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LAND REFORM: THE UGANDAN EXPERIENCE

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INTRODUCTION

Land reform has in the last decades taken centre stage in the agenda of East, Central and South African Countries. The reasons behind this are basically social, economic and political and include among others:

- the need to right historical wrongs as the case with Zimbabwe, Uganda, Eritrea and South Africa
- the need to rationalise distortions in land relations particularly as regards tenure and distribution as the case with Kenya, Uganda , Malawi and Mozambique
- the need to resolve internal conflicts arising from inefficiencies within the existing tenure relations-Tanzania, Swaziland, Lesotho and Uganda
- the desire to "modernise" indigenous tenure as a means of stimulating agrarian development such as Swaziland, Kenya and South Africa.

The process of land reform across the regions had been carried out either by use of bureaucratic mechanisms through drafts, discussions and publication of sessional or white papers followed by drafted legislations or by the use of more radical procedures involving comprehensive inquiry and public discussion at all stages of reform process. The outcomes of either processes However, tend to be broadly similar even through the level of concreteness sometimes do vary, this often involves:

- formulation of statements of national policy
- Translation of national policy statements into legislative programmes
- actual enactment of the basis land legislations which may be accompanied by complementary series of instruments

Land reform often involves changing the law relating to how individuals interact with respect to land. Sometimes, people may change the way they interact on the land and the law is simply put in place to recognise and legitimise the reality of what is happening on the ground. The main reason for land reform in many African countries is to increase agricultural productivity on which many Africa Countries still depend to sustain their economies. Many African countries also undertake land reform in order to make land laws that protect the most vulnerable members of the society like women, children and people with disabilities from loss of access to land for their subsistence production.

There is often a conflict created in trying to make sure that the two interests are catered for i.e. increase of agricultural production and protection of vulnerable groups. However, in general, some of the most successful land reform policies in Africa have been those:

- which have recognised and protected access to and use of land by the masses
- recognises how traditional land tenure has evolved over time
- attempted to guide the tenure evolution by encouraging those changes that are beneficial and preventing those changes, which are harmful.

HISTORICAL PERSPECTIVE TO LAND REFORM IN UGANDA

1. Pre-Colonial era

It is not possible to identify a single land tenure system for the whole of Uganda in the pre-colonial era. This is because of the varying practices of customary tenure that differed from one ethnic group to another. In Buganda for example there were at least four categories of rights of control over land:

- Rights of clans over land which was comprised of ancestral grounds and was not alienable to strangers
- Rights of *Kabaka*[1] who held paramount title to all land in Buganda and who could grant Land to his chiefs
- Individual hereditary rights stemming from long undisputed occupation and/or original grant from the *Kabaka*
- Peasants rights of occupation which entailed the peasants in Buganda choosing a chief under whom to live

In the rest of the country, customary practice varied from place to place. However, scholarly researches have indicated that whatever the differences, none of the communities in Uganda recognised individual ownership of land. There was however, recognition of various individual rights to posses and use land subject to sanction by his family, clan, or community.

The individual had the right to utilise his land as he thought best, to rent out his piece of land, pledge crops on the land but not the land itself, sell land subject to the approval of the family, dispose of the land according to the customary laws of inheritance, dispose of trees growing on his land, prohibit grazing near his homestead and fence his homestead. The clan or family had the power and right to settle land disputes, exercise the right or option to buy any land offered by its members, prohibit the sale of clan land to an undesirable person and declare void any land transaction which had not received its approval. The general community had the right to graze communally but damage to crops had to be made good. The community also had access to salt licks, watering of cattle and access to water from springs and other common rights. It can therefore be note that customary tenure in pre-colonial Uganda recognised both individual and communal holding of land.

2. Colonial and Post-Colonial Uganda

When the British colonised Uganda, they introduced indirect rule as opposed to direct rule since Uganda was a Protectorate. Although this would presuppose that the British did not introduce any new changes but maintained the existing African Institutions, practices and norms, this was not the case. Some of the fundamental changes introduced were to do with land holding system that totally altered the way land was held in Uganda. For the first time in Uganda they introduced three types of land tenure which were previously unknown: (a) Mailo land, (b) Freehold, (c) Leasehold.

