

2014

DRAFT FINAL REPORT OF THE IMPLEMENTATION OF THE LAND GOVERNANCE ASSESSMENT FRAMEWORK IN UGANDA

SUBMITTED BY
THE LGAF COORDINATOR

ESTHER OBAIKOL
UGANDA LAND ALLIANCE



Public Disclosure Authorized

Public Disclosure Authorized

ACRONYMS

| | |
|---------|--|
| ADR | Alternative Dispute Resolution |
| ALC | Area Land Committee |
| CAC | Command and Control measures |
| CADER | Centre for Arbitration and Dispute Resolution |
| Cap | Chapter |
| CBD | Convention on Biological Diversity |
| CIA | United States Central Intelligence Agency |
| CFR | Central Forest Reserve |
| CLA | Communal Land Association |
| CPR | Civil Procedure Rules |
| CITES | Convention on International Trade in Endangered Species of flora and fauna |
| COHRE | Centre on Housing Rights and Evictions |
| CSOs | Civil Society Organizations |
| DLB | District Land Board |
| DLM | District Land Management |
| DLO | District Land Office |
| GDP | Gross Domestic Product |
| GLTN | Global Land Tools Network |
| GPS | Global positioning Systems |
| GOU | Government of Uganda |
| FAO | Food and Agricultural Organization |
| FSSD | Forest Sector Support Department |
| FY | Financial Year |
| IFAD | International Fund for Agricultural Development |
| JLOS | Justice Law and Order Sector |
| KCC | Kampala City Council |
| LC | Local Council |
| LCC | Local Council courts |
| LEMU | Land and Equity Movement in Uganda |
| LIS | Land Information system |
| LGAF | Land Governance Assessment Framework |
| LGRA | The Local Governments (Rating) Act |
| LFR | Local Forest Reserve |
| LSSP | Land Sector Strategic Plan |
| MBI | Market-Based Instruments |
| MZO | Ministry Zonal Offices |
| MLHUD | Ministry of Lands, Housing and Urban Development |
| MWLE | Ministry of Water, Lands and Environment |
| MWHC | Ministry of Works, Housing and Communications |
| NLIC | National Land Information Centre |
| NEMA | National Environmental Management Authority |
| NLP | National Land Policy |
| NFA | National Forestry Authority |
| NSDS | National Service Delivery Survey |
| NTFPs | Non-Timber Forest Products |
| PCSP II | Private Sector Competitiveness Project II |

| | |
|-----------|--|
| PES | Payment for Ecosystem Services |
| PFE | Permanent Forest Estate |
| PPDA | Public Procurement and Disposal of Assets Act |
| REDD | Reducing Emissions from Deforestation and Forest Degradation |
| RTA | Registration of titles Act |
| RUAs | Resource Use Agreements |
| UBOS | Uganda Bureau of Statistics |
| UIA | Uganda Investment Authority |
| ULA | Uganda Land Alliance |
| ULC | Uganda Land Commission |
| UNCTAD | United Nations Conference on Trade and Investment |
| UNHABITAT | United Nations Housing and Urban Settlements Program |
| UNFCCC | United Nations Framework Convention on Climate Change |
| URN | Uganda Radio Network |
| US DOS | United States Department of State. |
| UWA | Uganda Wildlife Authority |

