REVISED DRAFT OF

PRINCIPLES OF A NATIONAL LAND POLICY FRAMEWORK FOR UGANDA

Prepared for the Uganda Land Alliance

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OUTLINE OF CONTENTS

1.0 INTRODUCTION

1.1 Country Background
1.1.1 Geographical Features
1.1.2 Population and Human Settlements

1.2 Land in Economy and Society

1.2.1 Economic significance of land
1.2.2 Political and social significance of land

1.3 Implications for definition of the land question.

2.0 THE LAND QUESTION IN UGANDA

2.1 The legacy of history

2.1.1 Pre-colonial origins
2.1.2 Impact of Colonialism

2.2 The characteristics of the land question

2.2.1 Independence and continuity
2.2.2 The land question in contemporary Uganda

2.3 Implications for land policy

3.0 DEVELOPING A LAND POLICY FRAMEWORK FOR UGANDA

3.1 Conceptual Parameters
3.2 The process of land policy development
3.3 Land policy principles for Uganda

3.3.1 Principles regarding land sector development
3.3.2 Principles regarding sovereignty over land

A. Constitutional principles
B. The location of radical title
C. The power of eminent domain

D. The scope of the police power
E. The system of derivation of title

3.3.3 Principles regarding land tenure

A. Classification of tenure regimes
B. Customary land tenure
C. Freehold land tenure
D. Mailo land tenure
E. Leasehold land tenure
F. Reform of customary land tenure

3.3.4 Principles regarding resource tenure

A. The framework of discourse
B. Tenure of specific resources
C. Sensitive Ecosystems

3.3.5 Principles regarding land use

A. Fundamental goals
B. Rural land uses
C. Urban land uses
D. Stainable management of land use
E. Support services and infrastructure

3.3.6 Principles regarding land administration

A. The overall framework
B. Land delivery systems
C. Land demarcation, survey and boundary-making
D. Land market operations

3.3.7 Principles regarding the resolution of land disputes

A. The general nature of land disputes
B. The resolution of customary land disputes
C. The resolution of registered land disputes

4.0 <u>LAND POLICY IMPLEMENTATION</u>

4.1 Identifying the gaps
4.2 Reviewing the status quo

4.2.1 Legislative measures
4.2.2 Institutional responses

4.3 The way ahead

1.0 INTRODUCTION

1.1 Country background

1.1.1 Geographical features

Uganda is an East African country bordered by Sudan to the North, Zaire to the West, Rwanda and Tanzania to the South and Kenya to the East. Its total area is 241,039 sq. km, of which 197,097 sq. km. is land while the rest, which is approximately 43,942 sq. km. is covered by water and swamps. It lies between latitudes 42° north and 1.5^o south and latitudes 28° and 35° east. The country occupies a plateau averaging 915 meters in the north rising to 1,340 near Kampala. Uganda's highest point, Mt. Stanley at 5,110 meters, is to be found in the east rift system which lies along the southwestern border near the Equator. In addition to lakes which cover approximately one-fifth of its territory, the country also has a complex system of rivers many of which are to be found in the south of the country and which drain into Lake Victoria, the third largest lake in the world.

There are two distinct wet seasons, namely March to May and October to November. The northeast part of the country is the driest, receiving about 812 millimeters of rainfall between April and August while the Lake Victoria region receives in excess of 1,500 millimeters annually.

Temperatures are moderated by altitude and range from 35 degrees centigrade on the rift floor near the Sudanese border, to 5 degrees centigrade in the southwestern highlands.

1.1.2 Population and human settlements:

The population of Uganda is approximately 22.5 million people growing at the rate of 2.6% per annum. In terms of distribution 3.4 of the population is to be found in the urban areas and approximately 86.6% in the rural areas. The capital city of Kampala boasts of a population of 1.5 million people. The overall population density is estimated at 76.4 to a sq. km. This, however, belies the fact that actual densities are much higher in the riverine districts of the country. In terms of demographic characteristics, the population remains relatively young at 55% below the age of 18 years; slightly over 51% of it being female.

The pattern of human settlements in Uganda has been shaped not only by eco-climatic factors, but also by such traumatic phenomena as wars and the HIV/Aids pandemic. Consequently many parts of the country are sparsely populated while others carry fairly high physiological averages. One consequence of this is that size distribution of land varies quite widely.

1.2 Land in economy and society

1.2.1 Economic significance of land:

Like all other African countries, Uganda's economy depends on its agriculture, which contributes 43% of the total GDP of the country and over 90% of its total exports. Agriculture remains the largest single employer engaging approximately 80% of workforce. Indeed, Uganda remains one of the few nations that is self-sufficient in food, despite the almost total collapse of its economic infrastructure due to civil war and the impact of the HIV/Aids pandemic.

Although 42% of the total land area of the country is suitable for agricultural use, only 21% of this is currently under cultivation and this is mostly in the southern regions. A large part of the country, particularly in the north and the northeast, is not suitable for agriculture due to the prevalence of the tsetse fly. Livestock rearing is, nonetheless, an important activity in these arrears.

The basic unit of production in the agricultural areas is the small-scale family holdings. The average size of such holdings is between 1.6 to 2.8 hectares in the south and 3.2 hectares in the north. Such holdings are typically held under customary tenure; a land rights system which varies from one ethnic community to another and from one region to the other. The majority of the ethnic communities, however, recognise continuous use of specific areas of land under the control of the family or some larger units as the basic land tenure principle. The right to hold and work such land is secured for as long as the land is occupied and cultivated. Generally, when such occupation and cultivation cease, the land reverts to common ownership and may be reallocated to other users.

1.2.2: Political and social significance of land:

Even before colonisation, land was always an important factor in the political organisation of Ugandan societies. This is clear not only in the organisation of governments in the kingdoms of Buganda, Busoga, Bunyoro and Toro, but also among territorial societies such as the Karamonjong. What colonialism did, therefore, was merely to legitimize 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 constitutes, in social and cultural terms, sovereignty over the very spirituality of society.