(a) Mailo land

This form of tenure resulted from allotments made out of the 1900 Buganda Agreement commonly known as the Uganda Agreement. By article 15 of this agreement, the total land area of Buganda was assumed to be 19,600 sq. miles and was divided between the *Kabaka* and other notables in the protectorate. The royal family of the Buganda

kingdom and high-ranking officials received 958 sq. miles as private mailo or official estate 1000 chiefs and private notables each received 8 sq. miles which totalled up to 8000 sq. miles, 92 miles went to existing governments. The 1500 sq. miles of forests, uncultivated land and what was termed wasteland were vested in the queen of England as Crown Land. The local peasants or cultivators previously settled on land were not recognised. They were only later recognised after they rioted in 1927 by the *Busuulu and Envujju Lawn*[2], which specified the rights of the Mailo owners and the peasants who had now become tenants.

(b) Freehold Tenure
This tenure was peculiar to the then Kingdoms of Toro and Ankole in Western Uganda and was set up by agreement between the Kingdoms and the British as native freehold. By these agreements the Kingdoms committed themselves to British protection and became part of the Uganda Protectorate. The terms of the tenancy between the tenants on this land and the titleholders were not negotiable and were fixed by law in 1937. Under the Crown Ordinance of 1803, the British also issued adjudicated freehold to a small number of people and churches or religious institutions.

(c) Leasehold
Leasehold is an interest in land as a result of an agreement between a lessor and lessee that the lessee will enjoy exclusive possession of the land of the lessor for a specific and certain duration in consideration of a payment it can be either private or statutory. The British introduced the system in Uganda.

3. The 1975 Land Reform Decree
The Land Reform Decree enacted the most radical position on land tenure in post-independent Uganda. It decreed that all land in Uganda be vested in the state in trust for the people to facilitate its use for economic and social development. It declared all land in Uganda Public Land to be administered by the Uganda land Commission, it abolished Freehold interests in land except those were this interest was vested in the State through the Uganda Land Commission. All mailo ownership, which existed immediately before the enactment of the decree, was converted into leasehold for a period of 199 years for public bodies and 999 years for individuals

The Decree altered the fundamental legal status of tenants by abolishing *the Busuulu and Envujju Law* of 1927, the Ankole Land lord and Tenant Law and the Toro landlord and Tenant law of 1937. It all tenants under these three laws Customary tenants on public land turning them into tenants at sufferance. These tenants did not have any transferable interest in land, only developments on land could be transferred after giving notice of 3 three months to the controlling Authority. Under section 5 of this decree, no person was to occupy public land by customary tenure except with written permission of the prescribed authority. This was the situation in Uganda, until the 1995 Constitution that abolished the alluvial or radical title to land in Uganda. The major land reforms are enshrined in the Uganda Constitution that resulted in the enactment of the actual basis legislation, the Land Act 1998.

LAND REFORM IN THE 1995 CONSITUTION AND THE LAND ACT 1998

♦ Background

Uganda recently enacted a new land law whose primary objective is to operationalise the land reforms in the 1995 Constitution. It should be noted that the new Constitution brought about fundamental reforms in ownership, tenure management and control of land in Uganda. The country has now embarked on the gigantic exercise of implementing this new land law. The exercise is both extra-ordinarily ambitious and challenging. It is ambitious as it comes at a time when government is already overwhelmed by other nation-wide programmes which are being implemented such as Universal Primary Education (UPE), the Decentralisation Programme, the Poverty Eradication Plan, the Plan for Modernisation of Agriculture and Food Security. The new land law has many contentious issues and it should be observed that the Land Act was from day one received with suspicion, apathy, fear and outright rejection from some quarters, the wounds may not have healed.

In Uganda, the Land reform process leading to the enactment of the Land Act 1998 was based on three 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.*
- *A good land tenure system should be uniform throughout the country*

In the absence of a Land Policy in Uganda, it was envisaged that those three principles would guide Uganda in its land reform process.

