



THE REPUBLIC OF UGANDA

**MINISTRY OF WATER, LANDS AND ENVIRONMENT**

**LAND TENURE REFORM PROJECT**

**ISSUES PAPER FOR  
THE NATIONAL LAND POLICY**

*February 2004*

## TABLE OF CONTENTS

<b>1.</b>	<b>INTRODUCTION .....</b>	<b>4</b>
1.1	HISTORICAL BACKGROUND .....	4
	1.1.1 Pre-Colonial Origins.....	5
	1.1.2 Colonialism .....	5
1.2	THE LAND QUESTION IN UGANDA.....	6
	1.2.1 Key Features of the Land Question .....	6
1.3	INTERNATIONAL RESEARCH ON LAND POLICY.....	7
	1.3.1 Land Tenure .....	7
	1.3.2 Land Transactions.....	7
	1.3.3 Land Reform.....	8
	1.3.4 Land Administration.....	8
	1.3.5 Land Management.....	8
1.4	REGIONAL DEVELOPMENTS IN LAND POLICY .....	9
	1.4.1 Land Policy and Legislation.....	9
	1.4.2 Capacity .....	9
	1.4.3 Participation.....	9
	1.4.4 Landlessness.....	10
	1.4.5 Land conflicts .....	10
	1.4.6 Land Tenure .....	10
	1.4.7 Land Administration issues .....	11
<b>2.</b>	<b>CONCEPTUAL FRAMEWORK .....</b>	<b>12</b>
2.1	POLICY GOAL .....	12
2.2	SPECIFIC GOALS.....	12
2.3	THE PRINCIPLES.....	12
2.4	OBJECTIVES OF THE POLICY .....	17
	2.4.1 Land and Sustainable Livelihoods.....	17
	2.4.2 Land Tenure .....	18
	2.4.3 Land Markets.....	18
	2.4.4 Land Administration.....	19
	2.4.5 Land Use and Management.....	19
	2.4.6 Natural Resources and Environment.....	20
<b>3.</b>	<b>ISSUES FOR THE LAND POLICY.....</b>	<b>15</b>
3.1	SOVEREIGNTY OVER LAND .....	15
	3.1.1 Vesting of Radical Title .....	15
	3.1.2 Police Power of the State .....	15
	3.1.3 The Power of Eminent Domain .....	15
	3.1.4 System of derivation of title .....	16
3.2	LAND TENURE SYSTEMS .....	16
	3.2.1 Customary Tenure .....	16
	3.2.2 Mailo .....	17
	3.2.3 Freehold .....	18
	3.2.4 Leasehold .....	18
3.3	GENERAL TENURE ISSUES .....	19
3.4	LAND AND SUSTAINABLE LIVELIHOODS .....	24
	3.4.1 Land and Poverty .....	24
	3.4.2 Land and Sustainable Livelihoods.....	24

3.4.3	<i>Gender and Poverty</i> .....	25
3.5	LAND ADMINISTRATION .....	25
3.5.1	<i>Land Administration Institutions</i> .....	26
3.5.2	<i>Delivery of Land Services</i> .....	27
3.5.3	<i>Land Information Systems</i> .....	27
3.5.4	<i>Dispute Resolution Institutions</i> .....	28
3.6	LAND USE AND MANAGEMENT .....	28
3.6.1	<i>Human Settlements</i> .....	29
3.6.2	<i>Rural Land use</i> .....	30
3.6.3	<i>Urban Land use</i> .....	30
3.6.4	<i>Land Use for Agriculture</i> .....	31
3.6.5	<i>Urbanization</i> .....	31
3.6.6	<i>Institutional Issues on Land use Agencies</i> .....	31
3.7	NATURAL RESOURCES.....	31
3.7.1	<i>Environment</i> .....	32
3.7.2	<i>Wetlands</i> .....	32
3.7.3	<i>Forestry</i> .....	33
3.7.4	<i>Minerals</i> .....	34
3.7.5	<i>Water</i> .....	35
3.8	LAND MARKETS.....	35
3.8.1	<i>Formalization of customary tenure</i> .....	35
3.8.2	<i>Protection of vulnerable groups</i> .....	36
3.8.3	<i>Distress sales and landlessness</i> .....	36
3.8.5	<i>Procedures of transacting on titled land</i> .....	37
3.8.6	<i>Speculation</i> .....	37
3.8.7	<i>Multiple layers of rights to a single land plot</i> .....	37
3.8.8	<i>Ownership of land by Non-citizens</i> .....	37
3.8.9	<i>Land markets, credit markets, investment and productivity</i> .....	37
3.9	LAND / PROPERTY TAXATION.....	38
3.9.1	<i>Land Taxation</i> .....	38
3.9.2	<i>Property Rates</i> .....	39
3.9.3	<i>Other Revenues from Land</i> .....	39
<b>4.</b>	<b>POLICY IMPLEMENTATION .....</b>	<b>41</b>
4.1	THE LEGISLATIVE FRAMEWORK.....	41
4.2	INSTITUTIONAL FRAMEWORK.....	41
4.3	MONITORING AND EVALUATION.....	41
4.4	FUNDING MECHANISMS .....	41
<b>5.</b>	<b>THE GAPS AND AREAS FOR FURTHER STUDY .....</b>	<b>42</b>
5.1	NATURE OF GAPS .....	42
5.1.1	<i>Translating existing Research into Policy</i> .....	42
5.1.2	<i>Studies to fill Gaps in Policy</i> .....	42
5.2	PRIORITY AREAS FOR IMMEDIATE STUDY.....	42
5.2.1	<i>Divestiture and Privatization of Land Services</i> .....	42
5.2.2	<i>Common Property Resources and Traditional Land Institutions</i> .....	42
5.2.3	<i>Land Taxation and Generation of Revenue from Land services</i> .....	43
5.2.4	<i>Resettlement, Landlessness and Internally Displaced Persons</i> .....	43
5.3	AREAS FOR FURTHER STUDY.....	44
5.3.1	<i>Derived and Secondary Rights</i> .....	44
5.3.2	<i>HIV/AIDS</i> .....	44

## **1. INTRODUCTION**

Land policy development is a deliberate act that involves a number of steps, not necessarily in any sequential order. The first of these is usually public enquiry guided by clear terms of reference set by the State; the second is public debate on the conclusions arrived at through enquiry; the third is the formulation of principles reflecting consensus resulting from that public debate, and the fourth is authoritative determination of policy which can then be used as a basis for legislation. In the case of Uganda, legislation has already been enacted ahead of policy development. Land policy must in this regard, identify the specific issues, which the land sector is expected to address as its principal contribution to that development.

In Uganda the centrality of land in the economy; the political ambiguity on the land question; the social and cultural complexity of the land question, particularly the fact that for many communities land relations are also social relations and finally, the overall governance framework in which land issues are played out and resolved are important. Secondly, account must be taken of other macro and micro-economic policies impinging on the land sector. These include policies on agriculture, poverty reduction, industrialization, the environment, infrastructural development and urbanization. Thirdly, an adequate framework for land policy development must take into account the current international discourse on land and the environment. The concern here is to ensure that emerging global principles are incorporated into and domesticated as part of national land policy. Finally, land policy principles must address not only specific components of the land question, but more importantly, the essential values which society seeks to promote or preserve. Ultimately, it is these values, which define optimum and sustainable land development.

### **1.1 HISTORICAL BACKGROUND**

Even before colonization, land was always an important factor in the political organization of Ugandan societies. This is clear not only in the organization of governments in the kingdoms of Buganda, Busoga, Bunyoro and Toro, but also among territorial societies such as the Karamojong. What colonialism did, therefore, was merely to legitimise an intricate system of political relationships based on land that had been in existence for centuries. This is the context in which the Uganda Agreement 1900 and the laws that were subsequently made to govern the relationships between the nobility and their tenants in Buganda, Toro, Ankole and Busoga must be read.

Underlying and hence reinforcing the political significance of land, is the fact that for indigenous Ugandans, land has always had an important ontological value. For land is regarded not merely as a factor of production, but first, and foremost, as the medium which defines and binds together social and spiritual relations within and across generations. Issues about ownership and control are therefore as much about the structure of social and cultural relations as they are about access to material livelihoods. This is one reason why debate about land tenure in Uganda and elsewhere in Africa has always revolved around the structure and dynamics of lineages and cultural communities, rather than on strict juridical principles and precepts. For this reason, control over land and associated resources constitute, in social and cultural terms, sovereignty over the very spirituality of society. This does not only locate land and associated resources at the centre of the struggle for identity and survival, but also points to the major concerns which policy development in this area must address. Indeed, they link land not only to the nature of contemporary political and social struggles but also more importantly to basic livelihood concerns such as poverty and food security. An important objective of this framework is to identify and examine those concerns and develop principles, which should guide the development of comprehensive policy in respect of land.

### 1.1.1 Pre-Colonial Origins

Land relations in pre-colonial Uganda may be classified in a number of ways, some of which are unique to particular communities. The first were relations based on feudalism. An essential feature of this system was that access to land was controlled by an oligarchy in which political power in society was exclusively vested. Security of tenure for land users was, therefore, based on continuous loyalty to that oligarchy. The payment of tribute in the form of produce and gifts was therefore not unusual and, indeed, a requirement as evidence of that loyalty. At the time of colonization, this system of land relations was fully established in and unique to the kingdoms of Buganda, Bunyoro, Busoga and Toro.

The second were systems based on territorial control in which access to land resources were governed by a complex network of reciprocal bonds within families, lineages and larger social units. The primary function of those organs, rather, was to protect and guarantee individual and community rights as prescribed by custom. As long as such bonds remained, any individual or group of individuals could secure access to the resources of that community. This system of land relations continues in operation in all of the arid and semi-arid regions of Uganda.

The third were the systems of land tenure prevalent in the non-feudal sedentary communities. Because these communities were and still are agricultural or semi-agricultural, land relations were defined not only by the network of social relations prevalent in each community, but also by the specific uses to which parcels of land occupied by individual families, clans or lineages were put. Tenure relations, therefore, recognized individual rights as well as community obligation in virtue of access to such rights. Most of the riverine communities in Uganda and much of the south can be classified under this system. Common to all three systems of land relations was the fact that radical title to land was always vested in the community as a corporate entity rather than in the political organs through which control of the territory or the resources of the land was exercised or mediated.

### 1.1.2 Colonialism

Through a series of agreements made with traditional rulers and their functionaries the British authorities granted a number of private estates called *Mailo* in Buganda and native freeholds in Toro and Ankole that were broadly equivalent to the English freehold. The effect of these agreements was not only to legitimise the feudal system of land tenure then in existence, but also to firmly confer upon feudal overlords absolute control over land, which they never had under customary law. The location of radical title to such land arguably was, by implication appropriated to the colonial government.

For the rest of Uganda, all land was expressly declared to be crown land meaning that the British authorities now held radical title to such land and all land users became, at the stroke of the pen, tenants of the British crown. Thus being holder of radical title, the colonial government proceeded to grant a limited number of freehold estates to selected individuals and corporations.

In the second instance by virtue of political sovereignty, the British authorities now asserted the right to control the management and use of land, a power that was previously vested either in communities or in the political functionaries of such communities. These changes were accompanied by an elaborate system of land administration, which included, in the case of Buganda, a system of land registration purporting to confer indivisible title to the Buganda King, his Princes and other landlords.

## 1.2 THE LAND QUESTION IN UGANDA

Upon the attainment of independence in 1962, the Government of Uganda retained the system of land tenure introduced by the colonial government. Indeed the land question hardly featured in political discourse during the traumatic events that characterized Milton Obote's rule up to the coup, which ousted him in 1971. In 1975, however, the Government of President Idi Amin issued a decree called '*The Land Reform Decree*' which declared all land in Uganda, public land and vested the same in the State to be held in trust for the people of Uganda and to be administered by the Uganda Land Commission.

The decree abolished all freehold interests in land except where these were vested in the State in which case these were transferred to the Land Commission. It also abolished the Mailo system of land tenure and converted them into leasehold of 99 years where these were vested in public bodies, and to 999 years where these were held by individuals. All laws that had been passed to regulate the relationships between landlords and tenants in Buganda, Ankole and Toro were also abolished. Elsewhere customary land users became tenants at sufferance of the state.

The legal implications of the Land Reform Decree, though not fully felt on the ground, persisted until 1995 when a new Constitution was enacted. That Constitution abolished the Land Reform Decree and restored the systems of land tenure that were in existence at independence. These were reinstated as customary land tenure, freehold tenure, leasehold tenure and Mailo tenure. The Constitution, however, went further: it made new and radical changes in the relationships between the State and the land in Uganda. It declared that land in Uganda would henceforth belong to the citizens of Uganda and vest in them in accordance with the land tenure systems outlined above.

The Constitution went further and set up a new system of land administration consisting of Land Boards in every district, although the Uganda Land Commission was re-established, the Constitution made it clear that District Land Boards were to operate independently of that Commission and were not subject to the direction or control of any person or authority. They were, however, expected to take account of national and district council policies on land.

The Constitution further provided that Parliament would provide for the establishment of land tribunals, the jurisdiction of which would be to determine disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the Uganda Land Commission or any other authority with responsibility relating to land; and the determination of any disputes relating to the amount of compensation to be paid for land acquired. Finally, the Constitution reaffirmed the authority of the State to make laws regulating the use of land.

### 1.2.1 Key Features of the Land Question

The characteristics of the land question in Uganda were no different from what they were during the colonial period. First, the feudal system of land tenure remained a feature of land relations in Buganda; secondly, customary land tenure systems remained unregulated and completely outside the statutory framework of land law of the country and, thirdly, the system of land administration was in no way integrated into the land tenure framework of the country. The 1995 Constitution and the Land Act 1998 did not entirely deal with the fundamental issues underlying these characteristics.

Indeed what the Act, did rather, was to elaborate upon juridical principles underlying the land tenure and management systems introduced by the Constitution. Apart from providing some relief for tenants under the Mailo system, the Act did not, and could not, question neither the

essential merits of the new tenure systems nor the desirability of the elaborate system of land administration and dispute resolution introduced by the Constitution. The primary reason for this was not simply that the Constitution had set the parameters for the new land laws; it was also because no clear policy principles existed to inform legislators in the enactment of that law. It is to this latter issue that we now turn.

Apart from the rather eccentric intervention by the Amin regime in 1975, Uganda governments have been extremely reluctant to tackle the land question in a fundamental way. Policies do indeed exist on various aspects of the land question, but these are eclectic, sectoral and inconclusive in many respects. Besides, as much policy as may be discerned from the legal and institutional structures governing land and related resources in Uganda is largely out of touch with contemporary research and discourse in land development both regionally and internationally.