TABLE OF CONTENTS

| | |
|--|-----|
| CHAPTER 1: INTRODUCTION..... | 6 |
| 1.1 What is the Land Governance Assessment Framework? | 6 |
| 1.2 Why the Land Governance Assessment Framework Is Important For Uganda | 7 |
| CHAPTER 2 - METHODOLOGY | 15 |
| 2.1 The Overall approach..... | 15 |
| 2.2 LGAF Implementation Process in Uganda..... | 15 |
| CHAPTER 3 - COUNTRY CONTEXT | 21 |
| 3.1 Geographical features and Demographics | 21 |
| 3.2 Land in economy and society | 24 |
| 3.3 Land Tenure in Uganda | 32 |
| 3.3.1 Evolution of Land Tenure in Uganda | 32 |
| 3.3.2 Land Tenure Systems post 1995 | 34 |
| CHAPTER 4 - FINDINGS OF THE LGAF | 54 |
| PANEL 1- LAND RIGHTS RECOGNITION..... | 54 |
| 1 Recognition of a continuum of rights | 54 |
| 2 Respect For And Enforcement Of Rights..... | 58 |
| PANEL 2: RURAL LAND OWNERSHIP AND USE RIGHTS | 68 |
| 3 Rights To Common Lands | 68 |
| 4 Effectiveness And Equity Of Rural Land Use Regulations | 84 |
| Panel 3: Urban Land Use, Planning, And Development..... | 91 |
| 5 Restrictions On Rights: Land Rights Are Not Conditional On Adherence To Unrealistic Standards | 92 |
| 6 Changes In Land Use/Management Regulations Are Made Transparently & Provide Benefits For All..... | 95 |
| 7 Land Use Plans Are Current, Implemented, Do Not Drive People Into Informality, And Cope With Urban Growth..... | 100 |
| 8 Development Permits Are Granted Promptly And Based On Reasonable Requirements | 104 |
| 9 Tenure Regularization Schemes In Urban Areas | 106 |
| PANEL 4: PUBLIC LAND MANAGEMENT | 116 |
| 10 Identification & Mangement Of Public Land | 119 |
| 11 The State Acquires Land For Public Interest Only And This Is Done Efficiently..... | 129 |
| 12 Transparency & Fairness Of Expropriation Procedures | 132 |
| PANEL 5: TRANSFER OF LARGE TRACTS OF LAND TO INVESTORS..... | 146 |
| 13 Transfers Of Public Land To Private Use Follow Clear, Transparent, And Competitive Processes..... | 149 |

| | |
|---|-----|
| 14 Private Investment Strategy | 154 |
| 15 Policy Implementation Is Effective, Consistent And Transparent And Involves Local Stakeholders | 163 |
| 16 Contracts Involving Public Land Are Public With Agreements Monitored & Enforced | 167 |
| PANEL 6 - PUBLIC PROVISION OF LAND INFORMATION: REGISTRY AND CADASTRE | 168 |
| 17 Mechanisms For Recognition Of Rights | 168 |
| 18 Completeness Of The Land Registry..... | 170 |
| 19 Reliability: Registry Information Is Up To Dated & And Sufficient For Inference On Ownership..... | 174 |
| 20 Land Administration Services Are Provided In Cost-Effective Ways That Are Sustainable In The Long Term | 175 |
| 21 Fees Are Determined Transparently To Cover The Cost Of Service Provision..... | 175 |
| PANEL 7: LAND VALUATION AND TAXATION | 176 |
| 22 Valuations Are Based On Clear Principles, Applied Uniformly, Updated Regularly, And Publicly Accessible | 177 |
| 23 Land&Property Taxes Are Collected And The Yield From Doing So Exceeds Collection Cost..... | 180 |
| PANEL 8: DISPUTE RESOLUTION..... | 183 |
| 24 Responsibility For Conflict Resolution Is Assigned To Competent Bodies And Decisions Can Be Appealed Against..... | 184 |
| 25 The Share Of Land Affected By Pending Conflicts Is Low And Decreasing | 192 |
| PANEL 9: INSTITUTIONAL ARRANGEMENTS & POLICIES..... | 194 |
| 26 Institutional Mandates In Land Administration Are Defined, Duplication Avoided, And Information Shared As Needed | 197 |
| 27 Policies Are Formulated In A Broad Public Process, Address Equity, And Implementation Is Meaningfully Monitored | 227 |
| PANEL 10 - FORESTRY..... | 230 |
| CHAPTER 5 KEY ISSUES AND POLICY RECOMMENDATIONS..... | 242 |
| 5.1 THE POLICY MATRIX FOR UGANDA | 242 |
| PANEL 5: TRANSFER OF LARGE TRACTS OF LAND TO INVESTORS | 252 |
| 5.2 RECOMMENDATIONS FOR STATISTICAL REPORTING | 270 |
| 6.0 CONCLUSION | 271 |
| 6.2 WAY FORWARD | 273 |

CHAPTER 1: INTRODUCTION

1.1 What is the Land Governance Assessment Framework?

The Land Governance Assessment Framework (LGAF) is a diagnostic tool for the evaluation of the legal framework, policies and practices regarding land and land use. The LGAF is based on a comprehensive review of available conceptual and empirical material regarding experience in land governance (refer to *Land Governance Assessment Framework: Conceptual Approach, Formulation and Methodology*). The LGAF groups land topics into five core thematic areas:

1. Legal and Institutional Framework
2. Land Use Planning, Management and Taxation
3. Management of Public Land
4. Public Provision of Land Information
5. Dispute Resolution and Conflict Management.

