first, by Schoeman,⁸⁰ which is limited to South Africa, analyses how government policy (mainly deficit and taxes) affects FDI. The second set of papers is by Asiedu.⁸¹ Using cross-section data on 71 developing countries, Asiedu⁸² attempts to answer the following set of questions: What factors drive FDI to developing countries? Are these factors equally relevant for FDI to SSA? Why has SSA attracted so little FDI?

⁷⁹Basu, A. and Krishna Srinivisan. 2002. "Foreign direct investment in Africa: Some case studies". IMF Working Paper WP/02/61. International Monetary Fund, Washington, D.C.

⁸⁰ Schoeman, N.J., Robinson Z. Clausen and T.J. de-Wet. 2000. "Foreign direct investment flows and fiscal discipline in South Africa". *South African Journal of Economics and Management Science*, 3(2): 235–44.

⁸¹ Asiedu, E. 2002. "On the determinants of foreign direct investment to developing countries: Is Africa different?" *World Development*, 30(January): 107–19; Asiedu, E. 2003. "Foreign direct investment to Africa: The role of government policy, governance and political instability". Working paper. University of Kansas.; Asiedu, E. 2004. "Policy reform and foreign direct investment to Africa: Absolute progress but relative decline". *Development Policy Review*, 22(1): 41–8.

⁸² Ibid ,2002

Why has SSA been relatively unsuccessful in attracting FDI despite policy reform? Is Africa different? The analysis is focused on only three main variables – the return on investment, availability of infrastructure and openness to trade – and does not take into account natural resource availability, which is an important determinant of FDI to Africa. Asiedu concludes that:

- Countries in SSA have on average received less FDI than countries in other regions by virtue of their geographical location.
- Both higher return on investment and better infrastructure have positive impact on FDI to non-SSA countries, but no impact on FDI to SSA.
- Openness to trade promotes FDI to SSA and non-SSA countries. The marginal benefit from increased openness is less for SSA, suggesting that trade liberalization will generate more FDI to non-SSA countries than SSA countries.

Her results imply that Africa is different and that factors attracting FDI to other regions may not be equally applicable in Africa. This implies that the success stories in other places cannot in some cases be replicated in Africa. Three policy implications arise from the results of the empirical work.

- African countries need to liberalize their trade regime in order to enhance FDI flows. The full benefit of trade liberalization is only achievable if investors perceive the reform not only credible but irreversible.

- Policies that have worked in other countries cannot be blindly replicated in Africa, since these policies may have different impacts on Africa.
- Africa is overly perceived as risky. Consequently, countries in the region receive less FDI by virtue of their geographical location. To dispel the myth, there is need to disseminate information about the continent.

In another paper, Asiedu used panel data on 22 African countries for the period 1984–2000 to examine empirically the impact of several variables including natural resource endowment, macroeconomic instability, FDI regulatory framework, corruption, effectiveness of the legal system and political instability on FDI flows⁸³. The paper debunks the notion that FDI in Africa is solely driven by natural resource availability and concludes that natural resource endowment, large markets, good infrastructure and an efficient legal framework promote FDI, while macroeconomic instability, corruption, political instability and investment restrictions deter investment flows. These results imply that African governments can play major roles in promoting FDI to the region through appropriate policy framework. In the short and medium term, government can increase their FDI by streamlining their investment regulation framework, implementing policies that promote macroeconomic stability and improving infrastructure. In the long run, more FDI can be achieved by curbing corruption, developing a more efficient legal framework and reducing political instability.⁸⁴

⁸³ Ibid ,2003

⁸⁴ Asiedu, E. 2003. "Foreign direct investment to Africa: The role of government policy, governance and political instability". Working paper. University of Kansas

One major deterrent to FDI flows cited in the literature is uncertainty. Uncertainty is also a known factor plaguing Africa's development strategy. Empirical studies of the relationships between FDI and uncertainty in developing countries are very few.⁸⁵ Two studies for Malaysia and Lehmann for developing countries, find a negative relationship between uncertainty and FDI in developing countries. Even fewer studies address the connection between uncertainty and FDI in Africa. While Bennell and Pigato highlighted the role of uncertainty,⁸⁶ none of them formally addresses the impact of both economic and political uncertainty in African countries. Lemi⁸⁷ examines how uncertainty affects FDI flows to African economies by analysing FDI flows from the United States, US manufacturing FDI and US non-manufacturing FDI flow to sampled host countries in Africa. Using a generalized autoregressive heteroscedastic model, the study concludes:

- The impact of uncertainty on the flow of FDI from all sources is insignificant.
- For aggregate FDI from the United States, economic and political uncertainties are not major concerns.

⁸⁵ Ramasamy, Bala. 1999. "FDI under uncertainty: Lessons from Malaysia". Conference Proceedings, International Conference on the Challenges of Globalization, Thammasat University, Bangkok, Thailand, 21–22 October.

⁸⁶ Bennell, Paul. 1995. "British manufacturing investment in Sub-Saharan Africa: Corporate responses during structural adjustment". *The Journal of Development Studies*, 32(2); Pigato, Miria. 2001. "The foreign direct investment environment in Africa". Africa Region Working Paper Series No. 15. The World Bank, Washington, D.C.

- For US manufacturing FDI, only political instability and government policy commitment are important factors, whereas for US non-manufacturing FDI, economic uncertainties are the major impediments only when coupled with political instability and debt burden of host countries.

- Other economic factors such as labour, trade connections, size of the export sector, external debt and market size are also significant in affecting FDI flow to Africa.

In Uganda, Obwona and Egesa(2001) analysed the various types of FDI and the relative magnitudes of the components. They examined the destination of FDI among the sectors of the economy and showed that a host of factors (economic, political and others) explain the attraction of FDI to Uganda in recent years. Privatization and the return of previously confiscated properties of expelled Asians have led to considerable FDI, which cuts across various sectors. In addition, they found that a string of policies has been implemented in recent times to achieve macroeconomic stability. These together with the peace in a large part of the country have brought large inflows of FDI. No single factor affected the flows of FDI into Uganda, but various factors have had an effect at different times.

They identified the following as important factors in attracting FDI:

- A predictable and consistent policy and macroeconomic environment;
- Successful implementation of privatization;
- Efforts at regional integration, which is important in attracting market-seeking investments;

- Aggressive investment promotion;
- Reforms undertaken among incentive schemes and related government agencies to fulfill the criteria for investment promotion; and
- Administrative simplicity, which has contributed significantly to FDI attraction.

This study is different from the above in that, whereas theirs was a generalized study, this research sought to identify the correlation between the land laws governing access to land and land ownership and FDI inflow in Uganda.

CHAPTER THREE

METHODOLOGY

Research Design

This study adopted the descriptive survey design, specifically, the descriptive co-relational strategy. Descriptive studies are non experimental researches that describe the characteristics of a particular individual or group of individuals. It deals with the relationship between variables, and development of generalizations and use of theories that have universal validity. It also involves events that have already taken place and may be related to present conditions as to discover the casual relationship and differences to provide precise quantitative description.

Research Population

This research sought to analyze the land laws and land law administration institutions in Uganda from the perception of the law implementers and the foreign investors in Uganda. Therefore, the population for this study comprised of investors from the manufacturing industry and agribusiness and staff at UIA, Ministry of Lands. The Total population of study was estimated at 30.

Sample Size

The sample size for the study has been calculated according to the formula recommended by Slovene which is as below.

$$S = \frac{P}{1 + P(0.05)^2}$$

Where P is the study population

S is the Sample size and

$(0.05)^2$ is the margin of error

Therefore the sample size was; $30/1+30(0.05)^2$ which is equals to 28. The minimum sample size was therefore be 28 respondents.

Sampling Procedure

The research required the researcher to collect information from respondents in specific areas. Accordingly, the 28 respondents to be included in the sample was selected using purposive sampling method. This means the respondents were sampled out by virtue of their involvement either as staff at UIA, Ministry of Lands or as investors in agribusiness or manufacturing industry.

Research Instruments

The researcher used an interview Guide .

Validity and Reliability of the Instruments

The researcher sought to examine the Land laws and their impact on foreign direct investment, with a particular and justifiable concern on the law relating to access to and ownership of land by foreign investors. She restricted herself to the topic area despite the fact that there are other factors which have been identified to impact on a country's FDI climate.