### **1.3 INTERNATIONAL RESEARCH ON LAND POLICY**

The Draft World Bank Land Policy Report heralds some major changes in global thinking about land policy since the last significant review by the Bank in 1975. These changes can be summarised as follows:

- Tenure security does not necessarily mean formal individual title, and gender and governance issues are central to security of tenure enhancement.
- Rental market for land is more important than sales market.
- Land reform can be a viable proposition
- Land policy needs to be linked into other reform agendas
- Partnership and dialogue are crucial elements of policy formulation and implementation.

The key findings of the draft report, adapted to fit national circumstances and priorities, provide an invaluable source of guidance in relation to preparation of land policy. Some of the most relevant conclusions drawn from the research are listed below.

#### **1.3.1 Land Tenure**

- The importance of rights in land and their distribution lies in their potential impacts (negative and positive) on growth, poverty reduction and social peace and good governance.
- Rights in land and their distribution need to be provided by governments because of economies of scale, need for widespread availability to facilitate markets and because public enforcement reduces transaction costs.
- States typically manage their own estates badly, thereby negatively impacting land markets and reducing their credibility as trustees; undisciplined acquisitions can exacerbate these impacts.
- Property rights evolve over time depending on economic and political factors. Inability to adjust property rights regimes can have very expensive and punishing consequences.
- There are multiple paths for increasing the security of different tenures

#### **1.3.2 Land Transactions**

- There is no discernable economy of scale in agriculture because of labour market imperfections (cost of supervision produces inverse economies of scale), credit market imperfections (lack of smallholder access to capital counteracts this) and these impact rental and sales markets differently.

- Rental markets are particularly important because transactions based on renting can develop quickly in response to opportunities, can provide ways in which poor but more efficient farmers can access land and landowners can participate in non-farm activities but rental markets are particularly sensitive to policy distortions and insecurity of tenure.
- Sales markets can provide basis for establishment of financial markets but will be susceptible to imperfections such as distress sales, thin markets, segmentation and other distortions linked to macro economic factors and will not improve access to land by the poor through mortgage purchase or self correct the distortions of original distributions.

### **1.3.3 Land Reform**

- Land reform has had limited success in Asia and to a lesser extent in Africa but has little impact on productivity anywhere because of political biases and the undue emphasis on full time farming as a sole source of livelihoods.
- For land reform to work there must be complementary efforts to improve access to credit and output markets, transparency and participation must be used to create less not more corruption and impacts must be careful monitored and programs continually re-jigged on the basis of feedback
- The legacies of failed reforms have to be cleaned up so they do not foul new initiatives

### **1.3.4 Land Administration**

- The key elements of land rights are their duration, which need to match investment timelines, clear and cheap demarcation of boundaries and functionality of right holders (e.g. group rights are effective where groups decision making is functional).
- Investing in securing tenure pays off (property values can increase between 40-80% with registration-transferability is an import component of increased value), a welfare effect is created by reduced spending on security, and the potential for better resource management and conservation is increased.
- Land taxation will be an important source of ‘own’ revenue for local government and land taxes have some advantages over other forms of revenue raising so that despite the political difficulties of collection, greater use can and should be made of simple land taxes.
- The principles of subsidiarity and non subordination should apply to decentralised land administration systems

### **1.3.5 Land Management**

- Land use planning and zoning is justified, usually only in urban areas, where externalities exist but there has to be upfront calculations made about costs and benefits, these have to be fairly distributed and predictable rules put in place in substitution for bureaucratic discretion.
- Increased security of tenure can improve the sustainability and conservation of marginal areas and conversely weak property rights can contribute to overexploitation of natural resources but more generally
- Lack of enforceability of rights is the key contributing factor in excessive and unsustainable resource use.

## **1.4 REGIONAL DEVELOPMENTS IN LAND POLICY**

A recent review of land sector developments in south eastern Africa, using a ten country sample, compiled by a panel of international experts produced an illuminating snap shot of progress in the land sector within the region. The following comments are drawn from that review, a summary of which is attached to this paper. These lessons learnt (highlighted in boxes) are offered here as possible guidelines to policy elaboration in Uganda, where they will obviously have to be adapted to fit into this specific national context.

### **1.4.1 Land Policy and Legislation**

Whilst many countries in the region and else where in Africa have been able to produce land policies and enact new legislation, very few have been able to implement either of them. The countries that have been able to make some inroads into untangling the skewed land distribution heritage of their colonial pasts have either done it steadily over long periods of time, like Swaziland and Botswana, or explosively like Zimbabwe and apparently increasing so in Namibia.

This has been variously explained. Some commentators have argued that the undue emphasis on legal and policy work in Africa is a consequence of weak-kneed donors who are only comfortable financing 'safe' elements of land sector reforms and have no commitment to financing implementation because of its inherent risks and poor track record in terms of demonstrable successes. Other have argued that governments in the region are reluctant to seriously tackle land issues because of the corruption and abuse of authority that characterizes land administration in many countries in the region. Whichever explanation is more accurate in any particular case, it is notable that so far within the negotiations around NEPAD, land issues have received scant attention.

**Land policy development and enacting the appropriate legislative framework for implementation can easily become a quagmire, loss of momentum can be difficult to reverse and the costs of procrastination can be very high.**

### **1.4.2 Capacity**

Across south-eastern Africa, lack of technical and professional capacity has slowed down implementation. The more sophisticated the land administration systems being adopted, the more expensive and human resource hungry it is. Morale can easily dip given the length of time and degree of difficulty involved in implementing land policy reforms. HIV/AIDS is starting to deplete the numbers of land professionals available for delivering land services increasing both the comparative advantage of automating land administration systems and the demand for producing practitioners that are more qualified.

**Because of lags and the likely impacts of HIV/AIDS, capacity building, training and retraining for land administration and management should continue or be started while policy and legal issues are being decided.**

### **1.4.3 Participation**

Civil society engagement in the process of land policy formulation and preparation of legal frameworks has been very important in South Africa and Mozambique and significant but less crucial in other countries. However, after the initial highly collaborative partnerships to promulgate laws and sensitise citizens about newly granted land rights, these partnerships have subsequently faded or soured.

The shift of donor involvement to direct budget support has had the effect of drying up funding for NGO in Mozambique and new ways to finance their vital role in helping communities to use the new laws need to be found. In South Africa, the problem seems to have had more to do with a general disillusionment, shared by activists who remained in academia or civil society and those who joined government about what the new post apartheid administration could realistically achieve.

**The civil society partnership with government needs to be carefully nurtured throughout the protracted process of implementing reforms in the land sector.**

#### **1.4.4 Landlessness**

It has been very difficult in south-eastern Africa to reduce landlessness through land reform. Indeed reducing landlessness through resettlement schemes has proved to be problematic almost everywhere. Some attempts at land reform have actually exacerbated landlessness. In Zimbabwe an estimated half million farm workers have lost their jobs, their families are without shelter or the ability to grow their own food. The long-term viability of the farms that have been occupied will to a great extent depend on the new owners access to factor and output markets and the provision of post transfer services. The Namibian attempt to reduce landlessness through resettlement schemes has been a dismal failure. A new resettlement programme is under design in Malawi using the community empowerment principles devised in Brazil but without the credit component that has been the subject of so much contention.

**Reducing landlessness through land reform is a high risk, high cost and so far unsuccessful intervention.**

#### **1.4.5 Land conflicts**

The potential for land conflicts within the region is endemic. Violence has erupted in Zimbabwe and is festering in South Africa. In Angola land, disputes were part of the cause of the civil war and land grabbing and elite expropriations have, unfortunately, become part of the ceasefire arrangements creating a fundamentally shaky truce. People throughout the region have expressed preferences for subsidiarity to apply to the settlement of land disputes. However land disputes between traditional authorities and their communities and intra traditional authority disputes defy solution by localized dispute resolution institutions.

**Local courts of first instance have to be linked by appeal mechanisms to the mainstream judicial institutions but mechanisms have to be devised to keep costs down and prevent rent seeking.**

#### **1.4.6 Land Tenure**

Land tenure issues throughout the region are complicated by the hybridisation of inherited notions of what 'is' and what 'ought to be' legitimate rights in land and who should control them. (Porter, 2000)

In Zimbabwe, multiple processes are at work: legitimisation of settlers, eviction of settlers, reversal of land acquisition resulting in mass uncertainty of tenures. In South Africa, a strategy of transferring whole farms to fairly amorphous groups of self-selected claimants has been a principal cause of difficulty. Restitutions based on court decisions about past evictions are likely to encounter similar problems in relation to the internal coherence of remnant claimant groups.

In Malawi, attempts are being made to invest in existing ‘informal’, traditional land actors by improve the administration of customary land. In Mozambique, the legal framework recognises customary land allocation as one of three ways a state-allocated Land Use Right can be acquired. However, conversion of customary lands to state titled lands has been chaotic and corrupt.

**Dynamic, multi tenure systems are here to stay within the region for the foreseeable future**

#### **1.4.7 Land Administration issues**

Throughout the region, governments are facing huge land policy challenges with very few available land administration tools. Zimbabwe has no current land records making even an order land acquisition programme impossible. Attempts are underway to create a land information system but perhaps it has come too late for some.

Malawi is pursuing the decentralization path. However capacity for land administration in the centre is very weak, devolution and deconcentration to local government are very new and District Administrations are already facing resource constraints to dealing with existing workloads.

The administration of customary land within the region is largely being treated as a process of conversion, a ‘managed’ evolution, of “traditional” collective rights to “modern” individualized rights.

Exceptions apply in Swaziland, where Chiefs administer almost two thirds of the country and in Mozambique where any “community” can apply to have their “collectively” owned areas registered, although some have argued that natural resources and land administration laws place too much power in land administrators, land surveyors.

Lesotho faces complex demands for land administration services for both customary and leasehold land in urban, peri-urban and rural areas. In Botswana, the challenge is to adapt land administration; based on customary rights and values, to rapidly urbanizing economy and an expanding land market.

**Land administration systems have to be able to service evolving, multiple tenures and segmented, emerging markets**

## 2. CONCEPTUAL FRAMEWORK

### 2.1 POLICY GOAL

The framework for this policy is rationalized on the grounds of the need to promote and consolidate the following concerns:

- Directing the process of change in the land sector;
- Provision of a permanent agenda on the land question not susceptible to easy manipulation from one generation to the next;
- Providing guidelines for good governance in this important sector of the economy;
- Defining the overall philosophical context and provide an integrating framework for all sectoral policies dealing with the use of land resources; and
- Providing an optimum framework for the sustainable use of land resources.

The broad overall goal of this policy therefore is:

***Sustainable utilization of Uganda's land resources for poverty eradication***

Uganda is endowed with abundant natural resources, land being the prime source of sustenance for the vast majority of the population. The goal depicts the ultimate aim of the land sector; it highlights the strong link between land resources and poverty alleviation. To achieve the Government aim of eradicating poverty, the productivity of Uganda's land must be guaranteed and enhanced. At the same time, however, it is necessary to manage land in a sustainable way, i.e.: in a manner that is consistent with economic objectives (such as increased output), social objectives (e.g.: ensuring an equal distribution of income), and environmental objectives (that is, without undermining the ability of the ecosystem to deliver vital services.). The agricultural and industrial development of Uganda will depend on, among other things, the land use and management policies adopted.

### 2.2 SPECIFIC GOALS

- ***To create an enabling environment for equitable access to land and security of tenure***
- ***To increase land productivity through optimal and sustainable use.***
- ***To promote an integrated approach to planning and management of land resources.***
- ***To enhance the role of the land sector in poverty eradication.***

### 2.3 THE PRINCIPLES

- Land is a common heritage of all Ugandans. It is the duty of everyone to ensure that it is sustainably managed and productively used.***

Land is a natural resource, which provides both use and non-use goods and services. It is viewed by the people as a vital natural resource and common heritage, which cannot be matched by any other natural resource. It is, therefore, of paramount importance that land resources are managed within the broader ecological context of which they are part, to ensure negative impacts on the environment are minimised and benefits are maximised for the current

and future generations. Ultimately the success of any land policy or legislation is the extent to which it facilitates the productive use and sustainable management of land.

Land is not only politically significant for the indigenous Ugandans, but has always had an important ontological value. Land is regarded not merely as a factor of production, but first, and foremost, as the medium, which defines and binds together social and spiritual relations within and across generations. Issues about ownership and control are therefore, as much about the structure of social and cultural relations as they are about access to material livelihoods.

This is one reason why debate about land tenure in Uganda and elsewhere in Africa has always revolved around the structure and dynamics of lineages and cultural communities, rather than on strict juridical principles and precepts. For this reason, control over land and associated resources constitute, in social and cultural terms, sovereignty over the very spirituality of society.

**ii. *Land is a basic resource central to the overall development agenda of Uganda and is a productive asset instrumental to poverty eradication.***

Land is a productive asset and should be managed as such - recognising that wise resource use and allocation can greatly enhance development prospects for the country, but unwise use can undermine development. Land is a major factor of production alongside labour and capital. Poor people's access to land is important in ensuring that they can contribute to and benefit from economic growth. Poverty elimination requires improved access to productive assets such as land in addition to access to basic services, markets, education and health care. Economic evidence indicates that equitable distribution of assets, including land, can promote higher rates of productivity and growth than are found in countries in which inequality is marked.

**iii. *Every one has a right to own land alone as well as in association with others.***

The people of Uganda regard land as the most important resource because of the importance they attach to it. As such, every citizen of Uganda is entitled to share in this vital and strategic resource.<sup>1</sup> Every citizen should be guaranteed ownership and access to land. People want a land tenure system and policy that will ensure fair and equitable allocation of land among the citizens, while at the same time preserving its capacity to satisfy present and future generations.<sup>2</sup>

**iv. *Government holds land reserved for ecological and touristic purposes in trust for the common good of all Ugandans, the terms and conditions of which should be defined. Trusteeship of natural resources by government should not be equated to ownership.***

The people of Uganda want natural resources to be exploited for the benefit of all citizens and that there should be some restrictions on foreigners and the rich from grabbing these resources, especially land. Although in the development of the country, they welcome private, local and foreign participation, people do not want to see rich people grabbing the natural resources of this country or carrying out developments with the short-term view of reaping profits.

---

<sup>1</sup> Quoted from the report of the Uganda Constitutional Commission: Analysis and recommendations; 1993. Government of Uganda, page 681 otherwise known as the Odoki Commission.