These core thematic areas cover the indicators to provide a relatively exhaustive assessment of land governance issues relevant for most developing countries. They can be complemented with optional thematic modules for an in-depth assessment of issues that can be important for some countries but not for others. This Implementation Manual includes directions for the implementation of two such modules:

6. Large-Scale Acquisition of Land Rights
7. Forestry

Within each theme area or optional module, a series of indicators has been developed with specific dimensions that define areas for investigation, quantitative measurement or qualitative assessment. Through the assessment of these indicators, the LGAF highlights areas for legal, policy or procedural reform to improve governance in land administration over time and can be used as a basis for global and intra-regional comparisons.

In the Case of Uganda, the LGAF Process saw the Assessment of ten Thematic areas

Panel 1: Land rights recognition

Panel 2: Rights common lands & rural land use regulations

Panel 3: Urban land use, planning, and development

Panel 4: Public land management

Panel 5: Transfer of Large Tracts of Land to Investors

Panel 6: Public provision of land information: registry and cadastre

Panel 7: Land valuation and taxation

Panel 8: Dispute resolution

Panel 9: Review of institutional arrangements and policies

Panel 10: Forestry

1.2 Why the Land Governance Assessment Framework Is Important For Uganda

In 1995, the Uganda government embarked on land reform starting with the Constitutional provisions. Land reform was imperative because of the country's turbulent land tenure history. Since 1995, many policies and laws have been promulgated to streamline land governance. In addition, financial, human and infrastructure resources have been put in place to enhance the process. All these efforts are attributed to the recognition that secure land rights and effective land governance are key stimulants to social and economic development for Uganda. In a pluralistic society like Uganda, effective land governance is premised on the pillars of equity, proficiency and justice.

The LGAF is introduced in Uganda at a time when the major policy reform process is coming to a close and more in-depth implementation of the reforms about to commence. This is such an appropriate moment in the history of Uganda where successes in policy and legal reforms meet real implementation challenges requiring a concerted effort of all land sector actors to pull off the reforms in practice.

The objective of Land Governance Assessment Framework (LGAF) in Uganda is to (i) assess the status of land governance at country level and (ii) build consensus around priority recommendations amongst key stakeholders to improve land governance. This participatory and locally driven assessment process helps to establish a consensus on the status of land governance and identify priority actions regarding (i) gaps in existing evidence; (ii) areas for regulatory or institutional change, (iii) for piloting of new approaches and interventions to improve land governance on a broader scale (iv) opportunities for south/south learning to take advantage of experiences from other countries in dealing with land sector issues, and (v) indicators to assess the

effectiveness of these measures. LGAF thus also helps put in place a benchmark and process to systematically track progress in improving land governance over time.

Uganda concluded the development of its National Land Policy in August 2013, a process that saw the participation of the entire citizenry in its development. As Uganda looks ahead to implementation of the National Land Policy, several reforms are foreseeable especially in the legal and institutional arrangement to enable land governance take root and yield the desired results of making land work for the citizens of Uganda as a tool for poverty reduction and wealth creation. Land is no longer viewed in terms of rights recognition only, but in terms of its productive capacity and as an enabler for economic empowerment and political participation.

Uganda chose to undertake the assessment of ten themes with a total of 33 indicators and 119 sub indicators. Below is a brief description of each of the ten themes that Uganda considered.

Theme 1: Land rights recognition

This theme considered the land tenure typology in Uganda particularly drawing distinctions between registered land and documentation. Land governance is a multifaceted web of laws, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, and how competing interests in land are managed. It includes all relevant institutions from the state, civil society and private sectors – including statutory, customary and religious institutions. It also covers the legal and policy framework for land, as well as traditional practices governing land transactions, inheritance and dispute resolution (FAO 2009).

The basic concern for good land governance is two-fold; one is its embeddedness in Rights discourse generally and the second is states' political goals such as economic growth, poverty reduction, and environmental sustainability. This assessment framework intends examine the legal and policy framework for land; therefore, it is about the second concern achievement of political goals. It gives an overview of the land and institutional governance framework in Uganda over a period of 20 years. It outlines the reform policies and laws as well as other processes and activities within this period with the aim of assessing progress regarding land reform implementation and legal framework enforcement.