1.3 Implications for the definition of the land question in Uganda:

The geo-physical, economic, political and socio-cultural significance of land outlined above must constantly be kept in mind if the essential characteristics of the land question in Uganda are to be identified. For not only do they locate land and associated resources at the centre of the struggle for identity and survival, they also point 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 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.

2.0 THE LAND QUESTION IN UGANDA:

2.1 The legacy of history

2.1.1 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 was 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 that in the political organs through which control of the territory or the resources of the land was exercised or mediated.

This, very briefly, was the situation on the eve of the 20th century when Uganda was brought under British colonial rule.

2.1.2 The impact of colonialism

In common with other African countries, colonisation had an important impact on land relations in Uganda. In the first instance, 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 to firmly confer upon feudal overlords absolute control of 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 which 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.

2.2 The characteristics of the land question

2.2.1 Independence and continuity

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 upto 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 to be 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 re-stated 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, the functions of which were: -

a) to hold and allocate land in the district which is not owned by any person or authority;
b) to facilitate the registration and transfer of interests in land: and
c) to deal with all other matters connected with land in the district in accordance with laws made by Parliament.

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 policy 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 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.

2.2.2 <u>The land question in contemporary Uganda</u>:

It should be clear from what has been stated above that at least until 1995, 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 a new law passed in 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 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.

2.3 Implications for land policy:

Although the ownership, use and management of land have always been recognised as critical elements in the overall development of the country, no attempts have ever been made to examine the basic constraints that have impeded the development of the sector.

Hence 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. A rationalizing framework consisting of a comprehensive set of policy principles is, therefore, necessary.

3.0 DEVELOPING A LAND POLICY FRAMEWORK FOR UGANDA

3.1 Conceptual parameters

As would be the case in any other sector, the development of land policy requires conceptual clarity at several levels. Firstly, the context giving rise to policy development must be fully elaborated. In the case of Uganda that context is defined by a number of parameters, chief among which are, the centrality of land in the economy; the political ambiguity on the land question as outlined above; 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.

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. The significance or otherwise of the land question in Uganda's future development will depend to no small extent on the success or otherwise of these other policies.

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.

3.2 The process of land policy development

Land policy development is a deliberate act that involves a number of steps, not necessarily in 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. It is therefore prudent to treat that legislation as providing the basic terms of reference for comprehensive public debate. Whatever policy principles are agreed as a result of that debate can then be used to revise that legislation. The land policy principles outlined in the next sector are intended not only to guide debate on the land question in general, but to facilitate systematic critique of the Land Act, 1998.

3.3 Land policy principles for Uganda

3.3.1 Principles regarding land sector development

a) Diagnosis

The design of an adequate land policy must in the first instance draw its goals, objectives and principles from the overall national development framework and strategies of the country. 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 recent years Uganda has, in numerous documents, set out a number of development policies and strategies towards which various sectors of the political economy are expected to strive. These include the modernization of agriculture, liberalisation and industrialisation, decentralisation, participatory governance and, more recently, poverty eradication.

Although the attainment of the overall objectives of these policies could remain elusive, they, nonetheless, give a clear indication of the country's long-tem aspirations. More specifically those policies identify the land sector as an important catalyst in the attainment of the country's overall development aspirations.

b) Policy principles

Uganda's Ministry of Water, Lands and the Environment has prepared a draft Land Sector Strategic Plan 2001 – 2011 which sets out the vision and mission of, and guiding principle for, the land sector as follows:

- ***the goal for the land sector is to ensure that Uganda's land resources are used productively and sustainably so as to ensure security of livelihoods and poverty reduction.***

- ***the Mission of the land sector is to create an enabling environment for the participation of all stakeholders in effective use and management of Uganda's land resources.***

- ***the guiding principles underlying that goal and mission are that: -***

    - ***since land is a common heritage of all Ugandans it is the duty of everyone to ensure that it is responsibly managed and productively used;***
    - ***all Ugandans irrespective of gender should have equal rights of access to the land whether this is through the market or through any system of inheritance, customary or statutory.***
    - ***it is the duty of public officers to ensure that land is administered transparently and that they remain accountable to Ugandans at all times;***
    - ***management of land resources must comply with broader social and economic objectives;***
    - ***sustainable management of land is a prerequisite to security of access to that land hence poor or unproductive land use is unacceptable;***
    - ***efficient land market operation is fundamental to land development hence market distortions of whatever nature, legal or otherwise, must be eliminated; and***
    - ***comprehensive democratic and participatory land use planning, and fidelity to the plan are integral to land development especially in the urban and semi-urban areas.***

In other words, the Land Sector Strategic Plan presupposes a policy framework that would promote and consolidate the following concerns: -

- direct the process of change in the land sector;

- provide a permanent agenda on the land question not susceptible to easy manipulation from one generation to the next;

- provide guidelines for good governance in this important sector of the economy;

- define the overall philosophical context and provide an integrating framework for all sectoral policies dealing with the use of land resources; and

- provide an optimum framework for the sustainable use of land resources.

An attempt is made in this section to provide guidelines for the formation of such a policy in terms of a number of specific issues. The most important of these relate to sovereignty over land, land tenure, natural resources tenure, land management, land use, land administration, and the resolution of land disputes.

3.3.2 Principles regarding sovereignty over land

There are at least five aspects to this issue. These are the constitutional classification of land, the location of radical title, the power of eminent domain, the scope of the police power of the state, and the system of derivation of title.