<sup>2</sup> Ibid, 668 otherwise known as the Odoki Commission

Development must take the long-term view of sustainability of resources and must be sensitive to the dignity of the citizens and the effect of development on the environment<sup>3</sup>.

The existing legal and policy framework vests the ownership of some natural resources in the people of Uganda but under the trusteeship of government and local government. In principle, leasing out or alienating any of these natural resources is prohibited, although concessions, licenses or permits may be granted. Often, considerable conflict arises over the ownership and management of these resources, particularly where interests of the citizens clash with Government interest, decisions and actions are taken without consulting Ugandans for whom Government holds these natural resources in trust, a fact that dilutes the principle of equity.<sup>4</sup>

- v. ***Central and local governments have inherent power to regulate the use of land in public interest. The parliament of Uganda shall guarantee this right while government holds in trust.***

This principle is premised on the doctrine of the police power, which is concerned with the issue as to whether the State should have general power to regulate the exercise of proprietary rights in land for any purpose. This doctrine, though a derivation from the theory of sovereignty, addresses the residual duty of the State to ensure that proprietary land use does not sabotage the public welfare. Indeed the police power of the State is no more than an extension of the doctrine of public nuisance. Its purpose, therefore, is to suppress or limit the use of private property while in the owner's hands, in order to protect public welfare from dangers arising from misuse of the property.

Tenure over land-based resources, as opposed to that of the land itself, has become an important issue in contemporary discourse on land policy. Although it is generally argued that proprietary land use, particularly under tenure regimes that grant rights to individuals, will guarantee the proper and sustainable management of land, this clearly has not been the case in Uganda. Evidence abounds to the effect that the sustainable use and management of land, is a partnership between proprietors, occupiers and the State. Thus, in addition to the proprietors' own efforts, the use of the police power of the State is necessary if the land use problems are to be resolved.

- vi. ***All Ugandans, irrespective of gender, have equal rights to ownership and equitable access to land whether this is through the market, or through any system of inheritance; customary or statutory.***

Insecurity and uncertainty of land rights among some of the poorest groups in Ugandan societies threatens significant numbers of livelihoods. The gender structure of land rights in Uganda varies across the country but in general is highly unequal, with women's rights generally limited to access while men are more likely to have ownership rights. Women's rights are generally less secure than those of men. Evidence shows that, particularly for rural women, this inequality of ownership to the key productive asset is a fundamental determinant of poverty and social disadvantage. Without secure rights to land, women's ability and incentives to participate in income-expanding economic activities are reduced<sup>5</sup>. Not only do women have weaker land rights, but also there is a traditional cultural bias against women's involvement in decision-making on land issues. Many people continue to regard land as a 'man's issue'. The need to strengthen women's land rights in order to achieve poverty reduction is recognised in the PEAP and the PMA.

<sup>3</sup> *Ibid*, page 646 paragraphs 23.62 otherwise known as the Odoki Commission.

<sup>4</sup> Expressed by the Solicitor General and also by Senior Legal Counsel, NEMA.

<sup>5</sup> Ovonji-Odida et al, *Land, Gender and Poverty Eradication*, 2000

**vii. Land administration institutions must be relevant, cost-effective, efficient, sustainable, accountable and transparent.**

- *Transparent technical processes, accessible information and accountability are critical for good governance.*
- *Land delivery systems should be accessible, broadly participatory and accountable to the land rights seeking public.*
- *Planning and implementation, decision making and monitoring must be democratic and participatory, transparent and accountable*

The policy of decentralisation is intended to transform the system of local governance by progressively delegating planning and decision making to district, sub-county and community level, and hence enabling local communities and institutions to take responsibility for the management and development of their economic, social and natural environment.

Land management institutions funded by the public sector must be justifiable as this is necessary for the management of land resources. They must provide services efficiently and at least cost for them to be effective and sustainable in terms of the ability of the public sector to finance their activities. In order for the land sector to be responsive to stakeholders, the processes for allocation of resources and monitoring of their use and impact must be open and the land sector must be accountable for the decisions taken in respect of land allocation and service provision.

**viii. Sustainable management of land is a prerequisite to productivity.**

The inter-relationship among agricultural activities, biodiversity, energy, water and climate are determined to a great extent by the quality of land use and management practices. In the absence of a land use policy, agricultural production still remains low, biodiversity, especially on private lands is threatened, deforestation continues unabated, energy deficits are increasing and degradation of soil and water resources is becoming widespread.

**ix. Efficient land market operation is fundamental to land development and economic growth.**

The freedom to transfer or otherwise dispose of rights over land is generally considered to be an integral part of a robust property system. For not only does it facilitate access to and exit from the land economy, it also enables proprietors to raise capital for land development. Because the transfer and disposition of land should ideally be undertaken within a free enterprise system, an effective policy must guarantee that the land market is liberated from impediments that would fetter its smooth and expeditious operation. The demand for land is derived from its uses. Thus government policies and regulations, which govern land use and development, affect the land markets and housing markets by controlling the supply of land and altering the costs of development.

**x. Stakeholder participation is integral to land development and the harnessing of indigenous knowledge for the management of land based resources.**

The public both directly and through their representative institutions must be encouraged and facilitated to participate in the management of land-based resources. The general principle in law is that these resources are to be held by the Government or a local authority in trust for citizens of Uganda. This means, *inter alia*, that the State holds both the legal and beneficial

interest in those resources. This position should not ignore the need for communities to be accorded an opportunity to own and manage some of these resources. State management of these resources over the years has not, however, been particularly responsible. The result has been substantial destruction of land based resources through failure to control land based pollution of water courses and bodies; exclusionary management of wildlife resources; and unregulated prospecting of minerals without adequate regard to environmental considerations.

***xi. Government reserves the right to compulsorily acquire land for public purpose and/or in public interest.***

This right is expressed in the doctrine of eminent domain and is concerned whether the state should have the power to extinguish or appropriate any title or other interest in land for public or other purpose. The Constitution of Uganda provides that the Government or a local government may acquire land in public interest. Thus the power of eminent domain is conferred not only upon the Government but also upon authorities, a formulation that is not common. This policy proposes that the exercise of this power be held by the central government only. It is made subject to conditions. These are that the taking of possession or acquisition is necessary *inter alias* for public use or be in the interest of defense, public safety, public order, public morality or public health. The Constitution goes on to state that the compulsory taking of possession or acquisition of property can only be made under a law, which makes provision for the prompt, fair and adequate compensation, of the owner prior to the taking of possession or acquisition of the property.

***xii. Uganda maintains a multiple tenure system. Tenure systems that promote productivity and sustainable development should be encouraged.***

Ownership of land by the individual, family or community confers real or potential wealth, social prestige and a sense of economic security. Uganda is a country of diversity in terms of cultural, social and economic experience and orientation. Different communities in Uganda hold land under different kinds of tenure. Secondly, the colonial legacy on land tenure, that is a direct result of the policy of indirect rule ensured that different parts of the country either maintained or retained their tenure systems (large parts of customary in Eastern and Northern Uganda) or radically changed (such as introduction of mailo and freehold tenure in central) the system of land holding depending on the needs of sustaining the colonial state. The different tenure systems that exist in Uganda are therefore, central to the formulation of an adequate land policy.

***xiii. Planning and land use patterns have a crucial bearing on the liveability of human Settlements***

***xiv. Appropriate land-use planning, should be integrated it with economic planning and infrastructure provision***

Population Settlement impacts on the environment because it leads to pressure on land, which culminates, into encroachment on land-based resources such as forests, wetlands etc. There has been lack of a clear government policy on what to do about people who need to be resettled from areas suffering from land pressure.

***xv. The land information system must aid legal, administrative and economic decision-making, planning and development.***

## 2.4 OBJECTIVES OF THE POLICY

### 2.4.1 Land and Sustainable Livelihoods

Land is a key resource for production and the main capital available to the majority of Ugandans. It supports agriculture on which the country depends and access to land is a basis for rural livelihoods. In Uganda 88% of the population is rural based and engaged in agriculture, primarily in smallholdings, as the predominant economic activity. Uganda is very densely settled, one of the poorest and least developed countries in the region, which has, however, shown very rapid growth in GDP in recent years.

Land is an important asset for the poor providing a basis for shelter, for food production and for livelihood activities. Large numbers of the poorest people in Uganda, live in the rural areas and are dependent for their livelihoods and food security upon secure access to and productive use of land and its natural resources, despite their growing scarcity. Secure rights in land and control over its produce are an important basis for farmer motivation. Alongside the production advantages, secure land rights can improve sustainable land management and access to credit, and serve as a source of security in times of crisis.

Hence, for the majority of Ugandan's especially the poor, subsistence agriculture remains an important source of livelihood. Agricultural productivity makes a critical contribution to growth, employment and livelihoods in the rural areas. Under the Participatory Poverty Assessment Report (PPA2), limited access to land and land shortage ranks the second among the most frequently cited causes of poverty after poor health/ diseases.

#### ***Gender and Land***

The patriarchal social construction also affects the sharing of resources; access to resources and benefits and control over them this is allocated according to gender. It has implications for human rights in that gender differentiation is about inequality and about power relations between men and women. The PEAP makes recommendations for the introduction of legislation and policy that ensures women's land rights are enhanced and protected. PMA makes note of the fact that the issue of land ownership and inheritance by women who are key stakeholders in agriculture production has not yet been resolved, through legislation. Therefore, it will be important for the land policy to resolve this.

#### ***Gender and Poverty***

Gender inequality (women's lack of control over land and land resources) is a major poverty issue causing both deprivation and inefficiency. Women play a key role in the development of national economies all over the world. Their contribution to the labour force and providing the backbone to the agricultural sector has to be recognized. Given this central role women play in agricultural production, it's without doubt that lack of protection of their rights on land and secure access to land has direct implications for investments in agriculture and efforts to promote agricultural productivity. Women who provide a majority of the farm labour (71%-80%) must begin to participate in the market, rather than be forced to depend on subsistence farming and continue to lack control over land and income from their produce.

- ***To eradicate poverty and ensure food security through a more equitable distribution of land access and ownership, and greater tenure security for vulnerable groups***
- ***To promote equitable access and ownership of land resources for poverty eradication***

### 2.4.2 Land Tenure

Land is an important asset for the poor providing a basis for shelter, for food production and for livelihood activities. Large numbers of the poorest people in Uganda, live in the rural areas and are dependent for their livelihoods and food security upon secure access to and productive use of land and its natural resources, despite their growing scarcity. Secure rights in land and control over its produce are an important basis for farmer motivation. Alongside the production advantages, secure land rights can improve sustainable land management and access to credit, and serve as a source of security in times of crisis. For the majority of Ugandan's especially the poor, subsistence agriculture remains an important source of livelihood. Agricultural productivity makes a critical contribution to growth, employment and livelihoods in the rural areas. The objectives of the policy on tenure, therefore, must address these critical issues.

- *To facilitate and ensure access to land and the security of tenure for all socio-economic groups.*
- *To create an enabling environment, which ensures that women and men have equal access to land.*

### 2.4.3 Land Markets

Land markets in Uganda have been said to be beneficial for increased production. Many people argue that an enhanced land market will stimulate credit and increase incentives for investment in land. It will create jobs for farm implements to be made thus leading to industrialization. However, this theoretical analysis has not been proved with any empirical data or example of success. The Land Sector Strategic Plan (2001-2011), notes that the process of land reform is Events leading to the advancement of the Land Market cannot be stopped and are expected to accelerate with increasing population pressure and poverty, as the demand for formal claims in land escalates.

Land reforms in Chapter 15 of the Constitution of 1995 and the Land Act 1998 were developed with the basic underlying principle of enhancing land markets so that land would move from the people without capacity to utilize it to those that have the capacity to put it to maximum usage. This is reflected in the following principles:

- A good land tenure system should support agricultural development through the function of land market, which permits those who have rights in land to voluntarily sell their land and for progressive framers to gain access to land.
- A good land tenure system should not force people off the land, particularly those who have no other way to earn a reasonable living or to survive. Land tenure system should protect people's rights in land so they are not forced off the land before there are jobs available in the non-agricultural sector of the economy.

To achieve the above principles the land markets must facilitate access to financial services, security from the banks; ensure that land goes to the most productive user; and in turn enhance multiplier effects and creates linkages.

- *To promote and support the development of an efficient, effective and equitable land market*
- *To mitigate the negative socio-economic effects of a land market*

#### 2.4.4 Land Administration

The policy of decentralisation was adopted by Government of Uganda in 1986, and was intended to transform the system of local governance by progressively delegating planning and decision making to district, sub-county and community level, and hence enabling local communities and institutions to take responsibility for the management and development of their economic, social and natural environment.

The Land Act 1998 decentralised the land administration function from the centre to the districts and from the districts to the grass roots. The key elements include the decentralisation of services, the devolution of decision making, planning and monitoring responsibilities to local governments, and the review of the balance between public and private sector provision of services. The policy has to ensure that land services are affordable and accessible to all Ugandans. The objectives are:

- *To establish and maintain transparent, accountable and easily accessible institutions and systems for decentralised delivery of land services.*
- *Develop land codes and legal frameworks that define the nature of land and rights that are formally recognised.*
- *Ensure simple procedures for the transfer of land and conversion*

#### 2.4.5 Land Use and Management

A comprehensive land use and land management policy is sound if its nexus is ground in promoting optimal use of productive land in urban and rural areas and supporting the implementation of improved land management practices that deal comprehensively with potentially competing land requirements for agriculture, industry, transport, urban development, green space, protected areas and other vital needs. It should incorporate the following goals:

- The attainment of orderly, productive, and sustainable land use through sound land use practices;
- The conservation and enhancement of the quality of land and land based resources;
- The improvement of the condition and productivity of degraded lands in rural and urban areas;
- Appreciation of the essential linkages between the environment and development and the promotion of individual and community participation in environmental actions;
- The proper management of demographic and health parameters in the country and especially in the rural areas;
- Integrated land use planning through information based and participatory processes;
- The provision of social, economic and other incentives to induce sustainable use and management of land; and
- A comprehensive human settlement policy for rural and urban areas in Uganda should be developed.