Data Gathering Procedures

The researcher used Archival analysis and interviews as the data collection method for this research.

Data Analysis

Data collected was analyzed qualitatively whereby the data was related to the objectives of the study.

Ethical Considerations

The researcher got an introductory letter from school of postgraduate studies introducing the researcher and explaining intended purpose of data collected. The researcher also committed to non-disclosure of availed information beyond what the information is meant for.

Limitations of the Study

The researcher encountered difficulty in questionnaire response since the respondents are very busy people. The researcher addressed the .problem of questionnaire response by making clear scheduled appointments with concerned respondents and being selective with the respondents and the themes of the study.

CHAPTER FOUR

The Legal and Policy Framework for Land and Foreign Direct Investment in Uganda.

International Legal Framework

Customary international law places no restriction on the right of states to restrict or regulate foreign access and ownership of land within their territories. States have sovereignty over their natural resources - including their land.⁸⁸ Equally states are entitled to prevent the entry of foreigners or to allow them entry only on terms - including a term that they may not own or use land or restricting and regulating such use.⁸⁹ International law is primarily concerned with the issue of the expropriation of land already lawfully owned by foreigners. While expropriation itself is not unlawful under international law, the manner in which it takes place is subject to rules of international law. Although a foreigner deciding whether or not to purchase land in a particular state might well be influenced by that state's attitude to the issue of expropriation, this cannot in itself be considered to constitute a legal restriction.⁹⁰

⁸⁸ This principle of customary international law has been affirmed in Principle 2 of the Rio Declaration at the Earth Summit in 1992.

⁸⁹ R. Jennings and A. Watts, eds., *Oppenheim's International Law* (London, 1992) (hereafter, "Oppenheim"), at 911.

⁹⁰ Various rules relate to the basis and manner for expropriation, including the amount of compensation paid; how that amount is determined; when payable; and the appropriate forum for the assessment of any disputes that may arise. See Oppenheim, *supra* note 5, at 911-927.

There are no global multilateral treaties on the issue of foreign land ownership or use. The instrument which comes closest to regulating in this area is the Organization for Economic Cooperation and Development (OECD) Code of Liberalization of Capital Movements which imposes a general obligation on each state signatory to liberalize its policies towards transactions and money transfers necessary for direct investment. However its impact on foreign ownership of land is minimal. One commentator has noted that it has "only a marginal effect on existing real property law and would not prevent a participant country from enacting new controls on foreign land acquisition".⁹¹

Regional international treaties can have a more direct bearing on the issue. Until the passing of Decisions 220 and 291 by the Commission of the Cartagena Agreement, members of the Andean Pact (Colombia, Venezuela, Peru, Ecuador and Bolivia) were each bound at national level to severely restrict levels of foreign investment in their economies, and by extension, investment in land.⁹² The European Union, on the other hand, effectively circumscribes the right of Member States to restrict or regulate the ownership of land by foreigners who are nationals of other Member States.⁹³

⁹¹ Dennis Campbell, ed., *Legal Aspects of Alien Acquisition of Real Property* (Kluwer, 1980).

⁹² Carlos Urrutia, "Colombia - A Special Report", 12:9 *International Financial Law Review* (1993), Supp. IAB 17-19.

⁹³ The Treaty of Rome, which establishes the European Economic Community, as amended by the Single European Act 1987, the Treaty of European Union 1992, and the Treaty of Amsterdam 1997 does not specifically deal with the issue of foreign land ownership, whether or not the foreigners are nationals of other Member States. However, treaty provisions prohibiting discrimination on the grounds of nationality, guaranteeing the free movement of goods, persons, services and capital, and freedom of establishment within the European Union, combine to restrict the competence of Member States to limit land acquisition by nationals of other Member States. Foreigners who are not nationals of EU Member States are still subject to the laws of the individual Member States.

Other potential restrictions in international law on a state's right to regulate or restrict foreign ownership of land are bilateral Friendship, Commerce and Navigation Treaties or their modern cousins, Bilateral Investment Treaties. As the latter's name suggests, such treaties are more concerned with investment regulation in general, in particular the grant of "national treatment", whereby foreign investors are accorded the same treatment as national investors, or "most favored nation" status, whereby all foreign investors, regardless of nationality, are treated equally. Few such treaties, however, grant foreign nationals a right to own property in the host state.⁹⁴

While treaties typically provide that each state "shall" admit investments from the other state party, such obligations are frequently qualified by a clause adding words to the effect that the investments shall be admitted "in accordance with the legislation of the host state"⁹⁵. Laws restricting foreign ownership of land would therefore still apply. Indeed in a 1976 study of the thirty-six such treaties entered into by the USA, only three guaranteed foreigners the same treatment as nationals in respect of the general acquisition of land, and six in respect of the acquisition of land by inheritance. By far the greatest number gave a time allowance for the disposal of land if foreign status prevented possession.⁹⁶

Therefore although the terms of bilateral investment treaties vary considerably, requiring each to be considered on its own terms, in

⁹⁴ M, Sornorajah, *The International Law on Foreign Investment* (Cambridge University Press, 1994)

⁹⁵ I. Shihata, "Recent Trends Relating to the Entry of Foreign Direct Investment", *ICSID Review* 47 (1993).

⁹⁶ Joshua Morse, "Legal Structures Affecting International Real Estate Transactions", 26 *Am. Univ. L. Review* 34 (1976).

general such treaties have little practical effect on the restriction and regulation of foreign ownership of land.

The National Legal and Policy Framework for Land and Foreign Investment in Uganda.

The 1995 Constitution of the Republic of Uganda.

The constitution is the supreme law in Uganda and any law which is inconsistent with any provision of the constitution is null and void to the extent of that inconsistent.⁹⁷ The constitution further provides that the State may regulate the acquisition, ownership, use and disposition of land and other property, in accordance with the Constitution.⁹⁸

According to the Constitution, Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution, namely: a) customary; (b) freehold; (c) mailo; and (d) leasehold.⁹⁹ Noncitizens may acquire leases in land in accordance with the laws prescribed by Parliament, and the laws so prescribed shall define a noncitizen for the purposes of this paragraph.¹⁰⁰

The Constitution recognizes and gives protection to private property. It provides that every person has a right to own property either individually or in association with others and that no person shall be compulsorily deprived of property or any interest in or right over property of any description except where: the taking of possession or acquisition is necessary for public use or in the interest of defense,

⁹⁷ Article 2 of the Uganda Constitution 1995.

⁹⁸ National Objectives and Directive Principles of State Policy; **Objective No. XI (III) of the Constitution.**

⁹⁹ Article 237(1) and (3) of the Constitution of the Republic of Uganda.

¹⁰⁰ Article 237(2)(c) of the Constitution of the Republic of Uganda.

public safety, public order, public morality or public health; and the compulsory taking of possession or acquisition of property is made under a law which makes provision for Prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property ; and a right of access to a court of law by any person who has an interest or right over the property. ¹⁰¹

Article 50(1) of the Constitution provides that any person who claims that a fundamental or other right or freedom guaranteed under this constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

The Land Act Cap 227

The land Act was enacted to provide for the tenure, ownership and management of land; to amend and consolidate the law relating to tenure, ownership and management of land; and to provide for other related or incidental matters.

The Land Act provides that; subject to article 237 of the Constitution, all land in Uganda shall vest in the citizens of Uganda and shall be owned in accordance with the following land tenure systems (a) customary; (b) freehold; (c) mailo; and (d) leasehold.¹⁰² The incidents of this tenure system are provided under the Act.

• Customary Land Tenure:

The most common tenure system in Uganda is customary tenure, which the Land Act recognizes as governed by customs, rules, and regulations of the community .In this system, landholders do not have a formal title to the land they use, although Article 237(4)(a) of the

¹⁰¹ Article 26 of the Constitution of the Republic of Uganda.

¹⁰² Section 2 of the Land Act Cap 227.

1995 Uganda Constitution stipulates that all Ugandan citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by Parliament. More than 80 percent of the land in Uganda is held under unregistered customary tenure. Despite the lack of registration, customary tenure is recognized by the state (Article 237(1) of the 1995 Constitution of Uganda).