♦ Objectives of the Land Act 1998

The main objectives of the Land Act can be summarised as follows:

- To provide security of tenure to all land users (the case of the Uganda they are mainly customary land holders- referred to as customary tenants on public land) and the lawful or bonafide occupants on registered land.
- To resolve the land use impasse between the registered owners (mailo, freehold and leasehold) and the lawful and bonafide occupants of this land. Prior to the passing of the new land law, substantial areas of potentially productive rural land have remained idle or under-utilised due to lack of incentives to invest on the part of either registered owners or tenants. Registered owners have had difficulty in evicting tenants in order to develop the land although the old law it permitted under certain conditions while the tenants have lacked sufficient security. This has also inhibited land markets in urban areas where purchasers experience difficulties in purchasing secure property holdings.
- To recognise customary tenure as legal tenure equal to other tenures
- To provide an institutional framework for the control and management of land under a decentralised system. This is for the purposes of effecting the

devolution of authority over land management/ administration as provided for in the 1995 Constitution

- To ensure proper planning and well-co-ordinated development of urban areas
- To ensure sustainable land use and development throughout the country to conserve the environment
- To redress historical imbalances and injustices in the ownership and control of land
- To provide for government and local government to acquire land compulsorily in the public interest and public use, public safety, public order, public morality or public health.

SALIENT FEATURES OF THE CONSTITUTION AND LAND ACT 1998

♦ Security of Tenure

1. Land Ownership

Article 237 of the constitution provides that land in Uganda shall belong to the citizens of Uganda and shall vest in them in accordance with four tenure systems: Customary, Freehold, Mailo and Leasehold. This provision is re-enacted in section 3 of the Land Act. This clause totally reverses the old system where land was vested in the public land. Now, individuals' rights to land have been secured by virtue of occupation. The state no longer controls ownership of land in Uganda.

2. Customary Ownership

Article 237 (4) (a) of the constitution recognises customary tenure as one of the forms of holding land in Uganda. The majority of Ugandans hold land under customary tenure; this provision therefore guarantees them security of land ownership. These tenants on customary land can now acquire a certificate of customary ownership on the land they occupy and they can convert this certificate to a freehold title. This certificate of customary ownership has been accorded value under the Land Act enabling it to be transferred, mortgaged, or otherwise pledged. This will enable holders of a certificate of customary ownership to have access to credit.

3. Tenants on Registered Land

The constitution guarantees security of tenure to tenants on registered land commonly referred to as lawful or *bonafide* occupants. These tenants can acquire a certificate of occupancy on the land they occupy and if they so wish, they can negotiate with the registered owner to be able to acquire a freehold title. These tenants on registered land are to pay the registered owner of land a ground rent of not more than 1,000/=. Failure to do this for two (2) consecutive years may lead the tenant to lose his security if he/she does not have sufficient reason for not paying. The registered owner cannot ask the tenants for anything else (including things in kind) except that 1,000/= provided for the certificate of occupancy can also be mortgaged, pledged or transferred. The tenant by occupancy also has the right to pass on his tenancy in a will.

4. Communal land Ownership

The Land Act recognises the right of people to hold communal land. The people may if they so wish form themselves into a communal land association and this association

may be incorporated. The communal land Association may also form a common land management scheme by which the members agree to manage the communal land and to set out their rights and duties.

♦ **Women and other Vulnerable groups**

The Land Act in S.40 requires that before any transaction can be carried out on land on which a family resides or from which it derives a sustenance, the spouse, dependent children of majority age and the Land Committee in case of children under the age of majority should be consulted. The Land Act also provides in accordance with constitutional provisions, that any customary provisions, that any customary practices which deny women, children or use of any land shall be null and void. The Land Committees have the duty of ensuring that the rights of vulnerable groups are protected.

♦ **Land Management Institutions**

The Land Act in pursuance of the overall government policy of decentralisation has decentralised land management and dispute settlement mechanism. The legislation requires the creation of a very large number of new institutions for land management/administration and land dispute resolution. These have been designed to shift the focus of land management to the local level, and provide for effective community involvement in land management decisions.