The objectives therefore are:

- *To adopt and promote a participatory and integrated approach to planning and management of land resources*
- *To promote productive and sustainable use of land resources*

#### **2.4.6 Natural Resources and Environment**

The State, under the National Objectives and Directive Principles of State Policy, has a mandatory duty to protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda. It also has a duty to promote sustainable development and public awareness of the need to manage land, air, and water resources in a balanced and sustainable manner for the present and future generations. The PEAP and PMA frameworks have one of their principles as, to “promote sustainable use and management of natural resources by developing a land use and management policy and promotion of environmentally friendly technologies”. This contributes to poverty eradication through agricultural transformation and sustainable natural resource-based livelihood. The natural resources regarded as capital assets under PMA are land, water, biodiversity, forests and wildlife. This is in line with goal 7 of the Millennium Development Goals. The proposed objectives are:

- *To promote management and use practices of natural resources to ensure environmental sustainability*
- *To Promote optimal use of productive land in urban and rural areas*
- *To protecting fragile eco-systems and environmentally vulnerable areas from the negative impacts of land use.*
- *To ensure the conservation of the environment, and the equitable sharing of benefits arising out of the utilization of natural resources*

### **3. ISSUES FOR THE LAND POLICY**

#### **3.1 SOVEREIGNTY OVER LAND**

##### **3.1.1 Vesting of Radical Title**

Article 237 (1) vests land in the citizens of Uganda. The Constitution however, does not specify the manner in which the citizens of Uganda hold this land as a whole. It is commonly assumed that every citizen must get a piece of that land. The following issues arise;

- In what corporate form would the citizens of Uganda hold such title?
- This formulation means that there is no specific persona, which owns the territory of Uganda as a whole.
- The location of the radical title is what determines the derivation, security and integrity of land rights. In Uganda, it is placed in the citizens. How do the citizens as whole exercise the powers of derivation, security and assurance.

##### **3.1.2 Police Power of the State**

The doctrine of the police power is concerned with whether the State should have general power to regulate the exercise of proprietary rights in land for any purpose. This doctrine, though a derivation from the theory of sovereignty, addresses the residual duty of the State to ensure that proprietary land use does not sabotage the public welfare. Its purpose, therefore, is to suppress or limit the use of private property while in the owner's hands, in order to protect public welfare from dangers arising from its misuse.

The directive of exercise of this power is under Article 242 of the Constitution; it states that "government may under laws made by parliament and policies made from time to time regulate use of land. Under Article 245 of the Constitution the state is duty bound to protect and preserve the environment from abuse, pollution and degradation, manage the environment for sustainable development and to promote environmental awareness. Section 44 and Section 46 of the Land Act, 1998 operationalise these articles. The issues to consider here are:

- Harmonization of sectoral policies responsible for the implementation of the exercise of police power.
- The division of roles and responsibilities between the central and local governments in the exercise of this power.
- A need for clear national standards, which override proprietary land use practices and which landowners, occupiers and holders of interests in land would be required to comply with.
- Failure of the state to exercise this power and set national standards to comply with is likely to be a pitfall for the land policy

##### **3.1.3 The Power of Eminent Domain**

The doctrine of eminent domain is concerned with the issue as to whether the state should have the power to extinguish or appropriate any title or other interest in land for public or other purpose. The Constitution of Uganda provides that the Government or a local government may acquire land in the public interest. Thus, the power of eminent domain is conferred not only upon the Government but also upon authorities, a formulation that is not common. Article 26 of the Constitution provides for compulsory acquisition of land by the state and lays out conditions under which it can acquire land for public interest, public use or in the interest of defence, public safety, public order, public morality or public health. The policy, therefore must resolve the following issues:

- Planning for redevelopment is not one of the grounds for compulsory acquisition of land and yet it was in the 1967 Constitution.
- Under Art. 237, the local governments have been given the powers to compulsorily acquire land. For purposes of uniformity and accountability in its exercise, should the power of eminent domain vest in both the central government and local government?
- The division of roles and responsibilities between the central and local governments in the exercise of this power.
- Is it a legitimate ground for government to compulsorily acquire land for investment purposes?
- The requirement for prompt, prior, adequate and fair compensation in Art. 26 of the Constitution should be maintained.
- The right to appeal against the exercise of the power of eminent domain.
- Where the public purpose or interest justifying the compulsory acquisition fails or is achieved, the law should provide for automatic restitution of that property or interest to the original owners, holders or occupiers.
- The exercise of the powers of eminent domain should expressly remain in the central government, to be exercised with authority from the citizens.

#### **3.1.4 System of derivation of title**

Both the Constitution of Uganda and the Land Act 1998 merely declare that land in Uganda will be owned in accordance with the following land tenure systems, customary, freehold, mailo and leasehold. Should the State exercise these powers on behalf of the people?

### **3.2 LAND TENURE SYSTEMS**

#### **3.2.1 Customary Tenure**

The first tenure category specified under the Constitution and the Act is customary land. Customary land tenure is a complex system of land relations, the incidences of which are not always capable of precise definition. These incidents often vary from community to community even within communities. The underlying commonality in all customary law systems is that rights are derived by reason of membership in a community and are retained as a result of performance of reciprocal obligations in that community. It has long been appreciated that customary tenure arrangements have important positive attributes. The land allocation system, which is generally designed as part of the political organization of the community, is an important factor in ensuring inter and trans-generational equity among members of that community and because kinship relations are reproduced in the land tenure system, equilibrium between social, political and economic processes is generally maintained. This is sustained inter-alia, through the resolution of land disputes as part of the community process of reconciliation. It would therefore be prudent for the policy to recognise that the legal status of customary land tenure should not be limited to land registration, but should also include rules, and processes relating to inheritance, third party rights and dispute adjudication. The policy will have to tackle the following issues:

- The law has allowed for registration of customary tenure, individually or as a family. Individualisation of rights extinguishes all access and other secondary rights ordinarily enjoyed under customary tenure, could this result in landlessness
- There are traditional or cultural rulers or the existing cultural mechanisms/institutions holds land in trust, the rights and obligations of the traditional rulers vis-à-vis those of the community should be defined.

- The provision for registration of this tenure threatens its very existence
- There need to understand the resilience of customary tenure in the face of statutory intervention so that the good side of this tenure is either maintained or incorporated in policy.

### ***Communal Land Rights***

Under the Land Act 1988 section 16 to 23, there are provisions for the establishment of Communal Land Associations to own and manage land and for these associations to manage and regulate the use of areas of common land use under a common land management scheme. Neither of these approaches has yet been tested in practice. The existing policy is expounded in sections 16-23 of the Land Act 1998. However, this policy needs tightening with regard to the following issues that must be further sorted:

- Reconciliation and distinction of individual rights from communal land rights.
- Reconciling the roles of the traditional land administration institutions and the statutory institutions.
- Does the community own this communal land or hold it in trust for the entire community.
- How communities relate to outsiders regarding access to land held under common land associations.
- The protection of common property resources in light of individualisation under a communal land association.
- The extent to which abuse of the powers of the officers of the communal land associations (managing committee) can be averted/controlled.
- Scrutinise further the remedies available for a person wanting to individualise but the communal land association refuses, this is especially so in light of PMA.
- What is the suitability and viability of Communal Land Associations and Common Land Management schemes as mechanisms for strengthening existing systems of managing common property resources?

### **3.2.2 Mailo**

The recognition and formalisation in Land Act, 16 of 1998 of overlapping rights on a single land plot, especially on mailo land is an issue that the policy must tackle. On one hand, the Land Act, 16 of 1998 clearly grants registered land owners the right to exercise all of the powers of ownership, including the right to take and use all the produce from the land, the right to engage in any transaction on land, and the right to bequeath the land. On the other hand, the same Act, also recognises the rights of tenants in occupancy (lawful occupants as well as bonafide occupants) to occupy that land in perpetuity for as long as they continue to pay the annual ground rent to the registered owner, as may be determined by the District Land Board.

Tenants in occupancy have the right to transact on the land in the same way as the registered owner. A tenant has the right to assign, sublet, pledge, sub-divide, bequeath, or create third party rights in the land. The existence of various consent requirements and rights of first refusal are an attempt to reconcile the conflicting rights. However, such provisions are not sufficient to address the issues raised below:

- The layering of rights over the same parcel of land on Mailo has negative implications on land use.
- Does Article 237(8) of the Constitution create an impasse by creating perpetual interest in land for lawful and bona fide occupants of mailo land, freehold and leasehold?

- Does occupancy amount to perpetual ownership?
  - i. Does the Land Act create equal interests on the same piece of land i.e. Mailo interest and tenancy in occupancy?
  - ii. Don't these interlocking interests create a land use impasse?
  - iii. Should ground rent be nominal rent or market rent?
  - iv. The concept and definition of bonafide occupant in the Land Act, 1998 is still problematic.
  - v. Should the rights of the lawful occupants be equal to the rights of bonafide occupants?
- The landlord-tenant relationship should for once be resolved. The Odoki Commission recommended that 'bibanja' holders (now lawful occupants) should be granted Freehold titles to the land occupied by them but government should make arrangements for compensation to the Mailo owners.
- In case mediation that is provided for in the Land Act between the registered owner and the lawful and bonafide occupant, what happens then, is it a hopeless situation?

### **3.2.3 Freehold**

Freehold tenure connotes the largest quantum of land rights, which the sovereign can grant to an individual. Freehold interest is said to confer unlimited right of use, abuse and disposition. In Uganda, freehold grants have been few and far between. Indeed the incidents of freehold tenure as defined in the Land Act 1998 appear to be no different from those of customary tenure or of mailo tenure, apart from the fact that freehold land rights are always individually held. The major issues affecting this tenure are as follows:

- The tenure issues discussed under Mailo apply to the native freeholds for the Kingdoms of Toro and Ankole under the 1900 and 1901 agreements
- Freehold granted before the Land Act Cap 227 and Mailo tenure pose some constraints to urban planning and orderly development, to urban planning and development. Should all land in urban areas be held in leasehold with government retaining the reversionary interest?
- The policy will have to call for an interpretation of sections 4(3) and 4(4) c of the Land Act to see whether development conditions can be imposed on freehold and mailo titles issued prior to the 1995 Constitution and those issued after the passing of the Land Act Cap 227.
- Does the interpretation of sections 4(3) and 4(4)c of the Land Act imply that the titles issued after the passing of the land Act Cap 227 are not of the same status as those issued earlier as far as imposition of development covenants are concerned?
- Can Mailo and freehold be subjected to development conditions under section 4(4)c of the Land Act 1988. This implies the law would have to apply retrospectively, is it possible?
- There are weak enforcement mechanisms to ensure that these urban areas are well planned.

### **3.2.4 Leasehold**

The term of leasehold is usually variable and may be defined in terms of specific developments planned by the prospective leaseholder. Second, the supervision of land use, which lies mainly in the domain of contract, is a matter of fulfilment of reciprocal rights and obligations agreed to by the parties. Third, the leasehold permits access to land by a much larger range of users and use categories than either the freehold or the Mailo. Fourth, unlike freeholds and the mailo, leaseholds are easily transferable. The issues for policy in this tenure are:

- Under Article 285 of the 1995 Constitution, statutory leases to Urban Councils were revoked. What was formally public land under the statutory leases is now individually owned. This has posed problems in enforcement of land use planning regulations.
- The dichotomy of those who acquired leasehold over public land before the coming into force of the Land Act, 1998, which land was occupied under customary tenure are burdened by the payment of ground rent to District Land Boards and are threatened by re-entry if they fail to pay. This is not fair. On the other hand, those who did not acquire leases on the land are now owners in perpetuity and do not have the burden of paying ground rent and other threats of re-entry.
- The restriction of conversion of leasehold into freehold (100 hectares) was intended to discourage holding of land for prestige or speculative purposes, S 29 (1) of the Land Act. Is this a good principle? Is it fair for those who are utilising more than 100 hectares and want to convert to freehold to be required to pay the market value in excess of 100 hectares as is provided for under S.29 (2) of the Land Act
- Arguments have been raised that there could be investments requiring a period larger than ninety-nine years. Is there a strong case for Uganda to impose restrictions on land ownership? Currently the legal regime imposes only one restriction, i.e. restriction on non-citizens as they are not permitted to acquire an interest in land which greater than a 99-year leasehold.

### 3.3 GENERAL TENURE ISSUES

#### (a) *Tenure Insecurity*

A high incidence of land tenure insecurity is experienced by specific categories of land users, including women, tenant farmers (kibanja holders), and households living in densely settled areas where land disputes are common. At household level, insecurity of tenure rights do impact on certain types of investment, for example the construction of permanent structures, the planting of income generating trees, manuring, soil and water conservation, among others.<sup>6</sup> The issues under here are:

- HIV/AIDS has exacerbated the plight of vulnerable groups. The social and cultural norms are harsh to the survivors and in particular widows and orphans. The existing legal framework to protect these vulnerable groups needs to be overhauled. The Domestic Relations Law is not in place.
- *Low awareness of land rights:* Lack of information and access to advice renders some groups vulnerable to loss of rights land.

#### (b) *Multiplicity of tenure in urban areas*

The existence of multiple large-scale land owners in an urban setting under different tenure systems has made the enforcement of regulations and development procedures complex and difficult. The tenure systems make it difficult as well as costly to provide infrastructure and urban services. The policy will have to address the following:

- The harmonisation of urban tenure to encourage urbanisation.
- The existence of multiple large-scale owners in urban setting under different tenure systems has made the enforcement of regulations and development procedures complex and difficult.
- The tenure systems make it also difficult as well as costly to provide infrastructure and urban services.

---

<sup>6</sup> Marsh and Laker, *Social Appraisal, Land Act Implementation Study, 1999.*

- The future of customary tenure in urban areas.
- The sustainability and viability of customary tenure in urban areas is a challenge to urban development.

**(c) *Overlapping and Conflicting rights in a piece of land***

The Constitution in article 237(8) and (9) recognises lawful and bonafide occupants of registered land in mailo, freehold and leasehold tenures. In effect, this recognition of overlapping rights in the same piece of land. This article is operationalised by the Land Act 1998. At the moment, it is almost impossible to disentangle the respective values of the mailo interest and the tenancy in occupancy. It clearly grants both registered landowners and tenants by occupancy rights to land in perpetuity, the condition for tenants being payment of annual ground rent to the registered owner. The policy will have to deal with the issues of:

- Reconciliation of the overlapping and conflicting rights on registered land.
- Interventions in the Constitution 1995 and the Land Act 1988 seem to have strained the relationships further, the issues needs revisiting, especially in the light of the increase in evictions on registered areas.
- These relations are straining the productivity levels.