Theme 2: Rights common lands & rural land use regulations

The question of rural land use planning in Uganda is one that has remained unanswered for decades. This dimension enabled to unearth the significance of not only rural land use planning but the understanding of rights structures; protection and enforcement of those rights. It delves into issues of multiple layering of rights over the same piece of land, a challenge currently faced by policy and the legal framework and multiple layering of rights over the sub soil resources, an unfolding debate in Uganda given the

recent discovery of oil and gas; and mineral wealth throughout the country. The process underscores the significance of recognition. It brings to the fore front the significance of mapping and recording group rights and ascertainment of boundaries and demarcation of communal lands. This is of particularly significance to Uganda where over 80% of the land is held under customary tenure, 90% of the population lives in rural areas and less than ¼ of the land is mapped and registered of which approximately 515,000 titles have been issued altogether. The LGAF process created space and a forum for reflection on appropriate models and mechanisms for security of tenure over rural lands not only through individualized models but taking cognizance of group rights.

Theme 3: Urban land use, planning, and development

Urban Land Use and Planning in Uganda is regulated by the Physical Planning Act enacted in 2010. Urbanization is growing in Uganda at a rate of 4.5% p.a¹ and 60% of the population is slum dwellers². This means that there is a high growth of informal settlements and this creates challenges for urban planning. The growth of urbanization is resulting from a myriad of factors ranging from rural poverty, search for employment, and access to social services & opportunities, reclassification of land use and, the exploding population in the country.

Planning is key issue to urban development because it plays a significant role on what and how developments will occur, when and where they will occur. Urban planning in Uganda can be traced back to 1890s when the first European footprint can be traced through spatial and urban planning that set Kampala to be similar to a European city³. The Ideas and theories of planning emerged from the British concept of cities taking into consideration health, aesthetics and exclusive settlement areas and this was made law through the Uganda's Town and Country Planning Act of 1951. In this period, physical planning formed one of the grounds for compulsory acquisition of land and as such the area would be declared a planning Area.

In 1995, physical planning ceased to be a ground for compulsory acquisition of land. Land further was vested in the Citizens of Uganda according to four tenure systems, Leasehold, Freehold, Mailo and Customary Tenure. In effect, this did away with public land that vested in the state. It also provided that all leases out of public land were convertible to freeholds and this included statutory leases to urban authorities⁴. The Constitution in its Article 237(7) provides that Parliament make laws to enable urban authorities to enforce and implement planning and development. The implications of this provision is that regardless tenure type, an area can be declared a planning area and planning regulations and development enforceable. This however does not come without challenge especially where rights to land are fuzzy.

¹ Somik Lall, Planning for Uganda's Urbanization, Inclusive Growth Policy Note 4.

² Damaris Kathini Muinde, Assessing the Effects of Land Tenure on Urban Developments in Kampala, Master's Thesis ITC March 2013.

³ Frederick Onolo Okalebo, Division of Urban and Regional Studies KTH Royal institute of Technology, Stockholm Sweden; Journal of Planning History 2010.

⁴ Article 237 (5) and (6) of the Constitution of the Republic of Uganda 1995.

The LGAF process enabled the analysis of the key constraints and challenges to urban growth and development in Uganda, considering the relationship between informal settlements and land tenure patterns, restrictions to urban land use, the conduciveness of the legislative and institutional arrangements to support urban land use planning and development.

Theme 4: Public land management

The LGAF defines public land as land in the custodianship of the state, municipality, or local authority, as opposed to private land.

Public land in Uganda has evolved with the land question in Uganda, a process which has always been at the centre of the constitutional and legal discourse. The result is that land issues are mired in a bed of complex constitutional structures and processes, drawing legitimacy from historical as well as contemporary political exigencies. Today, the mention of Public land in Uganda is foreign.

The National Land Policy Consultative processes generated a common stand throughout Uganda with regard to the public land/ government land issue. It became apparent that over the years, the state and local governments have demonstrated systematic arbitrariness, inefficiency, and lack of transparency in the exercise of these powers, at the risk of some communities becoming landless and in continuous land conflicts with their neighbors. The state therefore became both an inefficient land manager and a predator on land which belongs to ordinary land users. In particular, the constitutional and legal framework lacked clarity on:

- implications of shifting the *radical title* to land from the *State* to the *citizens* of Uganda at large;
- proper *role of the central governments* and local governments in land use and development control (the police of the State);
- land taxation;
- scope and exercise of the power of compulsory acquisition;
- Control and management of public land and government land;
- doctrine of public trusteeship;

The LGAF process enabled the analysis of the whole spectrum of public land governance form the legal and institutional framework, its management, protection and enforcement mechanisms, to its alienation.