A: Constitutional principles

a) Diagnosis

Before 1995 all land was vested in the Government which it was presumed, held it, as trustee for the people of Uganda. This follows from the fact that even before the very explicit provisions of the 1975 Land Reform Decree, land that was held as "freehold" or "Mailo" was, in law, held of the State. The 1995 Constitution and the Land Act 1998 have created a lot of confusion in terms of constitutional classification of land ownership by vesting radical title directly in the general citizenry. For this formulation means that there is no specific persona which owns the territory of Uganda as a whole.

Indeed the land boards and the Uganda Land Commission created by the Constitution and the Act are merely allocation authorities without any residual title to the land itself. Experience elsewhere indicates that the vesting of radical title in the public at large can in practice have very serious implications for the State and local communities. For example the State would have to proceed through compulsory acquisition procedures before it can allocate any, even vacant land for investment. This is clearly unsatisfactory.

b) Policy principles

As a matter of general principle, the Constitution of Uganda should distinguish between land as national territory and its character as a resource. Consequently,

- land as national territory should always be vested in the State;

- radical title to land as a resource should be held by a single juridical persona, and

- land as a resource may be held immediately or directly in the people at large.

B: The location of radical title

a) Diagnosis

Note has been taken of the fact that both the Constitution of Uganda and the Land Act, 1998 now provide that land in Uganda belongs to the citizens of Uganda. These instruments do not, however, specify the manner in which the citizens of Uganda hold such title. For example, in what corporate form would the citizens of Uganda hold such title? Is the Constitution and the Act talking basically about individuals holding radical titles? These are not merely academic questions. The location of radical title is what determines the derivation, security and integrity of land rights. This confusion needs to be clarified.

b) Policy principles

It is suggested that the following principles should guide that clarification: -

- all land Uganda should vest in the Uganda Land Commission as trustee for the citizens of Uganda;
- appropriate legislation should be enacted to define the terms and conditions upon which the Uganda Land Commission will hold such land as trustees for the citizens of Uganda.

C: The power of eminent domain:

a) Diagnosis

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 in the Government but also in authorities; a formulation which is not common. Although the exercise of that power is made subject to the usual conditions, that is to say that the taking of possession or acquisition must be necessary ***inter alia*** for public use or be in the interest of defence, public safety, public order, public morality or public health, the Constitution goes on to make a rather unusual provision, namely, that the compulsory taking of possession or acquisition of property can only be made under a law which makes provision for the prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property.

The effect of this provision is that an acquisition or the taking of possession must be preceded by a negotiated market arrangement in which the parties enter into an agreement for the transfer of that property to the Government or to the local authority. That is not eminent domain, as we know it.

b) Policy principles

Because eminent domain is such an important power, it should be delinked from issues relating to the location of radical title. Its exercise should therefore be guided by the following principles:

- in order to ensure uniformity throughout Uganda and accountability in its exercise, the power of eminent domain should vest only in the Government of Uganda and not in any local authority.

- that power should be exercised directly by the Head of State.

- other than in exceptional circumstances, compensation in the event of the exercise of that power should always be paid after acquisition but before the actual taking of possession of the property thus acquired.

- where the public purpose or interest justifying the compulsory acquisition fails, the law should provide for automatic restitution of that property or interest to the original owners, holders or occupiers.

- the Uganda Land Acquisition Act should be revised to conform to these principles.

D: The scope of the police power:

a) Diagnosis

The doctrine of the police power is concerned with the issue as to whether the State should have a 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 its misuse.

The Constitution of Uganda and the Land Act 1998 both recognise this power, especially as it relates to the use of land, the management of the environment, and land use planning and zoning. These instruments go so far as to confer in the Government and local authorities the control and protection of all natural lakes, rivers, waste lands, forest reserves, game reserves, national parks and any land preserved for ecological and tourist purposes.

They further, require land owners and occupiers to comply with any legislation enacted for these purposes. Consequently, it is expected that comprehensive legislation expressing the Government's exercise of that power would be enacted. This currently is

not the case. Further, it is not clear how local authorities are expected to exercise this power. These issues will need to be clarified.

b) Policy principles

As a creature of the Uganda Constitution, the exercise of the police power should be guided by the following principles: -

- there is a need for comprehensive land use policy for Uganda specifying clearly how land owners and occupiers are expected to comply with any national or local policy relating to the sustainable use of land;

- although legislation exists relating to the environment, there is need for an environmental policy framework that would give credence to that legislation;

- in order to ensure uniformity of the police power throughout the country, the Central Government will need to develop a set of guidelines for adoption by local authorities. These guidelines should be based on the overall national land use and environment policy;

- in addition to the State and local authorities in their corporate capacities, all planning authorities in the country should have the inherent power to regulate the use of land in the public interest;

- legislation embodying that power may be general or sectoral but in either case, must establish clear standards which override proprietary land use practices, and which landowners, occupiers and holders of interests in land would be required to comply with;

- such legislation should embody international and national policies relating to the sustainable use of land and the preservation of environmental values; and

- any law or bye-law expressing the police power of the State or of local authorities should, in addition to the usual procedures of publication, be fully and effectively discussed by the public or by local communities before they are enacted or promulgated.

E: The system of derivation of title:

a) Diagnosis

The issue of derivation of title relates to the modalities through which land rights of whatever tenure are created, acquired and protected. 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, that is to say, customary, freehold, Mailo and leasehold. But of whom, one might ask, will such land be held?

b) Policy principles

In order to ensure that all systems of derivation of land rights confer adequate security, attention should be paid to the following principles:

- all land rights, irrespective of tenure category should originate from a single authority, in this case the Uganda Land Commission;

- in order to avoid a complex process of investigation and verification, all land rights under whatever tenure in Uganda should be deemed to have been derived from the Uganda Land Commission.
- a process of re-issuing of land titles, where appropriate, should be commenced by the Uganda Land Commission, and a comprehensive register under each category prepared accordingly;

- the validity of any title to land under whatever tenure system should be traceable ultimately to a grant or registration or other form of conferment of that right by the Uganda Land Commission.