• **Freehold- Land Tenure:**

Very little land is held under freehold tenure in Uganda. Freehold is the premier mode of private land ownership under English law. The Land Act recognizes it as one of the four regimes through which access to land rights may be obtained. Its incidents are defined to include registration of title in perpetuity and conferment of full powers of ownership (i.e. the power of use, abuse and disposition) so long as it is done in a manner consistent with the laws of Uganda. These rights are well respected by the state. Transactions involving freehold lands are governed by the Registration of Titles Act (Cap.230).

• **Mailo Land Tenure:**

Established in 1900 by the British colonial government to reward colonial agents who advanced British interests with large estates of land, mailo tenure is a quasi-freehold tenure system found in the Central region and parts of central Western Uganda. *Mailo* ownership rights are well recognized by the state.¹⁰³ An important feature of *mailo* systems is that much of the land is used under a *kibanja* tenancy system (peasant tenancy), which may or may not be documented with

¹⁰³ Article 237(1) of the 1995 Constitution of Uganda

kibanja certificates. In the case of **Mitwalo Magyengo and Medadi Mutwabo (High Court Civil Appeal No.11 of 1996)**, the plaintiff was claiming Ownership of an interest in land classified as the MAILLO LAND OWNERSHIP which was governed by the BUGANDA KINGDOM LAW which confers ascertained rights to the owner of Mailo Land interest and limits the extent of the right to deal with that kind of land, and the other relevant law which recognised the Possession of interest of a person on another person's mailo land is the Busulu and Envujjo Law, which sets out, the right of Kibanja holder and those of mailo owner and then provides procedural enforcements of the same under Section 3, 4, 8 9 and 11. It was found that there is no right to transfer or dealing in Kibanja interest without the express consent of the mailo owner.

The question of who constitutes a bonafide occupant on land was extensively addressed in the case of **Kampala District Land Board and Another vs National Housing and Construction Corporation Civil Appeal No. 2 of 2004 (UGSC)**. In that case the respondent had utilised the suit land unchallenged since 1970. The Court of Appeal held that it was indeed a bonafide occupant having utilised the suit land unchallenged for 25 years. The Supreme Court upheld the position of the Court of Appeal.

Mailo Tenants do not hold full ownership rights; they must pay rent to the *mailo* owner¹⁰⁴ and face some restrictions on what they can do on the land. However, reforms under the Land (Amendment) Act 2010 have strengthened tenants' rights by limiting the rent they must pay to

¹⁰⁴ Busuulu and Envujjo law of 1927

a nominal amount and have made it more difficult for *mailo* owners to evict the tenants. The kibanja tenants have rights indefinitely.¹⁰⁵

It should be noted that a kibanja interest in land is not formally acknowledged as such either in the Constitution or the Land Act, but has been treated by the courts as customary tenure which is acknowledged by both legal sources as stated in **Marko Matovu vs Mohammed Sseviiri & Anor Civil Appeal No. 7/778 (CA)**.

• **Leasehold Tenure:**

In the leasehold tenure system, the owner of the land (whether customary, freehold or mailo) grants the tenant exclusive use of the land, usually for a specific period of time. Land may also be leased from the state to individuals for typical lease periods of 5, 45, or 99 years. In return, the tenant usually pays an annual rent or service under specified terms and conditions. Leaseholders may or may not hold formal contracts with the owner. Leaseholders are not required to be Ugandan citizens; the other forms of tenure are, however, available only to Ugandan citizens.

According to the Land Act (1998), foreign investors (self or company) are not allowed to buy land outright, but can lease land for up to 99 years. However, companies with local shareholding participation of 50% or more can buy land outright but the transactions must follow the nature on the land tenure.¹⁰⁶

¹⁰⁵ Section 3 (4), 31-39 of The Land Act Cap 227 as amended.

¹⁰⁶ Section 40 of The Land Act.

The definition of a non citizen for purposes of land is; a person who is not a citizen of Uganda by birth, registration or by naturalization¹⁰⁷; in the case of a corporate body, a corporate body in which the controlling interest lies with noncitizens; in the case of bodies where shares are not applicable, where the body's decision making lies with noncitizens; a company in which the shares are held in trust for noncitizens; and a company incorporated in Uganda whose articles of association do not contain a provision restricting transfer or issue of shares to noncitizens.¹⁰⁸ "Controlling interest" means; in the case of companies with shares, the majority shares are held by persons who are not citizens; and in the case of companies without shares, a company in which decisions are arrived at by the majority who are not citizens.¹⁰⁹

The Registration of Titles Act cap 230

The RTA allows the proprietor of any freehold or mailo land under the operation of this Act to lease that land subject to any law or agreement for the time being in force for any term exceeding three years by signing a lease of it in the prescribed form.¹¹⁰

According to the Land Act, a lease of five years or more acquired by a noncitizen shall be registered in accordance with the Registration of Titles Act. ¹¹¹Once registered, certificate of title is conclusive proof of ownership and can only be challenged if there is fraud.¹¹²

¹⁰⁷ Article 10,12 &13 of the Constitution

¹⁰⁸ Section 40 (7) of the Land Act.

¹⁰⁹ See S, 40(8) of the Land Act.

¹¹⁰ Section 101 of the RTA.

¹¹¹ Section 40 of the Land Act.

¹¹² See *Kampala Bottlers Ltd vs Damanico Ltd* Civil Appeal No. 22 of 1992 (SC), *Kampala District Land Board & Anor vs National Housing & Construction Corporation*

The RTA further provides that the proprietor of any lease under the Act may, subject to any provisions in his or her lease affecting his or her right to do so, sublet for a term not less than three years by signing a sublease in the prescribed form.¹¹³ In addition, the proprietor of land or of a lease or mortgage or of any estate, right or interest therein respectively may transfer the same by a transfer in the prescribed form¹¹⁴

Under the RTA, the proprietor of any land under the operation of the Act may mortgage that land by signing a mortgage of the land in the prescribed.¹¹⁵ Such a mortgage under when registered, has effect as a security, but shall not operate as a transfer of the land thereby mortgaged.¹¹⁶

The Investment Code Act Cap 92

According to the Investment Code Act (The Code), "foreign investor" means; a person who is not a citizen of Uganda; a company, other than a company referred to in subsection (2), in which more than 50 percent of the shares are held by a person who is not a citizen of Uganda; a partnership in which the majority of partners are not citizens of Uganda. Subsection 2 therein provide that, the following shall be deemed not to be foreign investors; a company registered under the Companies Act in which the Government holds a majority of the shares, whether directly or indirectly; a body corporate established in Uganda by law; an international development agency approved by

(supra)and Kampala Land Board & Another vs. Venansio Babweyaka & Others .
Appeal No. 2 of 2007 (UGSC).

¹¹³ Section 109 of the RTA.

¹¹⁴ Section 92(1) of the RTA.

¹¹⁵ Section 115 Of the RTA.

¹¹⁶ Section 116 of the RTA.

the authority for the purposes of this section; a cooperative society registered under the Cooperative Societies Act; a trade union registered under the Trade Unions Act.¹¹⁷

A foreign investor shall not operate a business enterprise in Uganda otherwise than in accordance with an investment license issued under the Code. In addition, the code prohibits foreign investor from carrying on the business of crop production, animal production or acquiring or being granted or leasing land for the purpose of crop production or animal production. But a foreign investor may provide material or other assistance to Ugandan farmers in crop production an animal production or Lease land for purposes of manufacturing or carrying out the activities set out in Schedules to the code¹¹⁸

Under Code; the business enterprise of an investor which is licensed under the Code, or an interest or right over any property or undertaking forming part of that enterprise shall not be compulsorily taken possession of or acquired except in accordance with the provisions of the Constitution of Uganda. Where a licensed business enterprise, of an investor or an interest or right over property forming part of that enterprise is compulsorily taken possession of or acquired, compensation in respect of the fair market value of the enterprise specified in the enterprise or an interest or right over property forming that enterprise shall be paid within a period not exceeding twelve months from the date of taking of possession or acquisition. The Compensation paid out to the investor under Code after compulsory acquisition is freely transferable out of Uganda and is not be subject to

¹¹⁷ Section 9 of the Code.