The Land Management hierarchy starts with the Uganda Land Commission, which shall be responsible for any government land and related issues. The District land boards independent from the Uganda Land Commission and from any other government organ or person are in charge of all land in the district. The land committees set up in each parish gazetted urban area or a division in the case of Kampala as advisory role to the District Land Board. At one of the planning workshops, a simple rough count was taken and the following figures reflect the number of officers and the amount of manpower needed to make the Act operational:

Institution	No. of Offices	Officials	Total
District Land Boards	45	5	225
Land Committees	7000	4	28000
Recorders	917	1	917
District Land Offices	45	5	225
District Land Tribunals	45	3	135
Sub-county Land Tribunals	917	3	2751

♦ **Dispute Settlement Institutions**

The Land Act provides that effective July 2nd when the Land Act was passed as law, all LC courts and magistrate courts stop handling new land matters and only complete old cases within the next two years. There shall be a land tribunal for each district, sub-county and for each gazetted urban area and in the case of a city, a tribunal for each division. The chief justice will appoint the Judicial Service Commission will appoint the District Land Tribunals and the sub-county and urban land tribunals. The Land Act

provides for several issues in other sections but the above represent the salient issues in brief.

CHALLENGES AND CONSTRAINTS TO IMPLEMENTING THE LAND ACT 1998 AND LAND REFORM IN UGANDA

1. Institutional capacity and administration

In implementing the Land Act, the Ministry of Water, Lands and Environment (MWLE) which is the line ministry, has adopted a participatory and consultative approach to the planning as well as the actual execution of the implementation by involving all key stakeholder. The country has adopted a participatory and consultative implementation strategy. The main thrust of this strategy is a creative "bottom up" approach to the implementation by involving a range of stakeholders from the outset, and by building capacity at the centre, in local institutions, and at the grass-roots.

This is not going to be easy given Uganda's tradition of top-down administration. However, Uganda has already made several strides in its decentralisation programme. The main challenge is to balance the need for strong co-ordination at the centre with effective mobilisation of district based institutions to use the powers devolved to them by the Land Act. There is a danger that the centre will attempt to take on too much, or that local governments and other local institutions will not be empowered enough to fulfil their roles effectively. The latter danger is already a real threat.

2. Public Awareness on the Land Act

The urgent provision of information for the public, as to the content of the Act and its implications have not been widely publicised, and there is a clear demand for information, as reported by district administrations and NGO's. The provision and maintenance of grassroots support for land tenure reform is a critical element in the success of implementation. Government has therefore to give high priority to sensitisation i.e. letting each and every citizen know what the new land law says, what it does not say, what roles it plays in land reform, what is going to change and how, what kind of time frame may the stake holders expect, and what the law means for the different stakeholders.

To this end, a Sensitisation Focus Group has been established composed of government, non-government and private media persons to oversee the production and dissemination of information messages to the grassroots. In the mean time only the Uganda Land Alliance has made efforts to reach people at the grassroots levels on a small scale (10 districts out of the 45) and the response has been overwhelming.

3. Institutional Framework

The establishment of District Land Boards by 2nd January 1999 and the Land Fund by 2nd July 1999, are requirements under the Act. By 18th January 1999 only 18 District Land Boards out of a total or 45 had been appointed. The laid down procedure is complex as these boards are appointed with the approval of the Minister.

Under the Land Act, with effect from 2nd July, 1998 jurisdiction over land disputes passed from Local Council and Magistrate's Courts to a system of Land Tribunals to be established. Until these tribunals are appointed and rendered operational there is a serious vacuum in land dispute settlement. No concrete efforts have taken place in this area as yet

The biggest challenge to implementation is the putting in place of the many new institutions, which are created by the Act and operationalising the institutions. The biggest question is whether the existing institutions and agencies have adequate capacity to undertake implementation activities and to produce the expected results. Equally challenging is how to co-ordinate the very large number of institutions, which are involved in land matters. MWLE is responsible for the creation of procedural frameworks, guidance and methodologies, and for capacity building and inspection functions. Local governments are themselves directly mandated to establish and support the local level management structures.