3.3.3 Principles regarding land tenure

A: Classification of tenure regimes

a) Diagnosis

Land tenure refers to the terms and conditions under which access to land rights are acquired, retained, used, disposed of, or transmitted. An examination of land tenure is therefore central to the formulation of an adequate land policy. There are three ways of classifying land tenure regimes. The first is in terms of the legal regime governing tenure i.e. whether that regime is statutory or customary. The second is in terms of the manner in which such land is held i.e. whether as private, public or community property. The third is in terms of the quantum of rights held i.e. whether as freehold, leasehold or commonhold.

The Constitution of Uganda and the Land Act 1998 have addressed only the last of these classification schemes. They provide that land in Uganda may be held in terms of four tenure categories, namely customary freehold, mailo and leasehold.

b) Policy principles

There is need to provide further clarification on other ways of classifying tenure regimes. In addition to the categories of tenure set out in the Constitution and the Land Act 1998, therefore, the law should:

- distinguish clearly between public, private and community land;

- specify clearly whether any or all of the tenure categories enshrined therein are interconvertible e.g. whether freehold land can be converted to Mailo and vice-versa; and

- allow for the possibility of evolution of other categories of land tenure.

B: Customary land tenure:

a) Diagnosis

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 incidents of which are not always capable of precise definition. These incidents often vary from community to community. 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.

Defining the incidents of customary tenure in terms of generalities as the Land Act does may, therefore, not be useful. Providing further that customary land rights may be registered and certificates of ownership thereof issued and, indeed, that customary land rights may be converted to freehold tenure, fails to appreciate the complexities of that system.

b) Policy principles

There is need, therefore, to determine the role of customary tenure in land development in Uganda in terms of the following principles:

- the primary incidents of land rights under customary tenure should be standardized and recognized as such across all communities;

- a statutory framework for the orderly evolution of customary land law based on those incidents should be designed and operationalised;

- the design of the framework should address, inter-alia, the following issues;
  - recognition of two distinct estates under customary tenure, namely the commonhold as the primary estate, and the leasehold;
  - inheritance of land under customary tenure;
  - land rights protection for women and children;

- the relative position of individuals in communities in which they live;
- the harmonization of basic principles of land holding across all indigenous tenure systems;
- the re-establishment of authority structures for land management in areas under customary tenure; and
- the re-institutionalisation of a system for the documentation of customary land transactions which communities can operate and manage.

C: Freehold land tenure:

a) Diagnosis

The second land tenure category set out in the Constitution and the Act is **freehold**. The origin of freehold tenure is distinctly colonial and feudal in nature. It connotes the largest quantum of land rights which the sovereign can grant to an individual. Being held of the sovereign, however, the freehold is technically a tenancy hence subject to resumption by the State. This means that, in theory any surrender of a freehold interest on sub-division does not entitle the holder to an automatic regrant of an interest of equivalent quantum. Nonetheless the freehold interest is said to confer unlimited right of use, abuse and disposition. Typically, such interests are individually held. In Uganda, freehold grants have been few and far between.

It is doubtful, however, whether this tenure regime is still of any relevance to contemporary Uganda. Indeed the incidents of freehold tenure as defined in the Act appear to be no different from those of customary tenure or of Mailo tenure, both of which are also defined in the Act. Hence, apart from the fact that freehold land rights are always individually held, there appears to be no distinction between this tenure system and customary or Mailo land tenure.

b) Policy principles

There is need to review the essential merits and value of the freehold tenure system in Uganda's political economy. That review should take account of the following principles:

- the freehold tenure system should be phased out and replaced by a tenure regime that is clearly subordinate to the overall police power of the State;
- rights currently held under freehold tenure should then be converted to the new tenure system once this is settled;
- where the conversion process leads to loss of a substantial quantity of rights by former freehold land owners, adequate compensation should be offered in respect thereof; and

- application of the English common law, the doctrines of equity and the statutes of general application in so far as they are relevant to the interpretation of property rights in Uganda should be phased out.

D: Mailo tenure:

a) Diagnosis

The third tenure system specified by the Constitution and the Act is the **Mailo.** Historically, the Mailo was a system of freehold tenure exclusive to Buganda and meant to solidify political control by Baganda Kings and Princes over their subjects. The continuation of such a distinctly feudal system of land tenure in contemporary Uganda is clearly anachronistic. Besides, land under Mailo tenure, being governed by Baganda law and custom, is held and transmitted exclusively to male heirs. This discriminatory disposition is clearly contrary to the equalitarian ideology to which the Government of Uganda is firmly committed.

b) Policy principles

There is need, therefore, to reconsider the role of this tenure regime in Uganda's political economy in terms of the following principles: -

- along with the freehold land tenure system, the Mailo land tenure system should be phased out and converted to a new regime of land tenure clearly subordinate to the police power of the State;

- tenants on Mailo land, described in legislation as bona fide occupants, should be enfranchised where proof of long and uninterrupted occupation is established;

- compensation should be accorded to former Mailo land owners for any unexhausted improvements made on the land; and

- interim measures for the protection of bona fide occupiers of Mailo land should be put in place ahead of their enfranchisement to avoid mass evictions by land owners.

E: Leasehold land tenure:

a) Diagnosis

The fourth system of land tenure set out in the Constitution and the Act is the **leasehold**. This is a device that is known to every system of land tenure. It involves the derivation of rights from a superior title and the enjoyment of such rights in exchange for specific conditions including, but not limited to the payment of rent. Leaseholds may be created by any proprietor holding a superior interest in any land.

The leasehold is a flexible device which many jurisdictions have found useful for a number of reasons. First, the term of lease 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 fulfillment 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.