¹¹⁸ Section 10 of the Code.

exchange control restrictions under the Exchange Control Act or any law.¹¹⁹

Under the Investment Code, a dispute between a foreign investor and the UIA or the Government in respect of a licensed business enterprise may be submitted to arbitration in accordance with the rules of procedure of the International Centre for the Settlement of Investment Disputes (ICSID), or within the framework of any bilateral or multilateral agreement on investment protection to which the Government of Uganda and the country of which the investor is a national are parties; or in accordance with any other international machinery for the settlement of investment disputes.¹²⁰

The Mortgage Act 2009

The Mortgage Act provides that a person holding land under any form of land tenure, may, by an instrument in the prescribed form, mortgage his or her interest in the land or a part of it to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfillment of a condition.¹²¹ A mortgage shall have effect as a security only and shall not operate as a transfer of any interest or right in the land from the mortgagor to the mortgagee; but the mortgagee shall have, all the powers and remedies in case of default by the mortgagor and be subject to all the obligations conferred or implied in a transfer of an interest in land subject to redemption.¹²²

¹¹⁹ Section 27 of the Code.

¹²⁰ Section 28 of the Code

¹²¹ Section 3 of the Mortgage Act.

¹²² Section 8 of the Mortgage Act.

The Land Acquisition Act Cap 226

According to Land Acquisition Act, Whenever the Minister is satisfied that any land is required by the Government for a public purpose, he or she may, by statutory instrument, make a declaration to that effect specifying; the location of the land to which it relates; the approximate area of the land; and if a plan of the land has been made, a place and time at which the plan may be inspected. The Minister shall cause a copy of every declaration to be served on the registered proprietor of the land specified in the declaration or, as the case may be, on the controlling authority and, if the proprietor is not the occupier of the land, on the occupier.¹²³

After the publication of a declaration in respect of any land, the assessment officer shall cause a notice to be published in the Gazette and exhibited at convenient places on or near the land, stating that the Government intends to take possession of the land and that claims to compensation for all interests in the land may be made to him or her. Such a notice shall give the particulars of the land to which the notice relates and shall require all persons having an interest in the land to appear personally or by agent before the assessment officer on a day and at a time and place specified in the notice in order to state; the nature of their respective interests in the land; the amount and particulars of their claims to compensation for those interests; and their objections, if any, to any plan of the land.¹²⁴

Where a notice is published in respect of any land, the assessment officer shall, on the day specified in the notice, proceed to hold an inquiry into claims and objections made in respect of the land and shall

¹²³ Section 3 of the Land Acquisition Act.

¹²⁴ Ibid Section 5.

make an award specifying; the true area of the land; the compensation which in his or her opinion should be allowed for the land; and the apportionment of that compensation among all the persons known or believed by him or her to have an interest in the land, whether or not they have appeared before him or her.¹²⁵

Where a declaration has been published in respect of any land, the assessment officer shall take possession of the land as soon as he or she has made his or at any time after the publication of the declaration if the Minister certifies that it is in the public interest for him or her to do so. Once possession occurs, the land immediately vest in the Land Commission free from all incumbrances; and the estate and interest of every person having an interest in the land shall be deemed to have been converted into a claim for compensation according to the Act.¹²⁶

Where an award is made, any person awarded or claiming that he or she should have been awarded compensation may within sixty days of the date of the award appeal to the High Court by way of objection to a; the total amount of the compensation awarded; the apportionment of the compensation; any failure or refusal of the assessment officer to include him or her in the apportionment.¹²⁷

Note that, the Government may enter into an agreement with a person having an interest in land by which; that person's interest in land is acquired by the Government; or that person's claim to compensation for land under this Act is settled by the grant of other land or in any other way.¹²⁸

¹²⁵ Ibid section 6.

¹²⁶ Ibid Section 7

¹²⁷ Ibid Section 13.

¹²⁸ Ibid Section 19.

Other Laws

There are a number of other enactments that are relevant to land access and land ownership by foreign investors in Uganda which include the Companies Act, The Wild Life Act Cap 200, The National Forestry and Tree Planting Act of 2003.

The Policy Framework

The Land Sector Strategic Plan 2001-2011

The Land Sector Strategic Plan 2001-2011(LSSP) is the operational, institutional and financial framework for the implementation of sector wide reforms and land management including the implementation of the Land Act. It is intended to guide government, the private sector and civil society in the management and use of Uganda's land resources. It is an integrated approach to the land sector, and is linked, among others, to the Poverty Eradication Action Plan, and the Plan for Modernization of Agriculture.

LSSP is designed to remove barriers to increased land utilization, created by unequal distribution of land access and ownership. The underlying principle is the realization that tenure insecurity and uncertainty of land rights among the vulnerable groups affects productivity and use of land. It holds that the poorest groups in society are also the most insecure in their land rights. LSSP further acknowledges that accessible and fair land dispute resolution is critical to tenure security especially for poor and vulnerable groups.

In the positive sense, LSSP lays down the framework for the development of land policy and legal framework, which addresses three main elements: tenure policy, land use policy and land laws. This

is the framework within which land issues of foreign investors can be addressed. In terms of service delivery, LSSP facilitates the decentralization of land services, the devolution of land management, and empowering communities and districts to make better use of their land resources, a system and principle that is ideal in delivering at lower levels of administration where the internally displaced are likely to approach for service.

The Draft Land Policy 2011

Uganda has never had a clearly defined and / or consolidated National Land Policy since the advent of colonialism in the nineteenth century. The draft National Land Policy, therefore, consolidates a number of scattered policies, which exist on various aspects of the land question, but are diverse, sectoral and inconclusive in many respects. Post-independence and recent attempts to settle the land question by the Land Reform Decree 1975, the 1995 Constitution of Uganda, and the Land Act 1998 failed to deal with the fundamental issues in land tenure due to absence of clear policy principles to inform the enactment of legislation that offers politically and socially acceptable and technically feasible solutions.¹²⁹

The key policy issues touch on (1) historical injustices and colonial legacies, (2) contemporary issues, mainly arising from such legacies; and (3) land use and land management issues.

The vision of the policy is: *"Sustainable and optimal use of land and land-based resources for transformation of Ugandan society and the economy"*. The goal of the policy is: *"to ensure efficient, equitable and sustainable utilization and management of Uganda's land and land-*

¹²⁹ *The Uganda National Land Policy, 2011*

based resources for poverty reduction, wealth creation and overall socio-economic development”.

The draft National Land Policy, among other things, seeks to re-orient the land sector in national development by articulating management and co-ordination between the land sector and other productive sectors in the economy to enhance the contribution of the sector to the social and economic development of the country. The policy has a bifocal emphasis on ownership of land and land use, stipulates incentives for sustainable and productive use, as well as other measures to achieve land management and land development objectives.

The policy identifies lack of clarity and certainty of land rights in all the tenure regimes to be a critical issue and in this regard, measures are proposed to disentangle the multiple, overlapping and conflicting rights over registered land. The policy has also addressed the complexity and ambiguity in the Constitutional and legal framework, governing the land relations between the Government and the citizens of Uganda. It affirms that citizens of Uganda shall exercise their residual authority over land collectively through the State. It avers that the Government shall hold and manage public land, government land and public trust natural resources in strict conformity with the acceptable principles of the public trust doctrine.

This policy overhauls the existing institutional framework for land administration and land management to facilitate the delivery of efficient, cost-effective and equitable services.

With regards to the operations of a land market hinge on an efficient land registry system that guarantees titles, provides accurate information, and is open to public scrutiny. Land markets by nature, are subject to imperfections and distortions caused by lack of effective

regulation, poor land use planning, and under-capitalization. Land markets can lead to loss of rights for vulnerable groups through distress sales, the consequences of which is landlessness, as land flows into the hands of the rich. There is need for infrastructure for efficient and equitable land market operations in support of the socio-economic and cultural needs of land users. It is the duty of the Government to regulate the operations in the land market under all tenure regimes.