**(d) *Properties of Traditional Rulers***

The position in respect to traditional rulers estates and interests in land, the provisions of the Traditional Rulers (Restitution of Assets and Properties) Statute 1996, is not clear on the roles and responsibilities with respect to Estates of Kingdoms and lands held in trust. The policy will have to clarify the roles and responsibilities and specifically answer the questions below:

- Do the traditional leaders own or just hold in trust the land?
- The roles functions and responsibilities of these traditional rulers need to be clearly defined.
- The status of the unreturned land and properties that belongs to the traditional rulers.

**(e) *Trusteeship***

Government does not own land held in trust for the common good of all citizens. It belongs to the people and is to be preserved and managed for the common benefit of future generations. This policy principle should be stated clearly and the following issues must be dealt with:

- The doctrine and principles of trusteeship should be clear
- In view of the radical title vesting in the citizens, the extent of powers of the state and local governments as a trustee has to be defined.
- Some of the land held in trust for the people and for the common good of all citizens (forest reserves, lakes, rivers, wetlands, and wildlife reserves and national parts, ecologically sensitive areas) is managed by designated bodies and under specific legislations e.g. Uganda Wildlife Statute, Water Statute, Forest Act etc. There is need to harmonise the management of these resources which are vested in Uganda Land Commission by virtue of the Constitution and the Land Act 1998.
- The rationale, and methods used, in gazetting, some of the protected areas have been questioned by people living in these areas or who were previously occupying the land in question.
- Safeguards against abuse in the exercise of these powers.
- Criteria for gazettelement and degazettelement of lands held in trust.
- Rights of access/use by the communities leaving in such areas

**(f) Common Property Resources (the commons)**

Common property resources management involves striking a balance between individual interests, community interests and state interests in those resources. These resources more often than not have ecological and technical characteristics that require well-defined management patterns and guidelines. There is growing attention to local management of community-based resources. In this however, more often than not traditional management systems are being ignored or assumed to be non-existent. The functions of these traditional institutions are being conducted in an environment of formal rights defined by the state<sup>7</sup>. The policy will have to address the question of balance between the market forces and state regulation. In this respect the following issues are raised:

- The right of access to common property is under threat with the increased individualisation of land under communal land ownership.
- There is a need for national standards for management and conservation of these resources by the community.
- Community management of common property resources and sharing of benefits arising from use and exploitation of these resources.
- There is need to enhance the capacity of the communities to manage these resources.
- The purpose for which land may be set aside for common use in section 24(3) of the Land Act, 1988 may not be comprehensive but is clearly articulated.
- Section 27(1) legalises the exclusion of non-members of the Communal Land Associations, yet the resources are held for the common good of the citizens of Uganda.
- Government should intervene when the community is not responding to forming a communal land association and a common land management scheme. The type of intervention is yet to be determined.
- Where common property resources such as forests, wetlands etc straddle across district boundaries, there is potential for conflict and disputes because ecological boundaries are not always similar to political boundaries. The question here is whether aspects of this nature are not bound to cause friction in access given the decentralization and ownership of land. There are already conflicts between the Matheniko (Karamonjong) and Iteso for example<sup>8</sup>.

**(g) Government Land**

Prior to the 1995 Constitution, virtually all unalienated land occupied under customary tenure regimes was public land vested in Government (Uganda Land Commission). The Constitution and the Land Act 1998 introduced major land tenure reforms among which was the restriction of ownership of Government land when public land virtually disappeared. Uganda Land Commission is, the custodian of land owned by the central government. The policy will resolve the following issues:

- The law does not define Government land and as such, it is not satisfactorily protected legally. A clear definition of Government land is required.
- The policy should make a clear distinction between the 3 categories of what currently appears to be Government land, i.e.
  - i. Land being used for state domestic purposes (hospitals, education institutions etc.)
  - ii. Land held in trust by the government for the people and for the common good of all citizens (Article 237 (2)(b) of the Constitution).

---

<sup>7</sup> See Section 24 – 27 of the Land Act

<sup>8</sup> Marsh & Laker, 2000

iii. Gazetted land under the different statutes e.g. The Forestry and Tree Planting Act of 2003, and The Wildlife Statute, 1996.

- Documentation of Government land has not been adequate in the past, leading to many conflicts, encroachment, and poor management of Government's land resources. The policy should sort out these conflicts and clearly pronounce on the encroachment by people, some encroachment has gone on for decades and the encroachers now believe they have legitimate user rights if not ownership rights.
- There are conflicts between the Central Government and Local Governments over ownership and management of the 3 categories of lands under 2 above. This is mainly due to ambiguities in policies, particularly after the decentralisation policy was adopted. The policy should sort out these ownership and management issues.
- There is conflict on the one hand between the restored kingdoms and the Central Government over some of the land previously owned by these kingdoms (official estates) but vested in Uganda Land Commission by the 1967 Constitution after the abolition of these kingdoms. There is also conflict on the other hand between the Central Government and District Land Boards over ownership of these lands.
- The current use of Government land has not been harmonized with recent policies like PEAP, PMA, etc.
- With regard to land used for state domestic purposes both in Central Government and within Local Governments, there is poor co-ordination of management between the Uganda Land Commission (owner/custodian) and other ministries, departments and agencies. Policy should sort out co-ordination of management so that these lands are put to sustainable productive use.
- The current and optimal use of Government land and land held in public trust is not known. Furthermore, the rationale for maintaining some of these lands/properties is no longer clear. The policy should sort out these issues, including divestiture of land, which is no longer, required.
- The policy should look at Government land as a potential source of revenue for the land sector.
- There is conflict between Central Government and local governments over revenues from protected areas, particularly from forest reserves.

**(h) Public Land**

Prior to the 1995 Constitution, virtually all unalienated land under customary tenure regimes was public land vested in Government (Uganda Land Commission). With the Constitutional reforms, this situation was reversed. Government land now appears to comprise only land that is occupied and used by Government for public purposes or reserved for future use by Government, including state and local government offices, police and prisons land, district farms, military installations, road reserves, land on which social infrastructure is located, and many others. The Constitution of 1995 vests land, which is not owned by any person or authority in the District Land Boards. This is operationalised by S.60 of the Land Act, 1998. The issues are:

- What is this land? This appears to be the only public land in the context of Uganda.
- Is this land held in trust for the indigenous people in that district or does the District Land Board own it?
- Under S.60(8) of the Land Act, 1998 the Board holds in trust for the citizens the reversion on any lease that was granted out of public land before the coming into force of the Land Act.

- For those individuals or organisations that opted to lease out of former public land, there contradiction because their contemporaries who opted to remain tenants on former public land are now customary owners in perpetuity, yet the leaseholder still have to pay annual premiums
- 9000 square miles, which is former public land in Buganda, is still an area of contradiction, the policy has to disentangle its status and implications.

(i) *Family Land Tenure Relations*

The Constitution of the Republic of Uganda, 1995 in Objective XV of the National Objectives and Directive Principles of State Policy recognises the significant role women play in society. Article 31 directs Parliament to make appropriate laws for the protection of the rights of widows and widowers to inherit property of deceased spouses. Article 33 (3) provides that the state shall protect women and their rights, taking into account their unique status and natural maternal functions in society and Article 33(6) prohibits the used of laws, customs and cultures or traditions that are against the dignity, welfare or interests of women or which undermine their status.

The National Gender Policy ensures that gender concerns are incorporated into the national development process in order to improve the social, political and economic lives of the people in Uganda particularly women. The Land Sector Strategic Plan recognises the vulnerability in relation to security of tenure for women. One of its strategies is to mainstream gender in all land sector activities. The Land Act in section 28 tackles practices of a customary nature that do not observe articles 33-36 of the 1995 Constitution. Section 40 provides that no person shall sell mortgage or give away land from which he or she ordinarily resides with his or her spouse and from which they derive sustenance except with the prior written consent of the spouse.

All these legislative expressions are attempts to protect the sanctity of the family unit in land relations. The following policy issues must be dealt with:

- Regardless of tenure type, the basic differences between men and women in land access, ownership, and control exist. Both men and women have access to land, but ownership and control over land is ultimately with men<sup>9</sup>
- The call for co-ownership and independent land rights for women has resonated strongly with many gender advocates, however there are others who are sceptical of this approach. The Poverty Status Report 2001 suggests the need to “revisit”, but “with caution,” the proposed co-ownership clause, which would have given both spouses land ownership rights but was not included in the Land Act, 1988.
- It is important to note that gender relations do not refer only to relations between husbands and wives but also embrace other kin and non-kin relationships, and stresses the importance of other relationships and networks, therefore in discussing the issues of inheritance of land and ownership of land one has to bear in mind that kin think about being deprived of their land rights.
- In case of marriage, separation and divorce, the law tends to look at married women and orphans and only to the extent of their residence and the land immediately surrounding the residence. The legal framework for equality and non-discrimination is lacking.
- On the issue of religion, there is no harmonious stand on and in the family; some religious promote equity and fairness on ownership and use of family land, while others do not.

---

<sup>9</sup> Eilor and Gioveralli, 2002

- Commercial banks are reportedly unhappy about the family consent requirement as a condition for transferring land, as that is seen to have an 'adverse impact on the value of land as collateral'<sup>10</sup>

### 3.4 LAND AND SUSTAINABLE LIVELIHOODS

#### 3.4.1 Land and Poverty

There are three major mechanisms through which the land sector impacts on poverty in Uganda. These are: unequal distribution of land access and ownership; land tenure insecurity, and inequitable systems and processes within the sector.

- ***Unequal Land Distribution***

Despite the current absence of an overall land constraint, the inequality of land distribution and barriers to migration mean that land shortages do occur in some areas, and at the household level, relatively widespread land shortage and landlessness exist. Average land holdings in Uganda are estimated at 2.2ha per household. However, evidence suggests there is significant inequality of access and ownership a) between regions, b) between households and c) within households. Inequality of land ownership has been found to correlate positively with household welfare. More important for poverty, however, is inequality of access, which means many poorer farmers are either unable to access land, or can only do so on very unfavourable terms.

- ***Tenure Insecurity***

Land tenure insecurity impacts on poverty by increasing the vulnerability of livelihoods in both rural and urban areas, and in some cases through inhibiting or prohibiting specific income-generating activities. Insecurity of land tenure threatens livelihoods, particularly among specific vulnerable groups, many of whom are already among the poorest. At the household level, insecurity of tenure or the structure of tenure rights do impact on certain types of investment, for example the construction of permanent structures or the planting of income-generating trees<sup>11</sup>.

- ***Land and Governance: Inequitable Systems***

Land sector institutions in Uganda until recently were designed to serve the interests of a narrow minority of (usually) relatively wealthy registered landowners. Centralised public bodies undertook decision-making regarding local land resources and a lack of transparency permeated the system preventing challenges to decisions. Local communities, although retaining significant power in relation to customary rules of allocation and use, have not been empowered politically or financially to determine critical land sector decisions or to resolve long-standing land problems. The impact of these factors on poverty is yet to be comprehensively assessed, but it is clear that lack of transparency and accountability have contributed to the inequality of land distribution as outlined above.

#### 3.4.2 Land and Sustainable Livelihoods

The Plan for the Modernisation of Agriculture is premised on the strategy of raising rural smallholders' incomes in order to eradicate poverty. Rights to land are the basis of the majority of Ugandan small farmers' livelihoods. Consultations under UPPAP showed that the poor recognise a range of benefits associated with land ownership and secure land access. These benefits are both economic and social and emphasise the role of land in production and the sustainability of livelihoods. Land is considered important for production and food self-sufficiency, and potentially, but less importantly, for income generation, for insurance against

---

<sup>10</sup> Adams, 2000: 92

<sup>11</sup> McKinnon & Reinika, 2000; Marsh & Laker, *Social Appraisal, Land Act Implementation Study, 1999*

shocks, for settlement, and for burial of the dead. Secure rights to land underpin the sustainability of livelihoods by providing a secure basis on which to plan and invest for the future, and even by providing security to consider wider livelihood options (including urban migration and livelihood diversification). Security of land access and use is therefore an important and frequently necessary pre-condition for the expansion of production and diversification of livelihoods.

### 3.4.3 Gender and Poverty

Insecurity and uncertainty of land rights among some of the poorest groups in Ugandan society threatens significant numbers of livelihoods. These groups include pastoralists, female and child headed households, urban slum dwellers, tenants, hunter-gatherer groups, refugees and internally displaced persons. Pillar four of PEAP highlights the fact that there are serious differences between men and women and that women are unable own and inherit land in some parts of the country. PEAP, 1997 envisaged that it was necessary to enact a new land law to protect land and rights of widows and orphans and registration of land to protect widows amongst others. It is still a policy challenge to strengthen the property rights of women and the fact that the current Land Act, 1988 protects orphans to a certain extent but not all widows.

### Policy Issues

- ***Gender, land access and land ownership***

The gender structure of land rights in Uganda varies across the country but in general is highly unequal, with women's rights generally limited to access while men are more likely to have ownership rights, and women's rights being less secure than those of men. Without secure rights to land, women's ability and incentives to participate in income-expanding economic activity are reduced<sup>12</sup>. The need to strengthen women's land rights in order to achieve poverty reduction is recognised in the PEAP and the PMA.

- ***Inheritance of property***

It is important to note that gender relations do not refer only to relations between husbands and wives but also embrace other kin and non-kin relationships, and stresses the importance of other relationships and networks: So in discussing the issues of inheritance of land and ownership of land must be born in mind so as to avoid depriving other members of their land rights.

## 3.5 LAND ADMINISTRATION

Land administration in this context, means the “rules of the game”, these include the laws and regulations necessary for creating property rights (and the associated restrictions and requirements imposed by the state or the community), for registering and subsequently transferring them, for resolving disputes, for taxation purposes, and the equitable resumption of these rights. They must be responsive to local requirements and conditions, and be capable of evolving over time to deal with different needs and priorities.

The 1995 Constitution provides that “Decentralisation shall be a principle applying to all levels of local government and in particular, from higher to lower local government units to ensure people’s participation and democratic control in decision making”. The Local Governments Act, 1997 gave effect to the decentralisation and devolution of functions, powers and services. The 1995 Constitution under Article 240 establishes District Land Boards for each district to entrench the decentralisation policy. Article 238 establishes Uganda Land Commission. Article 239 sets out the functions of Uganda Land Commission, article 243 establishes the District Land Tribunals for dispute resolution.

---

<sup>12</sup> *Ovonji-Odida et al. al; Land, Gender and Poverty Eradication, 2000*

The issues for policy are:

- The land reforms that are enshrined in the Constitution are not yet operationalised in the enabling pieces of legislation.
- There is need to determine the implementation strategies and, define and institutionalise the concept of partnerships, especially those that are beneficial and effective. This includes reviewing the existing situation, defining the roles and responsibilities and streamlining the linkages with Civil Society Organisations and the Private Sector.
- There is need to define the role of the community and traditional institutions in land administration, policy formulation, implementation and evaluation.