Although it is not clear under the Land Act 1998 whether leases can be created under customary land tenure, there is no doubt that this regime also recognises leaseholds, even though the conditions of obtaining such a lease may be different from what they would be under freehold or Mailo tenure.

b) Policy principles

There is need to reform the law of leasehold tenure along the following principles: -

- the leasehold tenure system should, as far as possible, be the primary basis for land development in Uganda,
- the period of lease in respect of public land should vary depending on the nature of the development to which the land is to be put; so should the conditions attached to any such lease.
- all land within urban areas should be held on leasehold tenure. Hence as urbanisation expands, all rights to land coming within an urban area should be automatically converted to leasehold subject, of course, to the payment of adequate compensation in respect of any rights larger than the leasehold interest.
- all leaseholds whether urban or rural, statutory or customary should receive adequate statutory protection.

F: Reform of customary land tenure

a) Diagnosis

Uganda, along with other countries in the region has experimented with policies which regard customary land tenure as a serious impediment to agrarian development. Indeed, although the Land Act 1998 does not explicitly say so, an obvious contempt of that tenure regime is evident in that legislation.

The view that customary tenure is an impediment to agrarian development is founded on the thesis that ownership per se, especially if it is individualized and secure against State interference, is the basis of initiative in the land economy. That argument has been sold by free enterprise economists and planners in Africa on two complimentary fronts. First it has been offered as the explanation for the alleged inability of indigenous tenure

institutions to stimulate agricultural development, it being contended that because of their communal nature, these institutions are inherently incapable of accommodating modern production methods, techniques and practices. Second, it has been offered as the panacea for the morass of underdevelopment which continues to plague agriculture throughout Africa. The implication, therefore, is that salvation lies along the path of privatization of land ownership rather that in the public control of land use.
Although a number of countries in Africa have accepted this and have, in consequence, invested staggering resources in tenure reform programmes, there is evidence that its wider political and economic consequences have not always been assessed or fully appreciated. In particular, the impact of tenure reform on the economic, political and social organization of rural society has never been fully weighed against its alleged contribution to rapid growth in the agricultural sector. More recent studies including a major empirical exercise by the World Bank, have now established that these assumptions are misleading. They demonstrate beyond any doubt that what is required is comprehensive agrarian reform. That means that beyond the property structure, there is need to reform production structures and support services infrastructure.

b) Policy principles

Since reform of customary land tenure will became necessary from time to time, there is need to ensure that it takes account of the social, cultural and economic realities of Uganda. Rather than proceed from particular orthodoxies, reform of customary land needs, rather to take account of the following principles: -

- land under any tenure should be freely alienable subject only to the requirement that such land, when transferred, will be productively utilized;

- there should be no gender discrimination in the transmission of land, whether by way of inheritance, or by other forms of operation of law;

- the rights of women and children in marriage under any system of law should be fully protected;

- land rights security for all users, irrespective of tenure category should be guaranteed; and

- unless otherwise shown, any property acquired during marriage should be deemed to be family property.

3.3.4 Principles regarding resource tenure:

A: The framework discourse

a) Diagnosis

Tenure over land based resources, as opposed to that of the land itself, has become an important issue in contemporary discourse on land policy. These resources include water, forests, grasslands, wild life, minerals, parks and reserves. The issue of tenure arises from the fact that in colonial Africa these resources were carefully appropriated to the State, hence access to them was only possible through a complicated system of licences and permissions operated by the State bureaucracy. The general principle in the law of Uganda is that these resources are to be held by the Government or a local authority in trust for citizens of Uganda. That position ignores the fact that contemporary research indicate that communities should be accorded an opportunity to own and manage some of these resources.

b) Policy principles

There is need, therefore, to rethink policies regarding the utilization, protection and development of land based resources. The following principles may, therefore, be appropriate: -

- other than in exceptional circumstances and subject to the principle that radical title to all land should vest in the Uganda Land Commission, ownership of the soil should always entail ownership of all resources on, above and below its surface;
- control and management of land based resources should continue to vest in, and be exercised in terms of, the police power of the State;
- the exercise of that power should be decentralized to lower levels of government including planning authorities;
- there is need to develop a comprehensive resource tenure policy as part of an overall land use policy for the country;
- in the formation of a resource tenure policy, substantial value could be drawn from customary tenure principles relating to the common utilization, protection and development of land based resources; and
- in the pastoral areas, the management of grasslands should be turned over to communities under a regime that takes account of the special ecological circumstances of those areas;

B: Tenure of specific resources

a) Diagnosis

As we have indicated above, the control of land based resources such as water, forests, wildlife and minerals is in terms of the Constitution and the Land Act, vested in the State and local authorities. This means, inter alia, that the State holds both the legal and

beneficial interest in those resources. State management of those resources over the years has not, however, been particularly responsible. The result has been substantial destruction of land based resources especially 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.

c) Policy principles

In addition to re-thinking the issue of tenure of land based resources, therefore, there is need to re-examine the management regimes which support their utilization and development. The following principles may be useful in that exercise: -

- existing laws should be revised so as to ensure that communities contiguous to these resources are fully involved in their management and development;

- a new system of income sharing between the State, local authorities and local communities represented by their own organs, should be put in place in respect of the utilization of wildlife resources;

- community principles regarding the utilization of water, forests and wet lands should be strengthened; and

- the principle governing the protection of forests, and wildlife, embodied in the concept of gazettement and national parks, respectively, should be re-examined.

C: Sensitive ecosystems

a) Diagnosis

Sensitive eco-systems such as seasonal migration routes of wildlife, national heritage sites, catchment areas, wetlands, marine resources, biodiversity colonies, mountains and river basins and banks, require a special proprietary and management regime. This is because of their fragility and exceptional value in the maintenance of eco-system stability and vitality.

c) Policy principles

Consideration should be given to the following principles in an attempt to strengthen the control structure of these eco-systems.