Theme 5: Transfer of Large Tracts of Land to Investors

The agricultural sector is the most important source of income and livelihoods for Uganda's predominantly rural population. Agriculture contributes 43% of Gross Domestic Product (GDP), 85% of export earnings, and 80% of employment (Republic of Uganda, 2000). Although food crop production dominates, only one-third of the food

crop produced is marketed. Major crops are bananas, cereals, root crops, pulses and oil seeds. Export crops, including coffee, tea, tobacco and cotton, account for only 8 percent of cultivated area. Because of the significance of agriculture to rural livelihoods, land is the most important asset for many Ugandan households. Average land holdings are estimated at 2.2 ha per household, although there are inter- and intraregional inequalities in this distribution, and evidence suggests much of this land is not cultivated (McKinnon and Reinikka, 2000).

In Uganda, the land is mainly transferred to public and private sector investors. The investors are basically Ugandan citizens that are not indigenous or Ugandan local elites who have entered into agreement with the Uganda Government and the production is mainly for export purposes. The public sector does it mainly for food security purposes while some are for energy and investment opportunity. Whereas small holder farmers utilize small pieces of land to meet their basic needs including food, shelter, health and clothing, commercial farmers utilize large acreages of land with sole aim of accumulating wealth for the individuals or corporate entities owning the investment. As a result, commercial farming initiatives always address profit maximizing opportunities irrespective of the cost to either the environment or the communities in which the initiative is implemented. However, it is argued that large scale land acquisition for agricultural purposes can be beneficial for the poor countries' economic development through job creation and food security to some extent. In this regard, International land acquisition refers to countries with insufficient land for food production look beyond their borders to find land that they can use.

The LGAF process enabled the examination of how land alienations happen in Uganda, the legal and regulatory framework governing these processes, people participation and coordination of the various departments. It brought a lot of learning on the need to streamline the processes through the regulation of the investment climate.

Theme 6: Public provision of land information: registry and cadastre

Land administration is a function, which entails the mobilization of institutional mechanisms and personnel for juridical, regulatory, fiscal and cadastral components development. Land rights administration involves the process of determining, registering and availing information about ownership, value and use of land and its associated resources.

Land Administration operates within two parallel systems comprising a) the traditional customary/informal systems governed by customs and norms of given communities and b) the centralized statutory/formal (state) system governed by written law. The two are not in harmony and often lead to confusion as the institutional arrangements are not clearly spelt out and the two systems are not at the same level of development (GOU-NLP 2013:32).

Land rights administration in Uganda has contributed to land rights insecurity as a result of lack of proper record keeping, inaccuracies in land registry process, fraud and forgeries in the land administration system.

Public provision of land information enables the building of public confidence in the delivery of land services and promotes transparency and accountability in land governance. The Ministry of Lands, Housing and Urban Development has developed the Land Information System that should function irrespective of tenure. It requires the accurate capture of land information as elaborated in the introduction and the translation of that information into digital format for storage and retrieval.

The LGAF enabled a close examination of the existing land administration system and how it is facilitating security of tenure both formal and informal. It investigates whether the registry records are linked to the national cadastre and whether maps are up to date.

It enabled to bring to bear where Uganda is in terms of provision of land information and to clearly highlight the existing challenges in managing sustained growth in land registration in Uganda.

Theme 7: Land valuation and taxation

Valuation has particularly been challenging to Uganda especially in light of large scale land acquisitions for investment and the discovery of mineral wealth. Should the conventional methods of valuation continue to apply? The LGAF process enabled a close examination of the valuation system in Uganda and enabled the understanding and consensus to be reached on the need to improve and review the valuation laws in the country. As regards taxation, an analysis of the valuation for taxation rolls were analyzed in a bid to determine how supportive they are for efficiency in taxation. The LGAF process enabled consensus building on the need to improve the taxation system in Uganda as a mechanism of increasing the funding to support of land services delivery.

Panel 8: Dispute resolution

Land related disputes are among the most prevalent types of disputes occurring with and among communities in Uganda both in the rural and urban areas. These disputes are fuelled by a number of factors, which include: population pressures, unfair land tenure regimes, changes in land laws, lack of clearly demarcated boundaries, backward and discriminatory customary laws and practices, inheritance practices, outdated statutory laws, underdeveloped land markets, lack of a modern land information system as well as inaccessibility to available land information.