The Directorate of Land and Environment has the overall responsibility to oversee the implementation of the Land Act. The Ministry has a number of experienced, well-trained professional staff but its overall capacity to handle the demands of the new land law is low. Under the current civil service recruitment freeze, there is very little chance of increasing staffing levels. Overall there are major capacity constraints, both in terms of the resources and expertise at the disposal of existing institutions, and the ability to resource and fund the new institutions.

4. Absence of a comprehensive national land policy

Uganda lacks a comprehensive national land policy, which is so vital in guiding implementation of the land law. What exists are scattered part of the policy which can only be pieced together from the 1995 Constitution, presidential public pronouncements and government statements. The need for a clear and comprehensive national land policy to guide the provisions in the land law, streamline the objectives and guard against contradictions and inconsistencies cannot be under estimated. A national land policy is also necessary to guide institutional implementers on how to exercise the discretionary powers, which the new law bestows on them. The policy would also guide in the prioritisation of objectives as well as the implementation activities

5. Legitimacy/Acceptance of the new law

From day one, the Land Bill was received with suspicion, apathy, fear and outright rejection in some quarters. The Report of the Parliamentary Sessional Committee on the Land Bill has this to say:

> *"From our own experiences during the public consultations we held, it was apparent that people's indignation with the Bill was because of their ignorance of its contents and what it aims to achieve... it is therefore important that the government should, before introducing any law, make widespread consultations with the people and get their trust. As one eminent lawyer said, if you don't trust the messenger why should you trust the message."*

Many sections feel that the Land Bill was not given adequate time to be considered, scrutinised and debated as because it was published very late on 2nd March, 1998 while targeting it to make it law by 1st July, 1998. The majority of mailo owners especially in Buganda are also not happy about the new status given to the bonafide occupants by the law. It is likely that some groups of primary stakeholders whose interests are threatened by the legislation may try to overturn the legislation or parts of it, by tabling amendments in parliament, recourse to the Constitutional Court, or by causing civil disturbances.

The women are not happy because the clause on co-ownership of land by spouses for which NGO's especially the Uganda Land Alliance, FIDA and UWONET lobbied so much for was accepted in principle by Parliament, but was missing from the Act. Arrangements are underway by the government to ensure that it returns to parliament, it draft is already out

6. Political Pressure, Economic Policies and absence of strategic plan

Partly as a counterweight to the vocal opposition in the country, and as a response to popular expectations, there is currently a lot of political pressure to be seen to be implementing the Land Act, this could undermine the implementation process if government takes to hasty and ill-advised actions. There have be demands from political quarters that the law is implemented immediately.

Over reliance on market-assisted approaches and demand-driven solutions, throughout the Land Act market-assisted approaches and demand-driven strategies underpin the reform programme. The biggest question to ask is whether these approaches will deliver on the objectives of the Land Act.

One of the serious weaknesses in the reform programme is that there was no strategic plan at the inception of the Land Bill to work out the required resources, the financial implications, and the availability of human and financial resources. Several implementation studies have been carried out under the auspices of DFID indicate that in it's present form the Land Act is not implementable and the responsible Ministry has to move the necessary amendments if it to be implemented at all.

7. Inadequate institutional co-ordination

The success of implementation will depend on the effective co-ordination and contributions of a wide range of institutional stakeholders including non-government organisations, and the commitment of a large range of key actors. There is a risk that certain key legal requirements for the establishment of institutions will be delayed by bureaucratic inefficiencies. In particular authoritative decisions will be required on points of law relating to the Land Fund and the land Tribunals before realistic plans can be made for its management and operations, and parliamentary assent will be required for the authorisation of regulations governing the operations of institutions.