- ownership of sensitive eco-systems should vest directly in the Uganda Land Commission;

- the management of those eco-systems should be exercised by an independent agency established specifically for that purpose;

- comprehensive and integrated land use planning should be undertaken in all areas around sensitive eco-systems;

- strict control of development activities should be maintained in all areas contiguous to these eco-systems;

- the following should be specifically controlled: -

    - agricultural activities in catchment and mountain area;
    - hotel and tourist development in areas contiguous to lakes and national reserves;
    - activities in areas governed by international conventions relating to wetlands and bio-diversity colonies; and
    - activities around hydroelectric dams and stations.

3.3.5 Principles regarding land use:

A: Fundamental goals

a) Diagnosis

Ultimately the success of any land policy or legislation is the extent to which it facilitates the productive use and sustainable management of land. An important strategic objective of the LSSP is to put land resource in sustainable productive use. While important strides have been made in Uganda to ensure that the land is, indeed, productively used, and sustainably managed, there are still a number of problems that require policy attention. These are endemic in both rural and urban land uses.

Three of these may be highlighted here: The first is the phenomenon of land deterioration due, among other things, to land pressure, the use of inappropriate technologies and a skewed pattern of land distribution particularly in the southern districts of Uganda. The second is the abandonment of agricultural activities in areas that were ravaged by war and/or the HIV/Aids pandemic. The third is the phenomenon of soil erosion and depletion of land use cover particularly in the arid and semi-arid areas of Uganda due, inter alia, to precarious and destructive land use practices, particularly over-stocking. The fourth is deterioration in the quality of urban settlements due to poverty induced land use practices.

The Government's LSSP acknowledges the need for strategies to combat these problems particularly as they relate to reserved land, common property resources and the urban areas.

b) Policy principles

There is clear need to address these and related problems. Consideration should, therefore, be given to the following principles:

- a comprehensive land use and land management policy should be developed incorporating 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 action;
    - 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 also be developed.

B: <u>Rural land uses</u>

a) <u>Diagnosis</u>

Because the majority of the people of Uganda still live on and draw their livelihoods from the rural areas, adequate policy must address the major activities in that sector, namely agricultural and livestock development. Agriculture – that is crop farming – is found mainly in the medium to high potential areas of the country. 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 regulation of rural land use, therefore, is essentially an environmental issue. This is clearly unsatisfactory

b) <u>Policy principles</u>

There is need for the re-examination of the social, economic, legal and ecological contexts in which rural land use operates. That re-examination should build on the following principles: -

- the need to re-establish an enabling environment for agriculture and livestock and, in particular to operationalise the Plan for the Modernisation of Agriculture and the Poverty Eradication Action Plan;

- the need for realistic policies for the management of rural population growth, particularly rural-rural migration;

- the institutionalization of mechanisms designed to induce land owners with excess land to release it for production to those who are land short;

- the intensification of land use in the high potential, densely populated areas, through the application of efficient technology;

- periodic consolidation of holdings and re-organisation of rural settlements as a method of controlling sub-economic parcelation of rural land; and

- the application of cost effective irrigation methods in areas of low agricultural potential.

C: Urban land uses

a) Diagnosis

Uganda is rapidly urbanizing. Many people who move into urban centers 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.

b) Policy Principles

Since urbanization is an inevitable process, there is need for planned growth on a long term basis. Planning for the urbanization process will need to take account of the following principles: -

- the need to create an enabling environment for urban development through the establishment of transparent, accountable and participatory governance structures and decision making processes;

- the integration of urban development master plans into long range national development plans so as to ensure synergy between the urban centers and the rural areas;

- the development of secondary towns as a means of stimulating agro-industrial development, thus easing pressure on demand for urban services;

- the need for a moratorium on the extension of urban boundaries and the re-planning of peri-urban areas as agricultural or pastoral communities;

- the control of spatial growth in order to generate an economic and social environment for urban development;

- the reconceptionalisation of zoning and sub-division control, not as exclusionary mechanisms within and across residential areas, but as tools for the creation of integrated viable urban communities sharing common services;

- the upgrading or gentrification of existing slums, and the discouragement of further slum development; and

- the reservation of green and recreational areas within urban centers beyond the pale of speculative land grabbing.

D: Sustainable management of land use

a) Diagnosis

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 identified in this section are to be resolved.

This may take several forms. The first is the conservation and protection of sensitive ecosystems in the manner indicated above. The second is land use planning in the form of framework or detailed implementation plans. The third is land auditing measures that are directed at ensuring that land use practices are continuously monitored and evaluated. And the fourth is public education through the school system or the provision of extension services.

Authority to monitor and evaluate land uses through the application of many of these mechanisms already exists inter alia, in the Environmental Statute. What is not evident is the extent to which their use has been successful in Uganda.

b) Policy principles

There is need to revisit that issue in terms of the following principles: -

- because comprehensive land use planning is essential for sustainable land use, there must be a law enabling planning authorities to, develop and every effort must be made to periodically update, a national land use plan, regional plans and local and area specific plans. The current Town and Country Planning Act is inadequate for this purpose;

- the planning process should:

    - facilitate orderly management of both urban and rural land;
    - empower land users and occupiers to make better and more productive use of their land;
    - promote efficient and environmentally sound land use practices;
    - promote participatory involvement by all stakeholders in land use planning;
    - ensure security and equity in access to land resources;
    - facilitate overall micro-level planning while taking into account regional and sectoral considerations;
    - provide for intersectoral coordination at all levels of land use development; and
    - make use of political and administrative resources available at national, regional, district and other local levels.

- planning authorities and administrators must ensure that the physical planning process works and that the integrity of the plan is respected;

- because comprehensive land use planning will require a land information system, this must be developed and operationalised;

- an innovative framework for land auditing in rural and urban areas will need to be designed;

- the management of rural urban migration will require an integrated settlement policy for those land use sectors; and

- clear environmental standards will be necessary so as to guide agricultural, livestock, urban and tourist development.