The policy provided that in relation to the land market, the Government shall promote efficient, effective and equitable land markets in all land tenure regimes.¹³⁰ To create an enabling environment for land market functions, Government will: facilitate the exchange and transmission of land rights and interests without compromising tenure security for individuals and communities; identify a statutory agency or department to facilitate and regulate the land market in Uganda; design and implement measures to mitigate against the negative impacts of land markets through fiscal, land-use planning and other appropriate measures; establish a well-functioning land information system and provide good quality land-related information and infrastructure to access this information; introduce and create a computerized land registration and cadastral system, that is periodically updated to guarantee transactional accuracy and reduce costs of registration and disputes; make progressive improvement in the quality and completeness of cadastral and land information databases and systems to facilitate the land market; promote public-private partnerships to provide sufficient capacity and finance while retaining ultimate control by the state; promote and institutionalize the land rental market to promote access to land; for

¹³⁰ Policy Statement 85.

production; and regulate the operations of non-state actors in the land market, in particular real estate agents and other professionals.

The policy recognizes that Growth in Foreign Direct Investment (FDI) can lead to alienation of land from peasant's rights holders and result into tenure insecurity, food insecurity, land conflicts and poverty. Mechanisms to deliver the right balance between improving livelihoods, protecting vulnerable groups, and raising opportunities for investments and development are needed. Determining the sectors which should be open to foreign direct investments (FDI) and the amount of land to be allocated for such investments based on the use to which the land is to be put is imperative.

Government or public land available to issue for carefully-selected private investment, deemed of importance for socio-economic growth is limited. In the past, Government proposed to harness the power of compulsory acquisition to deliver land to investors; this was roundly rejected by the Citizens of Uganda because. In some instances it was, not based on any criteria.

With regards to access to land for investment, the Government shall create an enabling environment to attract investment on both domestic and foreign in key sectors in the economy: in accordance with established laws and procedures; on the basis of appropriate evaluation, due process and due diligence; and Government shall put in place measures to mitigate the negative impacts of investment so as to deliver equitable and sustainable development¹³¹.

Government will put in place measures to: formulate a strategy to guide the State and its agencies in the provision of land for investment,

¹³¹ Policy Statement 88.

including measures to: regulate the amount of land investors can access in consideration of the use that the land will be put to, follow due process (evaluation, due diligence and approval of land use change), determine sectors open to foreign direct investment, carry out cost-benefit analysis on public facilities before allocating the land to private investors, assemble land and allocate it through a land bank; The government shall also provide reliable and easily accessible land-based information to guide potential investors; remove bureaucratic inefficiency and corruption in the land institutions to facilitate delivery of land for investment; promote long-term benefit-sharing arrangements rather than one-off compensation for loss of land rights, such as contract farming schemes for small holder farmers, out growers schemes, equity-sharing schemes, use of leaseholds and joint-ventures.¹³² And protect the land rights, including rights of citizens in the face of investments, with measures for, but not limited to; clear procedures and standards for local consultation; mechanisms for appeal and arbitration; facilitate access to land by vulnerable groups, smaller-scale land owners and land users in the face of large scale farming interests; protect and avoid degradation of natural resources and sensitive eco-systems.¹³³

Roles and Responsibilities of Key Players

There are several key players in the administration and management of land both at the National (Ministry) and District levels as explained below.

¹³² Policy Statement 89.

¹³³ Policy statement 90

AT THE NATIONAL LEVEL

Ministry of Lands, Housing and Urban Development

The ministry is mandated with the administration of the various land tenure systems in Uganda. This is done through the Directorate of Lands. The ministry remains with the functions of quality assurance, policy formulation and offering of technical assistance.

Directorate of Land Management (DLM)

The DLM's main roles in the administration of land are: setting and safeguarding standards for land administration; facilitating land transactions, taking into consideration the existing Government laws, policies and procedures; providing technical support and supervision and training of lower land management institutions; coordinating the collection, custody and updating of land information on delineated land in the country; assessment of compensation for land and properties acquired by Government; valuation of rental properties to be occupied by Government institutions and agencies, determination of premium and ground rent; valuation of leases; and assisting districts to work out meaningful compensation rates.

In addition, DLM vets appointed DLB members and submit them for Ministerial approval, inducting and training of ALC and DLB members, District Land Officers; and monitoring the work of DLBs, DLOs and ALCs.

The DLM also provides technical support to the DLOs in the processing of upcountry leaseholds and freeholds; processing and granting of consent to transfer properties, checking for compliance with the land laws, regulations and policies; plus the reconstruction, rehabilitation

and computerization of land records and cadastral index maps. The DLM is responsible for surveying and mapping activities in the country, demarcation and maintenance of international and internal boundaries and establishing, updating and maintaining of the national geodetic networks to control surveys done in the country. DLM also provides and maintains infrastructure for standardization of survey equipment and gives support in servicing and maintenance of surveying and mapping equipment used in the country.

Uganda Land Commission (ULC)

The ULC is an independent body that works closely with MOLHUD in the administration and management of land. Its roles are: holding and managing land in Uganda which is vested in or acquired by the Government in accordance with the Constitution of the Republic of Uganda; and, where applicable, holds and manages any land acquired by the Government abroad except that the Commission may delegate the management of such land to Uganda's missions abroad; the Commission also procures certificates of title for any land vested in or acquired by the Government. Further, the Commission is required to pay property rates to all qualifying Urban Councils and to collect Non Tax Revenue (NTR) from Government properties (land) which are rented out.

AT THE DISTRICT LEVEL

District Land Boards (DLB)

Sections 56, 57 and 58 of the Land Act CAP 227 requires the establishment of DLBs with a minimum of five (5) members who hold office for a period of five (5) years and may be eligible for reappointment for a further one term. Paragraph 3.1 of the guidelines

on the administration of land of 2005, requires members of the DLB to be appointed by the District Council (DC) on the recommendation of the District Executive Committee (DEC) and approved by the Minister for Lands, and is responsible for the following functions: holding and allocating land in the district which is not owned by any person or authority; facilitating the registration and transfer of interests in land; taking over the role and exercising the powers of the lessor in the case of leases that were granted by former controlling authority (ULC); causing surveys, plans, maps, drawings and estimates to be made by or through its officers or agents¹³⁴.

The Board compiles and maintains a list of rates of compensation payable in respect of crops, buildings of a permanent nature and any other thing that may be prescribed by the laws and reviews it every year.

The minutes, seal and other correspondences of the Board are kept by the Secretary to the Board who is a public officer appointed by the District Service Commission (DSC), with knowledge and experience in matters relating to land. The Board is required to prepare quarterly reports and its activities are financed from the Consolidated Fund.

District Land Offices (DLO)

Section 59 (6) of the Land (Amendment) Act of 2010 requires the establishment of DLO comprising the offices of the District Physical Planner, the District Land Officer, the District Valuer, the District Surveyor, the District Registrar of Titles and the District Cartographer, which provides technical services to the DLB through its own staff or

¹³⁴ Section 59 (1) of the Land Act Cap 227 as amended

arranges for external consultants to facilitate the Board in the performance of its functions.

Area Land Committees (ALC)

Section 64 (1) and (2) of the Land (Amendment) Act of 2004 requires the appointment of a Land Committee at Sub County or Divisional level consisting of a Chairperson and four (4) other members appointed by the District Council (DC) on the advice of the Sub County or Divisional Council.

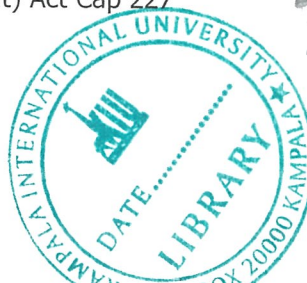
The ALC assists the DLB in an advisory capacity on matters relating to land including ascertaining rights in land boundaries and disputes, and performs any other function conferred on it by the law. The records and instruments of the ALCs are kept by the Chairperson, and the Committees may regulate their own procedures.

Committee members are paid such remuneration as may be determined by the DC on the recommendation of the DEC and the Committee expenses are charged on the district administration funds (Section 66 of the Land Act CAP 227). However, the law requires that, before appointing any given Committee, the DC considers whether the Sub County or Division Council has indicated preparedness to assist in the funding of the Committee and the state of the finances of the District¹³⁵.

District Land Tribunal (DLT)

Section 74 (1) and (2) of the Land (Amendment) Act of 2004 establishes the Office of District Land Tribunal (DLT) consisting of a

¹³⁵ Section 64 (6) © & (e) of the Land (amendment) Act Cap 227



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Chairperson and two (2) other members who shall be persons with knowledge and experience in land matters, appointed by the Chief Justice (CJ) the advice of the Judicial Service Commission (JSC). The Chairperson shall be a person qualified to be a Magistrate Grade 1.