### **3.5.1 Land Administration Institutions**

Articles 240 and 243 of the 1995 Constitution establish a decentralised system of land administration. The Land Act 1998 has set up a decentralised system of land administration which is expected to operate from the centre to the districts and from the districts to the grass roots by providing for a District Land Board and District Land Office for each district; a Recorder for each sub-county or division in a city; and Land Committees for each parish, gazetted urban area and division of Kampala City. This is in accordance with the country's concern for subsidiarity in decision-making, which is expected to facilitate effective governance at the grassroots level. Land administration entails the mobilisation of institutional mechanisms and personnel for land delivery, registration and titling, demarcation and survey, land information and inventory services and land market regulations. The structure of land administration as set out in the Act is not only very large and complex, but could be very costly, there is need, to re-examine it.

On land administration, the policy will tackle the following issues:

- Decentralisation of Land administration Institutions; both administrative and dispute resolution ones; creates the challenge of relevant, effective, efficient, cost-effective and sustainable institutions for delivery of services.
- The Land Act created land administration structures that are very large, complex and costly. There are inherent diseconomies of scale in such a decentralised structure. The burden on local governments to finance these institutions is excessive. There is urgent need to carry out a feasibility study of these structures.
- The roles of the different central government institutions and roles of the different local government institutions need to be clarified, streamlined and harmonised and there are horizontal as well as vertical linkages straightened.
- There is need to harmonize Constitutional provisions under Art. 189(6) with the provisions of the Land Act, the Registration of Titles Act, the Town and Country Planning Act and Local Governments Act in far as decentralisation are concerned to sort out the apparent inconsistencies. Such inconsistencies relate to financing of decentralised institutions, recruitment, appointment and supervision of staff among others.
- Overall supervision and coordination of these institutions that are decentralised, as well as monitoring of performance in delivery of land services
  - i. Roles and responsibilities and relations of each must be clear
  - ii. Collaboration and integration in these institutions must be clear
  - iii. Professional supervision of decentralised bodies for professional accountability.
  - iv. Performance measurement standards in land administration institutions.
- Incorporation of traditional land tenure and administration institutions especially in areas of customary tenure with the statutory bodies and sustainability. (Should be a study area)

### 3.5.2 Delivery of Land Services

Delivery of Land Services consists of procedures and modalities for receipt and processing of receivable land rights under the provisions of the law. Most tenure regimes impede land use and sustainable management because the land delivery systems are slow, inefficient, corrupt and even hostile to the land rights seeking public. The Land Act, 1988 provides that land registries be set up at all levels of public administration, including the parish levels, and in respect of all tenure regimes. Efficient delivery of land services also requires a systematic up-to-date, cost-effective and accessible land registry or record keeping systems. This is hardly the case in Uganda where land registry processes are slow and haphazard, and transaction costs in respect thereof prohibitive. Indeed land registry records, are archaic, inaccurate and hence unreliable. The policy must address the following:

**Divestiture/Privatisation of land services:** There is a need to divest some of the technical services to reduce on burden to the districts

- Private supply of technical services raises the following services;
  - i. Setting standards, rules and regulations, policies for privatised services to ensure efficiency and affordability
  - ii. Will it be commercial services for people and contract basis for public sector
  - iii. What is the feasible option in privatising services; contracting or divestiture or other means?
  - iv. Will such services remain affordable to the people after privatisation?
  - v. Ensuring quality and professional conduct in a privatised environment will be important (Quality control and Quality assurance).
  - vi. Creating an enabling environment for privatised service delivery.
  - vii. There should be a clear definition of the core services to be retained by the public and the others to be privatised and, the definition of levels at which this will occur.
- Roles of Civil Society Organisation in the delivery of land services; issues pertaining to partnerships, networking, collaboration etc. need sorting out.
- There is need to review the studies on restructuring /reform of the public service, study on commercial justice reform and assess the recommendations therein.
- There are a number of sector agencies dealing with land that need coordination to avoid duplication. There is need to review mandate of such sector agencies and build capacity to identify the gaps, enhance and strengthen them in a holistic manner.
- There is need to determine the feasibility of divesting/privatising some of the land services.

### 3.5.3 Land Information Systems

Land information is a public good that is core to the functioning of other government sectors. Land information is a key service where considerable information exists, the rate of land transactions is higher<sup>13</sup>. A modern analysis of land records and land administration focuses not only on tenure security issues (surrounding registered titles, demarcation and customary certification) but also only the benefits arising from the use of the land records as a source of spatial and land information<sup>14</sup>

The following issues must be dealt with:

---

<sup>13</sup> MISR/ Innovations at Makerere Committee, 2003: *Feasibility study on updating and computerizing the District Land Registries*.

<sup>14</sup> Dale and McLaughlin: 1988, UNCHS, Nichols: 1993, Fourie / UNECA: 1998, Williamson: 1997

- There is need to streamline the land information system (two existing parallel systems, the traditional system of registration and demarcation based on certificates of customary ownership and occupancy) should the two co-exist.
- The role of the state seems to be taken for granted, under the Registration of Titles Act, the state guarantees land titles; the question is who is going to guarantee the products of the new decentralised Land Boards and Recorders, Does the Government still guarantee for local governments?
- The trade off between privacy and the right to access information and therefore the extent of each to be clearly defined, this should embody
  - i. Security of person's in case information is to be used for dispute resolution
  - ii. Management of the records (information), hence the need to move towards computerisation, this too need a law and policy
- Other issues under Land information are;
  - i. Rehabilitation of the registry
  - ii. Systematic demarcation
  - iii. Land adjustments in Urban and peri-Urban areas
  - iv. International and internal administrative boundaries
  - v. Decentralisation up to the sub county

### **3.5.4 Dispute Resolution Institutions**

Article 243 of the 1995 Constitution establishes Land Tribunals as a decentralised system of dispute resolution. The Land Act 1998, defines the jurisdiction of tribunals over a wide range of issues in both rural and urban Uganda. It provides for the appointment of adhoc mediators in appropriate circumstances to assist the tribunals in resolving disputes. The provisions are progressive; however there is need to ensure that the tribunals are efficient, cost effective and socially reconstructive. Contemporary research indicates that land disputes require special juridical or quasi-juridical mechanisms for their resolution. A high prevalence of land disputes in the absence of an effective and equitable mechanism for their resolution also leads to economic losses through delayed or deferred production and investment. Even among groups whose tenure is believed to be relatively secure (for example customary owners) the prevalence of land-related disputes is clear evidence of insecurity. The following issues need to be in dispute resolution:

- There are many entry points into the dispute resolution framework which is bound to confuse the service user
- There is need to separate the judicial and administrative powers of the local councils.
- The jurisdiction of LC courts is limited to land disputes of a customary nature. What then happens to disputes between landlords (with registered land) and tenants, which do not warrant the intervention of land tribunal?

### **3.6 LAND USE AND MANAGEMENT**

Currently, a Land use Policy is being developed, that will consolidate the various policies relating to land use that are scattered in various legislation. The main law that governs land-use planning, the Town and Country Planning Act, 1965 is also under review. The Land Sector Strategic Plan states that development of the national land use policy will be multi-disciplinary and guided by the requirements for environmental management the need to develop more innovative methods for land use planning, design and management, and sectoral policies for the conservation of specific resources under the Department of Forestry, the Wetlands Inspection Division, and the Department of Tourism, Wildlife and Antiquities. Logically, the policy for land use is part and parcel of the National Land Policy.

For Uganda, the major issues to be tackled are:

- The national land use policy should establish a general framework for land use and physical planning within which specialised and more sectoral plans can be developed.
- There is a need to design mechanisms to facilitate the active involvement and participation of communities and people at local levels.
- There is need to promote participatory involvement of all stakeholders in land use planning at all levels.
- There is need to integrate spatial planning with economic planning.
- There is need to deal with the issue of inadequate harmonisation of sectoral land use policies.
- There is need to set standards and criteria regarding zoning of land use in Uganda.
- It has been recognised that soil maps are not detailed enough for land use planning purposes.
- The importance of urban-rural linkages in order to stimulate local economic development and assist diverse livelihood strategies that straddle urban and rural locations will have to be considered.
- There must be a balanced and integrated approach to addressing the requirement of both urban and rural society in dealing with land and land based resources.
- If government acquired land for public good and conservation purposes, and such purpose ceases, should degazettement and redistribution be considered?
- Land use planning should promote the conservation of biodiversity.

### **3.6.1 Human Settlements**

Land is a limited resource that calls for rational human settlements development, so that available land and other natural resources within and around the human settlements are optimally utilised to achieve sustainable growth. Human settlement is multi-sectoral and it not only refers to shelter but also physical facilities and social services necessary to sustain a community. It implies a place where more than one household lives and it includes a village, town, majority city or metropolitan centre. Human settlements provide the living environment for virtually all peoples of the world and has therefore a central role in managing interactions between the built environment and environment.

Rural settlements are generally characterised by dispersed pattern of homesteads and low population density although others such as Kabale, Arua and Kisoro are densely populated. The rural population mostly depends on natural environment for their livelihood through primary production in agriculture and livestock keeping, among others. Rural areas are also characterised by poor social and physical infrastructure.

On other hand, the urban settlements are more nucleated with higher population densities. The urban population derives livelihood from non-primary activities mainly manufacturing industry and the services sector. In Uganda today rural areas account for 88% of the total population compared to 12% urban. Bust this composition is fast changing because the urban population is growing at 4.7% compared to 3.4%, which is the national rate. The issues for policy are the following:

- Lack of shelter for all; inadequate provision of environment and other infrastructure in human settlements.
- Inadequate provision of sustainable energy and infrastructure in human settlement.

- Unsuitable Constriction activities
- Wasteful and inappropriate rural settlement patterns
- Lack of adequate shelter for all
- Inadequate human settlement planning
- Inadequate provision and integration of infrastructure in human settlements
- Unsustainable use of local construction materials.

### **3.6.2 Rural Land use**

Because the majority of the people of Uganda still live in and draw their livelihoods from the rural areas, adequate policy must address the major activities in rural areas, namely agricultural and livestock development. The major agricultural activities in the country include grain production, coffee, sugar cane, and horticulture. Livestock development, which is responsible for the country's dairy and beef requirements, is an activity that is carried out in all agro-ecological zones. Uganda has no specific legislation for the regulation of agriculture even though there are general crop specific and livestock instruments, which are relevant to rural land use. The following issues must be sorted out by the policy:

- Inadequate harmonisation of sectoral land use policies and activities
- Land Fragmentation resulting into diminishing productivity.
- Even with PMA, rural land has not increased productivity because of the use of traditional methods of agriculture. There is need to change those agricultural practices that do not enhance productivity.
- There is limited provision of extension of services to rural areas.
- Limited practices in land management
- There is need to promote pastoral development taking into consideration the ecological nature of rangelands.

### **3.6.3 Urban Land use**

Many people who move into urban centres are young, unemployed and lacking in technical skills. Even with industrialization, which is yet to be realized, these people cannot easily find gainful employment in the urban areas. In addition the indiscriminate extension of urban boundaries has brought within them population clusters living in areas of land which are still used predominantly for agricultural and livestock development. An important effect of this is that land use in the urban areas is hardly in conformity with existing zoning, sub-division, and building regulations. Further, the urban slum sector in most towns is now much larger than the inner core and beyond the reach of urban services such as shelter, water, sanitation, recreation and physical infrastructure. The policy must look at the following;

- Poor implementation of existing policies and plans
- Extravagant use of Urban land
- Irrelevant and costly physical plans
- Inadequately planned urban settlements.
- Planning is usually carried out after settlement, There are haphazard settlements
- In appropriate regulations and standards
- Multiplicity of land tenures in Urban areas
- Institutional schematisation
- Approval process and procedural delays

### **3.6.4 Land Use for Agriculture**

The capability, suitability and ability of land to support various agricultural activities let alone its productivity potential and its ability to sustain certain land uses are not well known in Uganda. This in turn makes it virtually impossible to allocate land to its most optimal uses. Ideally land should be zoned based on geological, pedagogical and agro-climatic factors that reflect suitability of use and sustainability of use. The policy will have to focus on the following issues, among others that will be articulated in the Land use policy:

- Inappropriate agricultural practices are leading to desertification, degradation etc
- Cultivation on marginal lands in environmentally vulnerable areas and in fragile ecosystems
- There is need to come up with an agricultural audit in order to improve productivity.
- Policy needs to promote sustainable use of agro-ecological zones.

### **3.6.5 Urbanization**

The process of transformation with urban areas characterised by rural-urban migration and economic development in terms of industrialisation. Case studies provide evidence that increased urbanisation accompanies economic development. The objective is to promote effective urbanisation in cities and towns of Uganda. The policy will have to deal with the following issues:

- Excessive urbanisation; that's concern over and fear of large population of visibly unemployed or under-employed individuals as result of rural-urban.
- Uganda is rapidly urbanizing and there is no national urbanisation policy
- Budgetary strain placed by demand for expanded provision of public infrastructure.
- Increased levels of congestion and pollution. (Zoning!)
- Too primate; that urban areas are too concentrated in a few large cities that are growing more rapidly than the urban population as whole.
- The above calls for measures to de-concentrate and develop an urban structure capable of handling marketing and needs of rural areas hence the policy on creating "growth centres" (cities in agricultural areas) charged with providing basic processing industries as well as services to nearby rural areas.

### **3.6.6 Institutional Issues on Land use Agencies**

There are several institutions or Government departments with varying responsibilities on land management, many are conflicting while others are overlapping without clear policy principles and guidelines. Policies, which relate to land use are scattered in various legislation, various institutions or government departments with varying responsibilities on land management. There is therefore a need to

- Strengthen coordination mechanisms between institutions that deal with land use and resources management to facilitate integration of sectoral concerns and strategies.

## **3.7 NATURAL RESOURCES**

The State, under the National Objectives and Directive Principles of State Policy in the 1995 Constitution, has a mandatory duty to protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda. It also has a duty to promote sustainable development and public awareness of the need to manage land, air, and water resources in a balanced and sustainable manner for the present and future generations.