E: Support services and Infrastructure

a) Diagnosis

In addition to measures expressing the police power of the State designed to facilitate sustainable land use, it is desirable that adequate support services and infrastructure be available for all land use sectors. These should include financial resources, extension advice, utilities and physical infrastructure. A novel approach to the provision of such services is the establishment of a Land Fund by the Land Act 1998. Although the scope

and utility of the Fund may appear limited, it is expected that these will grow with time. This is an institution which needs expansion and strengthening.

b) <u>Policy principles</u>

The following principles may be useful in that regard:

- the Uganda Land Commission must move rapidly to build capacity for an effective administration of a decentralized land financing system throughout Uganda;

- the Land Fund should, over time, be converted into a Land Bank with capacity to finance not only capital investments but also land development especially by rural land users;

- rules governing the operation of the Fund should be prescribed, published and operationalised; and

- services complimentary to land development financing including extension advice should be extended to rural Uganda.

3.3.5 <u>Principles regarding land administration:</u>

A: <u>The overall framework</u>

a) <u>Diagnosis</u>

Land administration is an activity which 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 Land Act 1998 has set up a decentralised system of land administration which is expected to operate from the district right down to the parish levels. 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. 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, therefore, to re-examine that structure.

b) <u>Policy principles</u>

The following principles may be appropriate in this regard: -

- although the Land Act has tried to separate land administration from public or political administration, it will be necessary to develop a professional cadre of staff that can manage land as property and not as political services;

- immediate measures should be taken to consolidate and rationalize the new structures and offices created by the Land Act in terms of cost, simplicity, efficiency, accessibility and affordability.

- there may be merit in allowing communities, especially those governed by customary law, to design and operate their own land and resource administration systems;

- the impact of the new structures on land market operations require careful monitoring; and

- there is need for the establishment of a professionally operated legal cadastre for efficient land administration.

B: Land delivery systems

a) Diagnosis

Land delivery consists of procedures and modalities for receipt and processing of receivable land rights under the tenure 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 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 land delivery also requires a systematic up-to-date, cost-effective and accessible land registry or record lisping systems. This is hardly the case in Uganda as everywhere land registry processes are slow and haphazard, and transaction costs in respect thereof prohibitive. Indeed land registry records, especially in Buganda, are archaic, and inaccurate, hence unreliable for ordinary land market purposes.

b) Policy principles

The land delivery system needs revamping as a matter of urgency. This should take account of the following principles: -

- the need to mordernise the land registry system so as to facilitate constant updating of land information data;

- the need to simplify land registration practice by moving away from the use of "lawyers' law" to simple do-it-yourself procedures which the land rights seeking public themselves can operate;

- the necessity of ensuring that the decentralization of land registration points down to the parish levels, is achieved;

- careful thought in the design and operation of customary tenure registries required under the Land Act;

- the need to design an efficient tracking system for transmissions, sub-divisions, mutations and boundary changes;
- the need to ensure that the land delivery system is accessible, broadly participatory and accountable to the land rights seeking public; and
- the desirability of allowing communities, especially those governed by customary law, to design and operate their own land delivery systems.

C: Land demarcation, survey and boundary-making

a) Diagnosis

Land demarcation, survey or simple boundary-making are processes that are integral to an efficient land delivery system under any tenure. It is the demarcation officers who determine the boundaries of parcels, hence ultimately the size of land to be allocated or registered. Where the land delivery system accepts general boundaries, demarcation, rather that survey, is all that is required. This is also the case under customary law where the demarcation of boundaries by the use of land marks, rivers, trees and other natural features, is an important phenomenon. Survey, however, will become necessary for purposes, inter alia, of the preparation of deed plans, the conversion of customary rights to statutory forms, and for development approval in urban areas which require accurate boundary determination.

Shortage of qualified personnel for demarcation or survey, however, has tended to hamper land delivery processes especially in urban areas. Besides, private surveyors are not only in short supply but are expensive, hence beyond the reach of ordinary proprietors. This is particularly the case in peri-urban areas where large tracts of land are still held under customary law. This partly explains the chaotic nature of development in these areas.

b) Policy principles

Land demarcation, survey and boundary-making, therefore, require rationalization and strengthening. Consideration should be given to the following principles: -

- the need to train more personnel for land demarcation and survey since this is a function that is integral to any efficient land delivery system;
- the need to enact legislation setting our procedures for customary tenure conversion; and
- the desirability of strengthening customary demarcation procedures in the process of reorganization of customary land law.

D: Regulation of land market operations

a) Diagnosis

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.

In practice, land markets operate in the context of different levels of regulation, both direct or indirect. A powerful, but indirect mechanism of land market regulation, is the land use plan. Because the plan has a bearing on the present and future value of property rights, it is not merely a facilitative guide; it is part and parcel of the constitution of property. Land taxes are also important as indirect means of market regulation. More direct mechanisms forming part of the police power of the State are also applied. Uganda does not have specific legislation regulating land market operations. Except as indicated below, this situation should be maintained.

b) Policy principles

The efficiency of a free market system requires fidelity, inter alia, to the following principles: -

- that all property registered be updated; an exercise which, in the case of Buganda, requires a programme of title, as opposed to land, adjudication;
- that an accessible and efficient land information system be installed and decentralized to the parish levels; and
- that in areas still governed by customary land tenure, an attempt be made to design a functional system of land rights recordation to facilitate the operation of customary land markets.