The jurisdiction of the DLT includes: determining disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the Commission or other authority with responsibility relating to land, determining any dispute relating to the amount of compensation to be paid for land acquired, making consequential orders relating to the cancellation of entries on certificates of titles or cancellation of titles and determining any other disputes relating to land.

The records, seal and correspondences of the DLT are kept by the Secretary who is a public officer qualified or knowledgeable in land matters.

Office of the Recorder

Section 68 of the Land Act CAP 227 establishes the Office of the Recorder at each Sub County, and for each Division, in an urban area. The Recorder shall be responsible for issuing and registering dealings on certificates of customary ownership and certificates of occupancy.

The Recorder shall establish, keep and maintain the following: an abstract book, a PIN allocation book, a register of certificates of customary ownership, a register of certificates of occupancy and a parcel file (PF), as per Section 41 of the Land Regulations, 2004.

Office of the Mediator

Section 89 (1) of the Land Act CAP 227 requires the establishment of the Mediator who is appointed by the Land Tribunal and the appointment shall be on adhoc basis. The Mediator shall be a person of high moral character and proven integrity, knowledge, work, standing or reputation in society and who is likely to bring parties in disagreement or dispute to reach a mutually satisfactory agreement and shall be paid such allowances as may be prescribed.

The Uganda Investment Authority .

The Uganda Investment Code Act establishes the Uganda Investment Authority which is a body corporate with perpetual succession and a common seal and, in its own name, capable of acquiring and holding property; suing and being sued; and doing and suffering all acts and things as bodies corporate may lawfully do or suffer. The authority is an agency of the Government and is under the general supervision of the Minister responsible for planning and economic development.

The functions of the authority are; to promote, facilitate and supervise investments in Uganda; to receive all applications for investment licences for investors intending to establish or set up business enterprises in Uganda under this Code and to issue licences and certificates of incentives in accordance with this Code; to secure all licenses, authorizations, approvals and permits required to enable any approval granted by the authority to have full effect; to recommend to the Government national policies and programmes designed to promote investment in Uganda; to provide information on matters relating to investment in Uganda; to assist potential investors in identifying and establishing investment projects in Uganda; in

accordance with the provisions of this Code, to determine the terms and conditions which may be imposed in relation to the operation of a business enterprise; to deal with complaints received by it; to supervise the implementation of this Code; and to do all other acts as are required to be done under this Code or are necessary or conducive to the performance of the functions of the authority.

In order to encourage foreign investors, a number of investment promotions have been organized abroad - the USA, Europe, India, Thailand, South Africa, etc. to explain the trade and investment opportunities available in Uganda, especially in agro-farming, fishing and forestry, minerals, power generation and tourism. Attractive incentives have been provided to prospective investors as well.

The UIA is currently implementing a plan to construct industrial parks in the country's largest population centers. The government is financing the project with a \$27 million World Bank loan and \$10 million budget allocation. The first park is located eight miles east of Kampala in Namanve, with electricity, sewage systems, roads, and telecommunications infrastructure jointly funded by the World Bank and the government. While works are still ongoing at the Namanve Park, it is open for business, and companies have already moved in. Others parks are planned for Kampala, Mbarara, Mbale, Gulu, and Soroti. According to the UIA, land at these sites is available and applications for development are being accepted. The government will subsidize investor costs based on a formula that calculates the amount to be invested and other factors such as the number of workers to be employed by the venture.

CHAPTER FIVE

ANALYSIS OF THE STUDY

DEMOGRAPHIC CHARACTERISTICS OF THE RESPONDENTS

The respondents that were interviewed about the research topic ranged from males and females of majority age with knowledge of the legal systems governing land either working with Uganda Investment Authority, Ministry of Lands or in active legal practice and investors in the agribusiness and manufacturing industry.

Respondents' Perception of laws and regulations that governing access and ownership of land

Majority of the respondents considered the Ugandan laws governing land access and land ownership sufficient in governing access and ownership of land by foreign investors and in securing the land rights acquired by them. Much as majority considered the land law as generally good, readily available and stable, they agree that there are still a lot of loopholes in the law which in most cases originates from the fact that there is no policy framework on which the laws are premised.

Respondents' Perception on Land Access Procedures

Foreign companies can acquire leases on both public land from the government and private land from individual land owners without seeking approval from any government agency except where the land is above 100hecters where approval must be acquired from the government as a matter of practice.

The procedures of leasing land are the same for both foreign and domestic companies. The process of acquiring a lease is cumbersome; leasing privately held industrial land takes, on average, 2 months—and leasing public land almost 5 months. With the help of a good lawyer, it is easier to acquire the land within a shorter period. The transaction cost for obtaining a lease are generally the same for both domestic and foreign companies, they depend on the size of the land one is acquiring.

The major problem identified by most respondents is the question of where to get the land for foreign investors to lease. Land is in the hands of private individual owners, and it is highly fragmented, so an investor who wants to venture into investments which requires a large piece of land, will have to first have to identify the land and try to negotiate with the different owners to convince them to sell to him, yet this is not really easy.

Over the last 10 to 15 years, the government has sought out land in gazette protected areas for investment purposes, especially wildlife sanctuaries and forest reserves. Wildlife sanctuaries and forest reserves are not managed as strict nature preserves, but rather for the sustainable use of natural resources and ecosystems. In such multiple-use areas, certain lands and natural resources may be used by local populations with appropriate permits and licenses. For many rural people, sanctuary and reserve-based natural resources contribute to local livelihoods and are critical to sustaining their well-being.

In some cases, the government has degazetted protected areas. Degazettement refers to the loss of legal protection of all or part of an established protected area. In Uganda, this—still public—land is put

into other uses for public benefit purposes or leased to the private sector. In the latter case, the proprietary interests of citizens are destroyed and opportunities for public access to the land and resources are diminished. In 1997, 1,006 hectares of the Namanve Forest Reserve on the outskirts of Kampala were degazetted for industrial development. In 2000, 3,500 hectares from several forest reserves on the Bugala Islands in Lake Victoria were degazetted for palm oil plantations. In 2003, the government sought to degazette part of the Pian Upe Wildlife Reserve for fruit production and, in 2005, it sought to degazette part of the Kaiso-Tonyo Wildlife Reserve for a small oil refinery. The latter two efforts were not completed and the reserves remain intact.

In 2007, the government sought to degazette 7,100 hectares of the Mabira Forest Reserve for sugarcane production by the Sugar Corporation of Uganda. Local NGOs and activists, organized in a coalition, pressed the government to not pursue the degazettement. They conducted policy research on the ecological and economic value of the Reserve, lobbied lawmakers, aligned their efforts with the National Forestry Authority (the government body responsible for managing forests), filed petitions in court, called for boycotts of Sugar Corporation products, and organized protests. The street demonstrations, involving some senior government officials and a former presidential candidate, led to ethnic tensions, loss of life and property damage. The government halted its effort, but continues to eye the land in the Reserve.

Respondents' Perception on the land information and registration

The Uganda Investment Authority is the body mandated to promote foreign investments in Uganda. Its is a one stop centre for all the interested investors where they can get information and help in identifying land for their prospective business. Generally, UIA is supposed to work hand in hand with the land registry in order to share information and help investors with land issues, this has generally not been the case since land information has not been readily available. However, currently, the Ministry of Lands with the help of USAID are in the process of computerizing the land registry.

That notwithstanding, UIA is in the process of developing Industrial parks across the country whereby, land has been acquired from private individuals and developed such that any investors who wants to acquire land for investment can lease the land from UIA.

The land registry in Uganda has not been very helpfu to investors in giving them information on available land for investments.Majority of the repondents argued that, they would not go to get information about available parcels of land from the Land Registry if they were helping investors identify land for investments. This is mainly because there is no such kind of information and if it were there,they had no idea it existed. The only way to identify a potential land for investment is through private Real Estate Agencies,advertisments in newspapers or through inquiries from the locals. After identifying the land, that is when they go to the land registry conduct a serch to determine ownership and any form of incumberances which might be on the land.

All land transactions are required to be registered. Ownership of land is by registration Title according to the provisions of the RTA. So if foreign investor buys land and does not have the transfer instruments registered, someone else can later on buy the same land and register it, in which case, the investor will only be deemed to have an equitable interest which is lesser than that of the one who register his (legal interest).