Article 237(1) of the 1995 Constitution provides that all land in Uganda belongs to the citizens of Uganda and shall be vested in them. However, article 237(2) qualifies this provision and

states that the state shall hold in trust for the people and protect natural lakes, rivers, wetlands, forest reserves, game parks, national parks and all land to be reserved for ecological and tourist purposes for the common good of all citizens. Under article 245 of the 1995 Constitution binds the State to protect and preserve the environment from abuse, pollution and degradation, manage the environment for sustainable development and to promote environmental awareness. Under article 244 of the 1995 Constitution binds the State to make laws regulating the exploitation of mineral and mineral ores taking into account interests of individual land owners, local governments and the government and the sharing of royalties from mineral exploitation.

A range of policies in the environment and natural resources sector have been developed since 1994. Some of these sectoral policies overlap. The major ones cover the environment, the wildlife, the wetlands, forestry and minerals. In general, the policy must deal with following issues:

- There is a need to appreciate the symbiotic relationship between development and environment, thus, the need to adopt a strategic framework that allows integration of both environmental and developmental goals.
- There is need to streamline the access and management of natural resources by the community and the Government.
- The policy should stipulate the modalities of sharing benefits arising out of the exploitation of natural resources.
- Population pressure has led to encroachment of natural resources.
- The need for criteria and priorities for public investment in the natural resource sector.
- Conflicts between the central government and the local government over the management of natural resources
- Resource tenure issues versus land tenure issues, there are contradictions.
- There is need to promote only harvesting of resources from forests and wetlands.
- Accessibility and Management of natural resources and protected areas.
- There need to revisit the ideology of agriculture being wise use of resources.
- Sharing of benefits from land-based resources between central government, local government and the communities.

### **3.7.1 Environment**

The National Environment Management Policy for Uganda (1994) expresses the following concerns regarding land and resource tenure:

- That the tenure system fails to provide security of tenure needed for sustainable socio-economic development
- That a comprehensive land and resource tenure policy should encompass not only property rights to land but also other natural resources (e.g. trees, both planted and natural, water fisheries, wetlands, minerals, rangelands and wildlife)
- That land tenure policy should provide for security of tenure in support of sustainable agricultural production systems (including forestry)
- In pastoral areas, pastoral groups should be provided with secure access and user rights to traditional grazing areas and water sources to the extent feasible.

### **3.7.2 Wetlands**

By the provisions of the 1995 Constitution, wetlands are held in trust by the Government or a local government for the good of all citizens of Uganda. How is this to be actualised?

National Policy for the Conservation and Management of Wetland Resources (1995) has the following salient provisions:

- Provides that all wetlands are a public resource to be controlled by the Government on behalf of the public
- Communal use will be permitted, but only if environmental conservation and sustainable use principles and strategies of the wetlands policy are adhered to
- Provides that all future land tenure documents including maps and layouts will indicate whether the area contains a wetland and will accordingly exclude these wetlands from tenure

The following policy issues arise:

- The ownership of wetlands on mailo and all land granted in freehold and leasehold from former public land before the 1995 Constitution is not clearly sorted out
- How can the right to use or have access to the wetland by the community be enforced on private land held under mailo, freehold, leasehold or customary tenure? Note that all wetlands in Uganda are held in trust by the government for the good of all citizens.
- How can sustainable use of a wetland be achieved in an environment of open access to the wetland resources over government land, public land and land held under communal ownership?
- Are the Communal Land Associations the best institutions to manage these wetland resources?
  - i. Sections 16 and 24 of the Land Act 1988 appear to confer ownership and management of these resources to the communal Land Association. Or do they confer only user rights?
  - ii. Section 24 of the Land Act 1988 provides for establishment of areas of common land use in communally owned land, specifies the purposes for which land may be set aside for common use
  - iii. What is the role of the Wetlands Inspectorate vis-à-vis the Communal Land Associations.
  - iv. Section 27(1)(d) of the Land Act 1988 legalises exclusion of non-members by members of a community accessing and using common property resources.
- The wetlands policy provides for recovery of previously drained wetlands.
  - i. How can restoration of the wetland be achieved in case of titled land?
  - ii. Does this not involve massive compensation for land and developments to be lost in the course of restoration?
- Absence of mechanisms to implement the wetlands policy.
- There is excessive pressure put on wetlands in urban areas. This raises the need of making the distinction between wetlands in the rural areas and those in the urban areas vis-à-vis development concerns.

### **3.7.3 Forestry**

According to the Uganda Forestry policy (2001) the goal of the sector is: “an integrated forest sector that achieves sustainable increases in the economic, social and environmental benefits from forests and trees by all the people of Uganda, especially the poor and vulnerable”. The Uganda Forestry Policy (UFP) identifies the following as the key land and resource tenure issues:

- There are considerable uncertainties over land ownership, land and tree tenure and permitted land uses in the minds of many people in Uganda.

- There are policy deficiencies relating to the private sector and local communities over land tenure, access rights and responsibilities for resource management
  - Women are disadvantaged in security of tenure and they are rarely involved in decision-making over natural resource management or the management of household income. All these factors are disincentives for women to invest in tree growing.
  - The absence of clear land and tree tenure arrangements is a disincentive to commercial tree growing.
  - There is no formal policy that determines forestry as a land use on private land
  - Few incentives exist for individuals on private business to invest in tree growing or forest management when tenure is so uncertain. This applies equally to tree tenure on private land, and the ownership of plantations or forest resources on government land
  - Open access to natural forests on private land as well as government land leads to destructive practices. Natural forests are perceived in many cases to be open-access resources, including those on government land.
  - Lack of tenure or security of access to forest resources undermines sustainable management and utilisation of these resources
  - There is lack of involvement in decision-making about resource management by the community
  - In the case of government forest reserves, national parks and wild life reserves, boundaries are not marked or have been obscured.
- (a) *The UFP proposes the following strategies:*
- Develop a supportive legal basis for tree tenure, access rights and sharing of benefits from wood and non-wood forest products
  - Collaborative forest management i.e. that local communities get genuinely involved in the management of the forest resource through a negotiated process in which rights, roles, responsibilities and returns for the sustainable management of such forest resources are shared.
  - Clarification of the rights of access for all Ugandans to all types of forests in the country.
- (b) *The National Forestry and Tree Planting Act, 2003 provides for:*
- Community forests (section 17) to be declared by the Minister after consultation with the District Land Board and the local community and upon approval by resolution of the District Council.
  - The Act, however does not sort out tenure issues (access rights, user rights and ownership rights) and this may conflict with sections 16 and 24 of the Land Act which provide for Communal Land Associations and for the establishment of areas of common land use (common property resources) in communally owned land.
  - The Act does not appear to give to the community access to resources in forest reserves. Section 14 just prohibits some listed activities.

### 3.7.4 Minerals

Article 244 (2) of the Constitution states that “Minerals and mineral ores shall be exploited taking into account the interests of the individual land owners, local governments and the Government”. The Mineral Policy of Uganda (2001) does not appear to comply with Article 244(2) of the Constitution, as it does not take into account the interests of the individual landowners. The policy states that royalties shall be shared between Central Government and

local government from where minerals are produced. In the Mineral sector the following policy issues therefore arise

- There are serious land tenure issues which needs to be sorted out
- Who owns minerals in Uganda? The Constitution is silent on the matter.
- How are the interests of the individual owner of the land to be taken into account?
- How about the interests of the community who may own land communally under customary tenure?

### **3.7.5 Water**

- There have been attempts by Government to lease out riverbanks and yet the Land Act prohibits the granting of an interest greater than a license. The National Land Policy should clearly stipulate this.

## **3.8 LAND MARKETS**

Like any other markets, forces of demand and supply and perhaps more importantly, power govern land markets, however, land is not a homogeneous product. Each parcel is unique, with a particular set of locational and physical attributes, and actors in the land market are diverse and often have conflicting agendas besides, rights to land vary. Well functioning land markets can be characterised by the level of ease and costs of entry into the system and of carrying out land markets transactions, both of which depend on the availability of adequate land information, secure tenure arrangements, and appropriate registration and recording mechanisms. The five main policy instruments, which affect the supply of land and have an impact on the functioning of land markets, are:

- Property rights and tenure systems
- Land registration
- Land use regulations and planning (i.e. government's restriction on the use of land)
- Direct public intervention through acquisition and disposal of land (projects of land nationalisation, exercise of the power of eminent domain and by land readjustment)
- Fiscal policies and practices

International experience shows that in cases where there is a poorly functioning land-registration system, buyers of land are often not sure if they are actually buying from the "real" owner. The lack of clear proof of ownership imposes substantial costs on the land market: first, without an accurate ownership register, prospective buyers must conduct extensive research on property ownership before deciding to enter into the transaction; second, owners of untitled property are unable to use the land as collateral for obtaining loans from financial institutions and thus must either forgo credit or pursue more expensive channels of borrowing.

### **3.8.1 Formalization of customary tenure**

The major effect of the 1995 Constitution on customary tenure, as operationalised by the Land Act, 1998, was to legalise customary tenure and make it almost at par with the other tenures, namely freehold and mailo. The regularisation of customary tenure was meant to enhance the land market, to facilitate access to credit and security of tenure. One of the consequences has been to open up land under customary tenure to the market; this in turn has raised the following issues;

- People losing rights in land
- Concentrating ownership to a single person
- Creating a class of landlessness people.

### 3.8.2 Protection of vulnerable groups

The protection of the rights of tenants in occupancy, women, children, orphans and other disadvantaged groups was a deliberate policy decision in the Land Act, 1988 to cushion these groups against potential social and economic impacts of the land markets. Section 40 requires spousal consent and other consents prior to carrying out transactions on household lands. Although these requirements are not proprietary rights, they do give people the power to approve or disapprove a transaction with the result that any transaction that is carried out without their consent is void. The issues for policy with regard to this are:

- The above provisions are bound to increase transaction costs on the land and property markets. A recent study found it impossible to identify all the people who need to consent especially in cases of polygamy that involve multiple wives and children (including those born out of wedlock). It is also almost impossible to verify that all the necessary consents have been obtained<sup>15</sup>.
- The question for policy is whether the costs of the current protection measures for approvals of transactions by vulnerable right holders are worth the benefits and whether they are working.

### 3.8.3 Distress sales and landlessness

According to literature, distress sales are caused primarily by unmitigated exposure to risk, which causes farmers to resort to liquidating their assets, including land, during crisis where they lack other risk-coping mechanisms such as secure employment, credit and insurance. Increased transferability of land rights, which is key to the full realisation of the benefits of increased security of tenure, may facilitate distress sales, leaving the poor without social safety nets, distress sales account for a disturbingly high percentage of land transactions. The issues here are:

- There is no sufficient statistical data on the extent and seriousness of landlessness in the country and how this impacts on poverty to enable the policy to tackle this issue.
- There is not enough information to inform policy on how distress sales and consequent landlessness can be mitigated.

### 3.8.4 Regulation of land markets

The demand for land is derived from its uses, government policies and regulations, which govern land use and development, affect the land markets and housing markets by controlling the supply of land and altering the costs of development. The issues for policy here are:

- Inappropriate planning regulations, standards and procedures affect the Land Market and in the distribution of land
- Irrelevant and costly physical plans - master planning and comprehensive planning techniques are primarily concerned with the product rather than the process and do not adequately address implementation issues.
- The increasing complexity of land markets, the role of the public sector versus private sector actions, and the links between spatial and financial planning.
- Approval process and procedural delays; the tedious process of approval adds substantial costs to any development ventures.
- Zoning can have considerable impact on land supply and in turn impact on the price.
- The price effects of strict land-use controls are great. Planning-induced limitations on land for residential, commercial or industrial development can force up land prices.

---

<sup>15</sup> Rose Mwebaza & Richard Gaynor: *Land Sector analysis - Land Market, Land Consolidation, and Land Re-adjustment Component, For Ministry of Water Lands & Environment, Feb. 2002.*

### 3.8.5 Procedures of transacting on titled land

A reliable system of registration of land rights supported by a functional land information system is essential to efforts to improve distribution of ownership rights, and to developing modern agriculture and a market based property system. Where there is a poorly functioning land-registration system, buyers of land are often not sure if they are actually buying from the “real” owner. It is therefore very important that the procedures for transacting on titled land be streamlined in order to facilitate the functioning of land markets.

### 3.8.6 Speculation

In Uganda, a lot of pressure has been put on land and has caused a hike in the land market.

### 3.8.7 Multiple layers of rights to a single land plot

The Land Act, 1998 attempts to reconcile the overlapping and conflicting rights of owners and occupants by putting in place various consent requirements and rights of first refusal. As a practical matter, mailo tenants are buying, selling and otherwise transferring their rights without obtaining the consent of the mailo owner, as the Land Act requires. They also seem to be ignoring the owner’s rights of first refusal. It is only because they are ignoring the Land Act’s requirements that purchases and sales continue to occur. If the requirements of the Land Act were strictly enforced, they would create a major obstacle to market activities.

From the above it is clear that:

- Land market activity is threatened to some extent by the Land Act’s recognition and formalization of multiple rights over a single land plot especially on mailo.
- Financial institutions question the viability of tenanted mailo land as collateral. They refer to Mailo land as “lost land” precisely because of the conflicting rights of landlords and tenants<sup>16</sup>.

### 3.8.8 Ownership of land by Non-citizens

During the Odoki Commission there was expressed fear of foreigners taking over land and as a result, the legal regime imposes only one restriction, i.e. restriction on non-citizens as they are not permitted to acquire an interest in land which greater than a 99-year leasehold. Under globalisation, foreign direct investment is a major factor under Uganda’s medium-term economic development framework (MTEF).

Much as this strategy is a pointer to increased economic development, it has also brought about contradictory implications for the land rights of the poor. In many cases, government land allocation simply gives precedence to commercial investors with more capital-intensive production systems, rather than smallholder farmers and traditional resource users in rural areas.

- Is there a strong case for Uganda to impose restrictions on land ownership?
- Is it wise to open up rural to non-citizens?

### 3.8.9 Land markets, credit markets, investment and productivity

The linkages between security of tenure, titling, land markets, investment and productivity have often been over-exaggerated. Titles have been promoted in the belief that they will lead to higher levels of investment in the land, and so to higher levels of productivity and growth, by facilitating access to credit and a free land market, which would transfer land from less to more efficient users. There is need to investigate these linkages if policy is to address these issues.

---

<sup>16</sup> Rose Mwebaza & Richard Gaynor, 2002: *ibid*.