3.3.7 Principles regarding the resolution of land disputes:

A: The general nature of land disputes

a) Diagnosis

A robust property system will always generate its measure of disputes. In the context of customary land tenure, disputes are often part and parcel of the continuous process of the constitution and reconstitution of social and cultural relations in a given territorial

system. In statutory systems, disputes are often seen as instruments for the clarification and vindication of land rights between individuals and other potential claimants. Either way, disputes can be short or protracted depending on their history, subject matter or political or economic ramifications. Where disputes are protracted, however, a lot of time, money and production opportunity are often lost in an attempt to resolve them. Sometimes disputes can go on for generations, a matter which is clearly detrimental to social and economic relations.

The Land Act 1998, approaches this question by establishing a system of decentralized land tribunals with jurisdiction over a wide range of issues in both rural and urban Uganda. No choice of law rules are however, specified in the Act. The Act also provides for the appointment of ad hoc mediators in appropriate circumstances to assist the tribunals in resolving disputes. In the exercise of their functions under the Act, the mediators are to be guided by the principles of natural justice, general principles of mediation and the desirability of assisting the parties to reconcile their differences to understand each other's point of view and be prepared to compromise to reach an agreement.

Contemporary research indicates that land disputes require special judicial or quasi-judicial mechanisms for their resolution. The provisions of the Land Act are, therefore, progressive. There is need, therefore, to ensure that the tribunals are efficient, cost effective and socially reconstructive.

b) Policy principles

The following principles may be useful in that regard: -

- land dispute mechanisms should be devoid of complex jurisdictional and litigation procedures normally associated with ordinary courts of law;
- the choice of law rules for such mechanisms should allow for the simultaneous application of customary and received law, depending on the circumstances and facts before them;
- all mechanisms should have the power to mediate between parties irrespective of the tenure system governing the land in dispute; and
- all mechanisms must ensure authoritativeness and finality of the outcomes of disputes processed through them.

B: The resolution of customary land disputes

a) Diagnosis

Customary land disputes often arise in one of several contexts. The first is over claims founded on colonial or recent expropriations. Such claims have been laid in Buganda in

respect of the so-called “lost countries”. The second are disputes founded on inheritance or similar intra-family feuds. These are the most numerous. Such disputes will arise whether or not the estate against which claims are made is the subject of a will, and despite powers of disposal having been vested in registered proprietors by relevant legislation. The main reason is that succession is generally governed by customary law irrespective of the registration status of the land.

The third is over boundaries, especially because these are not, as a general rule, accurately marked or triangulated. Boundary disputes are a phenomenon which occurs both at individual, family and ethnic levels. When it occurs at the last of these levels it can easily degenerate into conflict on a grand scale.

The point to stress about customary land disputes is that normal judicial mechanisms and procedures have not been successful in resolving them. In some parts of the country these disputes are simply settled violently at home.

c) Policy principles

There is need, therefore, to revisit the jurisdiction of tribunals with a view to incorporating the following principles: -

- customary land disputes should always be determined, in the first instance by institutions which have authority over the community in accordance with custom and tradition;

- because inheritance disputes are socially the most fractious, consideration should be given to the possibility of enacting a set of uniform rules for the inheritance of land throughout the country; and

- in order to discourage the progression of certain customary land dispute from generation to generation, a record of the final determination of any dispute should be maintained by relevant community organs.

C: The resolution of registered land disputes

a) Diagnosis

Most disputes over registered land are transactional. More often than not they are generated by the failure of land delivery systems to clearly record, or effectively transmit property rights in contractual situations. They may also arise as a result of imperfect land market conditions. Because many of these involve corporate entities and well-connected elites and their agents, litigation often occurs in fora which are well understood and accepted by the protagonists. The resolution of this category of disputes has, in general, worked well. What is required is to improve the efficiency of those fora.

b) Policy principles

Attention should, therefore, be paid to the following principles: -

- the level of complexity procedures, and of dispute resolution of expenses associated with litigation over registered land should be reduced;
- where disputes over registered land entail the determination of deeply rooted social and cultural rights, these should first be resolved in an appropriate forum, before the technical issues based on the relevant legislation are determined;
- land registry records should be periodically updated so as to ensure that the boundaries of registered property rights are always clear; and
- there is need to create a special division in the High Court to handle land cases as a means, inter alia, of developing a consistent and rational jurisprudence on Uganda's property law.

4.0 LAND POLICY IMPLEMENTATION:

4.1 Identifying gaps

The above principles suggest that although the Constitution of Uganda and the Land Act both provide fairly comprehensive provisions for the regulation of land rights in Uganda, a number of gaps remain. These must be identified and resolved. Legislative and institutional responses will, therefore, be necessary not only for the overall implementation of the Act, but also for ensuring that those gaps are properly sealed.

4.2 Reviewing the status quo

4.2.1 Legislative measures

The legislative measures that will be required include: -

- re-examination of the constitutional provisions regarding land in Uganda.
- comprehensive review of the Land Act 1998 once a land policy is settled;
- review of legislations complimentary to the Land Act, for example, those regarding forests, wild life, water, planning, and the environment; and
- the, immediate design of a new and innovative regime for the development of customary land tenure in Uganda either as part of or independently of the Land Act.

4.2.2 **Institutional responses**:

Institutional responses necessary for the implementation of any policy along the lines indicated above will require: -

- a re-alignment of the land administration system and especially the Land Boards in such a way as to create a linkage with the Uganda Land Commission.
- a simplification of the procedures and processes of land boards and land tribunals to ensure that these are accessible to the land rights seeking public; and
- the possibility of creating informal community mechanism below the sub-county land boards and land tribunals to ensure that landowners and land users are fully involved in the management of land at all levels.

4.3 **The way ahead**

The Government of Uganda will need to develop clear strategies for the development of a comprehensive land policy along the lines mentioned above. The Land Sector Strategic Plan is an important starting point in this direction. The operationalisation of that plan, however, will require mobilization of resources, both human and financial, and their accessibility to all levels of land administration, and to the land use public in general. A firm plan of action is therefore essential.