As already noted, Uganda has not been having an electronic database for land information, be it land information system or spatial information system, therefore, no land information is readily available electronically. If someone wanted any information from the land registry, they have to go to the land physically. This according to the respondent is one of the reasons why the process land transactions takes long.

Respondents' Perception on the Nature and content of land rights acquired by investors

Most of the respondents agree that, most investors get leases for up to 45 years, only a few investors get leases of up to 99 years, and this were leases given long time ago especially for Sugar processing companies. The leases are easily renewable and in most cases, there are provisions to that effect in the lease agreement.

Under the law, a foreign leaseholder enjoys the same rights as a domestic one; he/she can transfer it, sublease it, or mortgage it. There are no special procedures for doing the above as long as the provisions of the law are followed and nothing is done fraudulently.

While most respondents' opinion were that the laws governing land is generally sufficient in controlling access and ownership of land by

foreign investors, there were a number of concerns raised. First of all, the issue of availability of information pertaining land in Uganda or rather lack of it. For an investor who is not in Uganda, he has to rely on other people to identify the prospective investment land. Secondly, because of land fragmentation, it is sometimes not easy to get somebody with the right size of land to accommodate the investment project, government generally does not have land to give away to investors, if it must, government must first acquire it through compulsory acquisition, this process may take a long period of time and thus investors sometimes may lose interest and decide to take his investments elsewhere.

It should also be noted that there has also been issues of government allocating land and the public protesting such allocations. For instance, the government's attempt to allocate part of Mabira Forest to the Madhvani Group of Companies for sugar plantation which saw riots in Kampala and destruction of properties belonging to Indians.

Another issue raised by the respondents is the issue is the confusion that exists as to the role of UIA. According to some respondents, there are investors who come to Uganda and just set up shops without getting any form of authorization from UIA. These groups of respondents seemed to wonder whether it is mandatory for investors to get a license from UIA and if so, then in that case, the implementation process has a lot of loopholes. It should be noted that the Uganda Investment Code Act provides that; a foreign investor shall not operate a business enterprise in Uganda otherwise than in accordance with an investment license issued under the Code.

The National Environmental Act requires the making of an Environmental Impact Assessment report before carrying out an investment especially in sectors likely to have effects on the

environment. Most of the respondents agree that in most sensitive investments, these reports do get done, the reliability of the reports was doubted by some of the respondents.

The Link between Access to Land and Ownership of Land and Foreign Direct Investments

The ability to access land or buildings with secure ownership rights, at transparent prices, and with limited restrictions was identified as critical to a foreign investor's decision on whether to invest in a new market. Secure rights of access to land are a prerequisite for productive investment. Difficult access discourages enterprises of all sizes in both urban and rural areas. Easier access depends on effective, accessible land administration systems.

That being said, most respondents admit that, in Uganda, accessing land for investment is a major problem, first because of lack of official information about available land for investment and secondly, because land is in the hands of private individuals and owned in a multiple tenure systems, it is almost impossible to ascertain who to deal with in land transactions and different tenures come with different sets of rules.

On the question as to whether land ownership was necessary to attract foreign investors, majority of the respondents were of the opinion that it is not necessary to allow foreign land ownership to attract foreign investors besides, majority of the respondents seemed to think that foreign land ownership will have far more resounding adverse effect in the country. Some of the reasons advanced for the need for restrictions on land ownership by foreign investors is that land is the single most

valuable asset which provides food security, community and national identity, cultural inspiration and the basis for values and traditions, therefore, if it were placed in the hands of foreigners, all the above will be put in jeopardy.

In addition, FDI companies seek to own land where it involves capital intensive investment in heavy industries such as chemical and heavy metal industries, heavy machinery etc. Otherwise, wherever lease hold is an option, FDI businesses prefer to lease land to protect against: expropriation risk and currency devaluation an economic risk and long term exposure to economic crisis.

The respondents were of the view that, much as accessing land is necessary to attract foreign investors, ownership of land may not be a key issue of concern for investors, as long as they can obtain a secure lease for a reasonable period of time, that will suffice.

CHAPTER SIX

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

While carrying out research examining the land laws of Uganda and their impact on FDI, the researcher summarized the findings of the research, drew conclusions and made recommendations in the area of research as covered under this chapter.

Summary of Findings

The researcher established that the national law governing access to land and land ownership is very well developed. However, there are some few gaps identified which can be remedied if the National Land Policy was made operational.

The researcher also realized that the laws are not very clear in defining what a foreign investor is generally. The definition of a non citizen for purposes of the Land Act means: a person who is not a citizen of Uganda as defined by the Constitution and the Uganda Citizenship Act; (b) in the case of a corporate body, a corporate body in which the controlling interest lies with noncitizens; (c) in the case of bodies where shares are not applicable, where the body's decision making lies with noncitizens; (d) a company in which the shares are held in trust for noncitizens; (e) a company incorporated in Uganda whose articles

of association do not contain a provision restricting transfer or issue of shares to noncitizens¹³⁶.

On the other hand, the Investment Code Act defines a foreign investor as; a person who is not a citizen of Uganda; a company, other than a company referred to in subsection (2), in which more than 50 percent of the shares are held by a person who is not a citizen of Uganda; a partnership in which the majority of partners are not citizens of Uganda. Subsection 2 therein provide that, the following shall be deemed not to be foreign investors; a company registered under the Companies Act in which the Government holds a majority of the shares, whether directly or indirectly; a body corporate established in Uganda by law; an international development agency approved by the authority for the purposes of this section; a cooperative society registered under the Cooperative Societies Act; a trade union registered under the Trade Unions Act.¹³⁷

It is not clear whether; if a foreigner incorporates a company in Uganda it will be considered a non citizen or not.

As to whether the land laws have an impact on FDI, the researcher found that; the ease of accessing industrial land can affect a company's decision to invest and that difficult access to land can significantly impede foreign direct investment (FDI). Accessing land can impede foreign investment and doing business more generally for many reasons, including: Mistrust and discrimination. Foreign investors seeking to acquire land often face sensitive land issues rooted in historical, indigenous, and colonial traditions. (a)Mistrust of private ownership, particularly foreign ownership, still exists leading to laws that discriminate against foreign companies or individuals. These

¹³⁶ Section 40 (7) of the Land Act

¹³⁷ Section 9 of the Code.

include restrictions on ownership, types of land that can be acquired, and approvals for foreign investors;(b) Weak legal framework for land. Once a company obtains rights to an investment site, weak land use rights can impede its ability to operate and plan for the long term. Limits on land use rights can include short lease terms, obstacles to renewing and transferring land rights, and restrictions on the ability to mortgage land or use it as collateral; (c) Burdensome acquisition procedures. It may be difficult to obtain clear land titles, and acquiring industrial land is often inefficient, nontransparent, and a source of corruption.; and (d) Lack of information. Foreign investors often face major challenges in finding suitable investment locations which can include insufficient information about encumbrances, valuation, geographic characteristics, utility connections, and environmental and social risks.

Therefore, Improving access to land and ensuring its security provides significant benefits for foreign investors, governments, and other stakeholders. Effective, efficient, secure land administration is one of the drivers of foreign investment. Better access to land can also facilitate investment—foreign and domestic and may increase prosperity.

With regard to the issue of land ownership, it was found from the examination international law that the issue of foreign land ownership is largely unregulated by international law, leaving states to legislate in accordance with their own policies and requirements. This is mainly premised on the issue of state sovereignty.

Generally, most governments and more so in sub-Saharan Africa restrict foreign land ownership. In Uganda, a foreigner can not own a freehold or Mailo land. There are a number of reasons advanced as to why

governments including Uganda restrict foreign ownership of land which may include; To protect National Security; To prevent general foreign economic domination; To prevent or restrict foreign-based speculation in land; To preserve the social fabric of the nation; To indirectly control immigration; and, To control the amount of direct foreign investment. It was found out that it is not necessary to allow foreign land ownership in order to attract foreign investors besides; majority of the respondents seemed to think that foreign land ownership will have far more resching adverse effect in the country. In addition, FDI companies seek to own land where it involves capital intensive investment in heavy industries such as chemical and heavy metal industries, heavy machinery etc. Otherwise, wherever lease hold is an option, FDI businesses prefer to lease land to protect against: expropriation risk and currency devaluation an economic risk and long term exposure to economic crisis.