### **3.9 LAND / PROPERTY TAXATION**

#### **3.9.1 Land Taxation**

Uganda does not have what is traditionally known as a land tax i.e. tax on bare and/or undeveloped land. During the debates that preceded the promulgation of the 1995 Constitution, some attempt was made to introduce a land tax in Uganda. The Report of the Uganda Constitution Commission, 1993 (the Odoki Commission) stated that:

- It has been suggested that the least developed the land should be the taxed. It is argued that if such a tax policy on land were introduced, it would compel the holder of undeveloped land to put the land to productive use in order to avoid heavy taxation or sell part of it.
- Some people, while not opposed to the policy of taxing land altogether, are of the view that land tax should only be imposed at the time of transfer or its acquisition. Some people maintain that land should not be a taxable item.
- There is need for utilising every piece of land economically and according to approved plans and conditions. At the moment, land lying idle, and there is no urge on the part of holders of such land to develop it because they are not compelled to do so.
- A land tax computed on developmental basis is likely to compel landowners to think of all means of developing the land to avoid taxes, or to sell of the extra land, which they cannot develop.
- Great care should be taken not to levy taxes on those who preserve part of their land for the purpose of protecting and conserving the environment.

The Odoki Commission recommended that:

- In principle land should be taxed;
- Idle and undeveloped land should attract higher taxes;
- Parliament should make laws for the imposition of taxes on land.

These recommendations were not accepted and subsequently were not implemented by the Constituent Assembly and as a consequence, there is no land tax in Uganda. Before any steps are taken, there is need for information that will enable decision makers pronounce themselves on the issue of land taxation. It is important, that the following questions are answered either through a study or by research:

- Is land a good fiscal device? What are the international experiences and contemporary practices?
- Consider the effectiveness, efficiency and equity of the land taxation system. Ideally, a tax should comply with the norms of neutrality, equity, certainty, simplicity, efficiency, and political acceptability. How do these norms apply to a land tax in the context of Uganda?
- What would be the objective(s) of a land tax in Uganda? Would it be to raise revenue and/or to attain social, economic or political objectives?
- What is the viability and sustainability of a rural land tax? The majority of Uganda (88%) live in the rural areas and practice subsistence agriculture. Less than 20% of the land in Uganda is surveyed and registered. The titles register is also out of date.
- Consider the revenue assignment issue. Will it be a local tax or a national tax? Do the local government structures have the administrative and professional capabilities to administer the tax assessment or collection?

- Consider possible effects of a rural land tax on subsistence agriculture. Perhaps a land tax can be imposed on commercial holdings
- Will a land tax be politically feasible?
- What will be the tax base, productive capacity, and market value or resource quality?

*There isn't sufficient information to answer these questions. A study is recommended in this area.*

### **3.9.2 Property Rates**

Rating in Uganda is currently governed by the Local Government (Rating) Decree, 1979. The decree empowers urban authorities to levy rates on all properties (with a few exceptions) within their boundaries. Since 1997, District Local Councils have been permitted by the Local Governments Act to impose, under the provisions of the Local Government Rating Decree, rates on properties that are within their areas of jurisdiction. However, to date not a single district has levied these taxes.

Property rates, which alternatively in Uganda are called assessment rates/municipal rates, are a local tax levied by urban authorities. The urban authorities are institutionally weak in many aspects. They lack professional people to administer the property taxation. Urban authorities can legally charge a maximum rate of 20% of the rateable value. The urban authorities have the unfettered power to set the rate without the agreement of the central government. Before the promulgation of the 1995 Constitution, urban authorities were required to have their budgets approved by the Minister of Local Government. With decentralisation, urban authorities gained financial autonomy. The following key policy and administrative questions have to be addressed by the policy:

- What should be and not be included in the tax base? Land and/or buildings? Land alone, or buildings alone?
- Broadening the definition of what is taxable can increase the yield of the tax.
- The challenges of integrating property tax reform with the overall decentralisation of local government finance.
- What is the most appropriate rating system for Uganda?

### **3.9.3 Other Revenues from Land**

Raising revenue performance is an important component of Uganda's overall fiscal strategy and for achieving PEAP goals. Revenue from budget has also been identified as a potential mechanism for increasing overall Government revenue, both through improving rates of collection of property taxes, premium rates of collection of property taxes, premium and ground rent, and possibly through the introduction of new land-based fiscal instruments. The potential for the land sector to generate revenue, and to facilitate improved collection, is recognised but has not yet been comprehensively analysed or quantified. There are two major aspects of land sector development, which will depend specifically on assessment of this potential, and on capacity to realise this potential:

- Decentralisation of land services and the level of land services provided would depend in part upon the resources, which can be generated within the land sector to sustain decentralised service delivery institutions.
- Strategies for divestiture or agentisation of some functions within the sector from Government will depend largely on the level of revenue, which can be generated from those functions.

In view of the Government's policy on cost sharing and the overall goal of poverty eradication, the issue of incidence of any revenue generated (through fees, ground rent or taxation) will be important in analysis of the potential for the land sector to increase revenues without undermining the strategy for poverty eradication. The policy therefore will have to tackle the following issues:

- Since the coming into force of the 1995 Constitution, revenue from premium and ground rent has declined substantially. The leaseholders appear to be reluctant to pay ground rent.
- The urban authorities lost the statutory leases over public land falling under the areas of their jurisdiction and as a consequence, there is hardly any free land to allocate – so no premium.
- Granting customary tenure to all occupants of former public land has greatly affected the revenues of Government (Uganda Land Commission) and District Land Boards—they have lost premium and ground rent.
- District Land Boards and some urban authorities are charging illegal and mostly exorbitant fees in total disregard to the provisions of the Land Act, 1998 and the Land Regulations, 2001. They also charge and retain fees, which are supposed to be fees for the Central Government.
- The tax on transactions (stamp duty) does not appear to raise substantial revenue.
- The issues of revenue sharing in the land sector between the central government and local governments need to be sorted out.
- Issues of cost recovery, sustainability and affordability need to be addressed.
- The Land Act Implementation Study (1999) found that it should be possible to finance the title registration system entirely from fees, and to generate tax revenue on transactions (stamp duty).
  - i. The applicant already pays the cost of the cadastral survey.
  - ii. To encourage entry to the system, it is common practice to subsidize the real cost of first registration by recovering it from fees for registering subsequent transactions.
  - iii. The present low level of activity in the Land Registry may not be sufficient to cover its running costs, which leads to under investment and paralysis.
  - iv. After the initial investment to reactivate title registration, it should be fully self-financing with a revised fee structure that is designed to cover the operating costs.
  - v. It may be necessary to set fees at a more realistic level which would recover the annual operating costs of delivery (excluding the initial investment in the infrastructure and training) to make implementation of the Land Act financially sustainable.
  - vi. There may be need to find other ways to support those who would not be able to pay.

## **4. POLICY IMPLEMENTATION**

Policy implementation involves the successive detailing of policy from the level of intent through the structuring of actions required to achieve intended policy outputs, outcomes and impacts.

### **4.1 THE LEGISLATIVE FRAMEWORK**

Most of the existing legislation is outmoded, outdated, and thus inadequate to answer to the land question facing Uganda today. These deficiencies have had a significant negative impact on land management. The issues that arise here are:

- The need to create a legal framework for the implementation of the National Land Policy through harmonization and modernization of sectoral pieces of legislation with the Land Act.
- The pieces of legislation need to suit the political, social, cultural and economic framework of the country.
- The framework should provide a mechanism for participation of the people in the development of national and local policies, laws and plans on land management.

### **4.2 INSTITUTIONAL FRAMEWORK**

Land being central to economic development across sectors requires an integrated multi-sectoral approach to management and use, which provides for a comprehensive and well-coordinated institutional mechanism that ensures efficient and effective delivery of land services, and which ensures wide and active participation and interaction. The issues here are:

- The need to create an institutional framework for the implementation of the National Land Policy through harnessing of the private sector and civil society to actively participate in land management and development.
- The need to clearly assign distinctive roles and responsibilities to all actors.
- There is need to develop a powerful voice that will ensure cross-sectoral coordination and management

### **4.3 MONITORING AND EVALUATION**

In order to know and assess the impact of the National Land Policy, constant and progressive monitoring and evaluation will have to be done. This ensures that the policy will be constantly fine tuned or modified to respond to changing circumstances in the future. Issues that arise are:

- The need to determine the impact of the policies and strategies that will be developed and ascertain their progress and effectiveness in delivering land services and land management and development programmes.
- The Monitoring and evaluation system needs to be sensitive to the division of roles and responsibilities and therefore, track the progress and evaluate the effectiveness of the institutional framework in delivering the desired result.

### **4.4 FUNDING MECHANISMS**

This policy must stipulate funding mechanisms for the land sector

## **5. THE GAPS AND AREAS FOR FURTHER STUDY**

This section proposes additional policy analysis and research work to address issues that have not been sufficiently addressed in the issues' paper either due to absence of analysed information or a total vacuum on information availability. If these gaps that have emerged are to be filled all analyses and research undertaken must look at the potential contribution of land resources to national development strategies more broadly. This should not only be in terms of agricultural productivity but in view of sustainable utilization of land resources. The gaps are to be filled are at two levels:

- Translating already existing research into policy
- Conducting research to fill the gaps in policy

### **5.1 NATURE OF GAPS**

#### **5.1.1 Translating existing Research into Policy**

There are areas where numerous researches have been undertaken with sufficient information to inform policy. However, this information has not been clearly translated into policy or analysed in the context of policy. In such areas, existing studies and research work or information needs to be adequately analysed and translated into policy issues for the land sector. These will be basically desk review studies with limited stakeholder consultations to contextualize the analysis and develop appropriate recommendations.

#### **5.1.2 Studies to fill Gaps in Policy**

There are areas where no research has been undertaken or analysis attempted. If any research has been under taken at all, it is either not related to the land sector or information in existence is not sufficient to inform policy. In such areas, more in-depth studies combining both analysis of existing information and collection of fresh data from the field will have to be conducted to effectively add value to the policy.

### **5.2 PRIORITY AREAS FOR IMMEDIATE STUDY**

#### **5.2.1 Divestiture and Privatisation of Land Services**

This is a major area of study without which the policy will be incomplete in the context of service delivery. This study will have to revisit the Land Act Implementation study 1999 and the Ministry of Public Service Restructuring Report for MWLE and follow up on their recommendations. These studies/ reports have already established a knowledge base. What is needed is to assess the feasibility of the recommendations made and building consensus on the issues arising and their impact on the Land Sector.

#### **5.2.2 Common Property Resources and Traditional Land Institutions**

Extensive studies exist on the commons in Uganda and all over the world. However, little of what is concluded in these studies is visible in policy and law; hence the non-satisfactory and negligent handling of policy in this area. The study in this area will review and consolidate policy issues embedded in existing researches, literature and data on the commons, to inform the national land policy on how to appropriately handle this subject area.

There is an overwhelming preference for involving customary traditional institutions in land litigation matters and administrative issues by the communities. In addition, there is apprehension on the composition of the proposed land administration institution in areas where customary tenure is predominant. The persons serving on such institutions are viewed as outsiders who know nothing about land matters/concerns or dynamics in a given area. Further,

more, the idea of including an elder on the local land administration for purposes of balancing cultural and legal aspects was widely recommended in earlier studies.

### **5.2.3 Land Taxation and Generation of Revenue from Land services**

There are a number of issues on land taxation that must be reviewed and/ or answered by this research. The major concern is the feasibility of a land tax in Uganda; whether it is a good fiscal device, the effectiveness, efficiency and equity of the land taxation system, the political acceptability of such a tax, what would be the objectives of the land tax in Uganda? What is the viability and sustainability of a rural land tax? How would the tax be operationalised? Given the fact that less than 20% of land in Uganda is surveyed and registered. Would it be a local tax or a national tax? What would be the effect of such a tax on subsistence agriculture and livelihood vulnerability? What would be the tax base, productive capacity and market value or resource quality? These and several other issues need to be covered sufficiently.

The other area, which needs broad consideration, is the generation of revenue from various land services offered by the land sector as well as securing appropriate and commensurate funding from the treasury and other sources for the sector. The tax on transactions (stamp duty) doesn't appear to raise substantial revenue. The issues of revenue sharing in the land sector between the central governmental and the local government need to be sorted out. Issues of cost recovery sustainability and affordability need to be addressed. The Land Act Implementation Study (1999) found that it is possible to finance the title registration system entirely from fees and to generate tax revenue on transactions (stamp duty).

### **5.2.4 Resettlement, Landlessness and Internally Displaced Persons**

This study will look at the following issues:

- Look at the application, viability and practicability of the Land Fund provided for in section 42 of the Land Act, 1998 especially with regard to resettling persons who have been rendered landless by government action, natural disaster or any other cause (?) (Sec. 42(4) c).
- Study the recent clashes, tensions and conflicts over land in respect of migrants moving, across district, and tribal boundaries e.g. Kibaale Districts, Kyenjonjo and the swamps of Teso.
- Voluntary and Involuntary Resettlement; look at causes and orderly solutions including refugees.
- There is no sufficient statistical data on the extent and seriousness of landlessness in the country and how this impacts on poverty to enable the policy to tackle this issue.
- There is not enough information to inform policy on how distress sales and consequent landlessness can be mitigated.
- Given the massive displacement of people in Northern and Eastern Uganda due to prolonged war, this policy needs to:
  - Look at ways of resettling these persons given that there is no public land
  - Look at ways of protecting persons' properties and assets, on return at the end of war.
  - Look at international convention that need to be domesticated on resettlement, and displacement

### **5.3 AREAS FOR FURTHER STUDY**

#### **5.3.1 Derived and Secondary Rights**

The legal structure of Land rights tends to favor individualized ownership to exclusive parcels of land. The derived rights are very vulnerable within this framework especially under customary tenure i.e. certain specific groups whose rights to use or occupy land are highly insecure. The marginalisation of their land rights increases the vulnerability of their livelihood and is likely to make those individuals and households poorer. Derivative rights have received little attention in statute or land policy. The significance of derived rights for the livelihoods of most Ugandans cannot be overstated.

#### **5.3.2 HIV/AIDS**

The placement of HIV/AIDS in the arena of property rights and agricultural production stems from its socio-economic effects such as distress often resulting in disposal of household assets, succession and/ or inheritance dynamics that may result in disenfranchisement of land from the productive members of the household. Land being the key productivity resource and very often than not the key household asset, its at the heart of the HIV/AIDS-property rights-agricultural production linkage.

The need therefore to look at AIDS as a policy issue for consideration in land reform is of paramount importance. If we do not explicitly factor in the impact and trends of HIV/AIDS as a central feature of our analysis of how to go about land reform (or any other development activity) in Uganda, we risk being professional negligent, misusing resources for poverty reduction, and are unlikely to achieve stated objectives.