The constitutional and legislative framework within which the key institutions must operate is somewhat ambiguous, especially in terms of the boundaries of their various mandates. There is already a big issue on implications of the autonomy/independence of District Land Boards. How much power do District Authorities have in determining

land policy and in regulating in its respect through promulgation of by-laws? How does Uganda make devolution real on the ground when the 1995 Constitution lists land as a national function? Section 94 of the Land Act gives power of making regulations to the Minister responsible for lands, with the approval of Parliament. Getting the balance right between helping the districts do the job well and prescribing how they do it, is one of the most important challenges facing government. It is imperative that the key statutory bodies and other stakeholders have a serious dialogue to sort out issues. In this way duplication of effort, conflicting priorities and confused information can be avoided, and the effective implementation of the legislation secured.

8. Inconsistent related laws

A number of other land-related laws are in need of review and up-dating in order to harmonise them with the provisions of the Constitution and Land Act and to meet current needs. The principal laws which are in need of revision are the Survey Act (which dates from the 1920s and provides for detailed and high standard cadastral survey which is unnecessary complicated for surveying of customary holdings), the Registration of Titles Act (which is currently based on the Torrens system of registration, setting out lengthy and difficult procedures for the acquisition of certificates of titles), the Land Acquisition Act (which is currently inconsistent with Constitutional requirements for compensation for land acquired by government and could cause difficulties in acquiring land for redistribution to tenants), the Mortgage Decree (which is at present virtually inoperable and would make the provision of loans from the Land Fund along and difficult process, and also the use of certificates of customary ownership and certificates of customary occupancy as security for credit impossible), and the Town and Country Planning Act (which needs harmonisation with the current local government arrangements)

9. Capacity in local governments

The heaviest burden of implementation lies with the local governments. These local governments have serious capacity short falls. Districts are likely to be unable to recruit qualified technical staff for District Land Offices and therefore unable to perform adequately the support services necessary for many aspects of land reform. The Land Act required each district to have 5 professional staff a Land Officer, a Surveyor, a Registrar of Titles, a Valuer, and a Physical Planner. Only 16 districts out of a total of 45 currently have Land Offices; only one of these a Physical Planner, none of them has a Valuer and only a few have District Registrars of Titles. The successful implementation requires a well-paid, motivated and transparent civil service. Currently the personnel lack tools and a living wage which factors seriously erode the capacity to deliver.

10. Poor Inter-Sectoral Planning and Consultations

Different line ministries and departments are involved with land, other natural resources and agriculture, all of which have a long tradition of independent action and rarely consult among each other when formulating policies under their line sectors. A good example is the National policy on Modernisation of Agriculture and Food Security. Throughout the formulation of this important policy, which depends a lot on land for its success, no senior officer from the land sector was involved. In the end a number of policies are not properly harmonised. For example the Poverty Eradication

Action Plan talks very little about the land sector and the policy objectives and policy instruments in the plan covering land are a bit vague. There is need to revamp and rationalise the various bureaucracies that have jurisdictions in the land sector and the agrarian sector with the aim, inter-alia, of eliminating overlaps, conflicts, contradictions and inertia.

CONCLUSION

There is opportunity for partnership in implementing the Land Act. Government can work with committed Local Non-Governmental Organisations with activities related to land, agriculture, food security and women. A number of these NGO's have already been important in lobbying on behalf of specific interest groups in relation to the land law. Many of these NGO's have also participated in the consultations and their presence is a great asset. Uganda Land Alliance is a consortium of local and international NGO's set up as pressure group with the mission of ensuring that land policies and laws are reviewed to address the land rights of the poor and to protect access to land for the vulnerable and disadvantaged groups and individuals in Uganda. Groups, Uganda Women's Network (UWONET), Uganda Women's Lawyers Association (FIDA), and Uganda National Farmers Association (UNFA). A national association of farmers with a network of field offices and the ability to deliver extension services and public information messages to a broad constituency.

At the start of the reform process, it was stated that the most appropriate goals for tenure reform in Uganda are that the land tenure law and practice should contribute to the economic and social development of agriculture, protect the land rights of farmers who have no alternative source of income and contribute to the evolution of a single uniform, efficient and equitable tenure system for the nation, as to whether the current reform will achieve these expected results still remains to be seen.

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