FINDINGS

From the research findings, the observations made and the literature reviewed, the researcher drew the following findings in regard to the research topic:

1. The law governing land in Uganda though relatively good and consultative, is lacking in terms of the policy framework lay down the framework for the implementation of the laws.
2. The Constitution and the Land Act in Uganda prohibits the ownership of land by foreigners. Foreign investors seeking to access land in Uganda may lease privately or publicly held land. Private land available for lease may include customary and

communally owned land, which cannot be leased without community consultations.

3. The procedures for leasing both private and public land to foreign investors are similar, but one must negotiate with the relevant public authority for the lease of public land. Land may be leased for a maximum duration of 99 years and there is no restriction on the amount of land that may be leased.
4. Lease contracts offer the lessee the right to sublease, subdivide, and/ or mortgage the leased land, subject to the terms of the contract.
5. Since not all land rights require registration, a thorough due diligence process is required before leasing land since its possible to have three different types of interests in the same piece of land.
6. Access to land related information is crucial in the investors decision making process. In Uganda, the information is not easily accessible through the internet, but most land-related information can be found in the land registry. The ministry of Lands is currently in the process of computerising the Land information to make it easily available to the public.
7. Easy access to land can positively impact the inflow of FDI into the country, but this is not the only factor to be considered. FDI inflows are also influenced—to a larger extent—by other economic fundamentals such as large market size, higher education levels and productivity, better infrastructure and lower domestic lending rates. Moreover, FDI inflows from developing countries are influenced more by costs like tariffs and fiscal incentives. Hence, the government should work towards reducing operational barriers, e.g. approval process,

and sectoral restrictions, e.g. equity participation, limiting FDI inflows.

Basing on the above findings, the researcher made viable recommendations to guide the stakeholders in the land laws and FDI.

Proposed Areas of Further Research

The researcher notes that, the following areas are beneficial for research purposes in the field of Foreign Investments and Land in Uganda;-

- A Comparative Analysis of Regulatory Approaches to the Use of Land by Foreign Investors in Uganda.
- The Impact of land acquisitions by Foreign Direct Investor on the land rights on the local communities.
- Security of tenure for Investors' Land Rights in Uganda; is it a myth or reality.

Conclusions

Basing on all that is set out in this research, the researcher acknowledges that the laws governing access to land and ownership of land by foreign investors in Uganda are well spelt out, the only problem is lack of a policy framework to aide their implementations.

Restrictions on foreign ownership of land do not necessarily undermine investment flows: long-term renewable leases are adequate for most if not all business purposes, and all that is needed is a proper land access procedure. Therefore, laws governing access to land have a direct influence on the inflow of FDI.

RECOMMENDATIONS

The national Land Policy should be enacted to help lay the foundation for the implementation of the Land laws.

Since access to land related information like available parcels of land for investments, procedures for acquiring the land and the people who can be dealt with by the investors in relation to the identified land is crucial for the investor's decision, the information should be made easily available to the public so that even those investors who are not in yet in the country can easily get access to these information.

Land for investments should be made easily accessible by making sure that the process of acquiring leases and the period it takes to process a leasehold title is reduced to the minimal period necessary.

There are other factors which determine the country's attractiveness to FDI; the government should also ensure that all other factors which have been identified in literature to attract FDI are if possible available in Uganda.

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INTERVIEW GUIDE

Interview Guide for collecting information on Land Laws and Their Impact on Foreign Direct Investment from Investment Promotion Agency, Ministry of Lands and Foreign investors.

Dear Participant,

I am a candidate for masters in Law at Kampala International University currently carrying out research on Laws governing access to land and land ownership and their impact on Foreign Direct Investment (FDI). You are kindly requested to participate in this research to establish the laws governing land access and ownership by foreign investors and their impact on FDI. Please ***note*** that: There are no ***correct*** or ***incorrect*** responses, so please kindly provide the most appropriate information. All the information gathered from this Interview will be ***totally confidential*** and the strictest confidentiality and anonymity shall be preserved.

Yours faithfully

Nyachio N. Mary

Master's Degree Candidate

Respondent information

Title (Mr., Ms., etc.) _____

Position _____

Firm/Organization

What is your specialization?

Perception of laws and regulations that governing access and ownership of land

1. Do you think the laws governing land in Uganda are sufficient in;

- (a) Governing land ownership by foreign investors?
- (b) Governing access to land by foreign investors?
- (c) Securing foreign investors' land rights?

2. Rate the laws governing land in Uganda on the following criteria on a scale of 1-5 (with 5 being the highest score) :

- (a) The land laws are Good _____
- (b) The land laws are Complete and readily available _____
- (c) Land laws are Stable and consultative _____
- (d) Land laws in Uganda are outdated _____
- (e) No idea _____

Land access procedures

1. Do you think foreign landownership is necessary to attract FDI? _____

_____.
2. Do you think land tenure is a grave concern for investors? Why? _____

_____.
3. Can a foreign company lease land from the government (e.g. public land)? _____

_____.
4. Can a foreign company lease land from private owners (freehold land)? _____

_____.
5. Does a foreign company need an approval from government official or parliament to lease public land? _____

_____.

6. Does a foreign company need an approval from government to lease private land? _____

_____.

7. Are procedures for leasing industrial land the same for foreign- and domestically-owned companies? _____

_____.

8. Would a foreign-owned company be required to pay any transaction costs above those paid by domestic companies? _____

_____.

Characteristics of land information and registration

9. Is there an investment promotion agency (IPA) which provides information about land plots available for investments? _____

_____.

If you answered No, please skip to question **12**.

10. What is the name of this agency/organization? _____

11. Is this agency linked with other publicly provided land information (such as land registry or cadastre) to share data, coordinate and maintain accurate land information? _____

_____.

12. Is there a land registry with public information about registered land plots? _____

_____.

13. Does the land registry:

(i) Have an inventory of public land parcels available for investment? _____

_____.

(ii) Have an inventory of private land parcels available for investment? _____

_____.

(iii) Provide information about available land parcels accessible remotely for specific parties (e.g. for notaries)?

_____.

(iv) Provide information about available land parcels accessible over the internet to everyone?

_____.

(v) Provide information on both the land plots and buildings/physical structures on top of the land? _____

_____.

(vi) Require by law that all land transactions be registered? _____

_____.

14. Does your country have a single searchable electronic database for all land related information also known as a land information system (LIS)? _____

_____.

15. Does your country have a single searchable electronic database for all land related spatial/geographic information (may) also be known as a geographic information system (GIS)?

_____.

16. Where would you look for information about land if hired by an investor to identify an investment site? (check all that apply)

Land

Registry

Cadaastre

Real Estate

Broker/Agent

Court

Investment promotion agency

Others (Please name the agency):-----

17. What is the name of the authority/authorities that administer land registration in your country? (This may include the Ministry of Lands, courts or any other governing authority)_____

_____.

18. Please identify any other sources of information that you would use to identify available land for investment:_____

_____.

19. What is the system of recording land rights in your country? If you mark „other“ please explain below in the comments and clarifications.

Register of Titles _____

Register of Deeds _____

Both _____

Other _____

Comments _____ and _____ clarifications:

_____.

Nature and content of land rights acquired by investors

20. What is the statutory maximum duration of a lease (in years) that a foreign company would be able to obtain?

_____.

21. Are foreign companies allowed to renew their leases?

_____.

22. Are foreign companies allowed to transfer their leases?

23. If yes, can a foreign company transfer land to another foreign company?

24. Can a foreign-owned company sublease land from an existing leaseholder?

25. Can a foreign-owned company subdivide its lease?

26. Can a foreign company sublease its acquired land?

27. Can a foreign-owned company use the leased land as collateral for the purchase of production equipment?

28. Can a foreign-owned company mortgage the leased land?

29. Can a foreign company lease an unlimited amount of land?

30. Is there a fast-track option for lease registration that allows foreign companies to pay a higher fee to have their lease application processed faster?

31. Is a foreign company legally required to do an environmental impact assessment during the process of leasing

industrial

land?

32. Is there a link between land laws and Foreign Direct Investment?

Any

other

remark? _____



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