Land disputes do not only stifle investment on land, they also divert scarce resources (labour, time and money) to solve them, thus impacting negatively on productivity and household income generation, resulting into heightened poverty levels. Quite often land disputes result into destruction of property and, in extreme cases, even loss of lives. Very often, the disputed land becomes a 'no-go' area and is not available for use while

the dispute lasts, which results in the withdrawal of a critical factor for wealth-generation from productivity. Thus, there is obvious need to find effective ways of resolving and/or mitigating land disputes particularly for poor households. Inadequacy and in many cases, lack of information and knowledge about land rights is a cause of fraudulent land dealings due to ignorance and at times lack of concrete information about a given land parcel and the attendant land rights, especially within communities. Lack of information about land seriously impacts on poverty levels in that communities do not have the basis on which to effectively protect their land rights and to plan for the development of their land at optimal productivity levels.

The LGAF process in Uganda enabled to bring the elements of administrative dispute resolution in the same breath with judicial dispute resolution, a process that was critical to drawing synergy between various departments of Government to resolve the land dispute management function and at the same time consider the formal and informal dispute resolution. The LGAF enabled highlight the gaps in institutional arrangement but to underscore the significance of Alternative dispute resolution models.

Panel 9: Review of institutional arrangements and policies

Uganda embraced a decentralized system of governance based on the District as a Unit under which there are lower Local Governments and Administrative Unit Councils. Elected Local Government Councils which are accountable to the people are made up of persons directly elected to represent electoral areas, persons with disabilities, the youth and women councilors forming one third of the council. The Local Government Council is the highest political authority in its area of jurisdiction. The councils are corporate bodies having both legislative and executive powers. They have powers to make local laws and enforce implementation. On the other hand Administrative Unit Councils serve as political units to advise on planning and implementation of services. They assist in the resolution of disputes, monitor the delivery of services and assist in the maintenance of law, order and security.

The LGAF process enabled the assessment of the clarity of mandates and inter-linkages that do exist within the land sector, how strong and efficient they are to ensure sustainability and effectiveness of service provision. In this regard the LGAF process enabled the analysis of existing mandates and the determination where there are possible conflicts of interest. The process enabled the identification of administrative overlaps and therefore areas of improvement.

Panel 10: Forestry

Forests provide a variety of goods and services, at the global and local levels. At the local level, in many countries, they are an important source of food, fuel and fodder and overall livelihoods for local communities. Forests provide important global public goods functions of which climate change mitigation (through carbon storage) is currently the most high profile one. Yet, forests are also one of the least well-governed resources, suffering excessive destruction and consequent (and often irreversible) loss of

contributions to timber, non-timber forest products, biodiversity and climate mitigation. This needs to be controlled and improving the quality of governance is a key challenge needing urgent redress in this context.

This module aims to assess the quality of key dimensions of forest governance and how they might be strengthened when found to be inadequate. Through a core set of questions, the module probes governance aspects such as the available incentives in a country to promote climate change mitigation, how forest management and resources address the drivers of deforestation, legal recognition of the rights of indigenous people, participation of local communities in land use plans, efforts to control illegal logging and corruption, etc. Where existing systems are judged to be inadequate, the module points the way for further verification and analysis.

CHAPTER 2 - METHODOLOGY

2.1 The Overall approach

Although the Land Governance Assessment Framework implementation manual adopted five thematic areas for the measurement of performance in the field of land governance (these five thematic areas are: Legal and Institutional Framework; Land Use Planning, Management and Taxation; Management of Public Land; Public Provision of Land Information; and Dispute Resolution and Conflict Management), Uganda assessed ten thematic areas.. Within the 10 thematic areas there are 27 “land governance indicators” (LGI) and 6 Forestry Governance Indicators (FGI). Each indicator relates to a basic principle of governance and is further broken down into a number of “dimensions. For each indicator, there are between 2 and 6 dimensions, with a total of 119 core dimensions in the LGAF. Each dimension is to be assessed by selecting an appropriate answer among a list of pre-coded statements.

The LGAF hierarchy of thematic areas, indicators and dimensions is represented in Table 1 below which lists the most satisfactory assessment for each dimension. A full detailed version of the LGAF that includes comments and all possible alternative assessments for each dimension is set out in chapter 4 of this report.

The assessment was conducted using the Land Governance Assessment Framework (LGAF) developed by the World Bank together with many multi and bilateral partners and is an instrument to bring together a wide range of stakeholders to assess the status of land governance in a participatory way that can provide a basis for a shared vision and thus a platform for change in the sector. To this end, ULA composed a multi disciplinary team of researchers and panels of experts to respond to the diversity of issues covered in the LGAF.

A score methodology was used at the expert panels to assess the ten themes of the LGAF for which rankings were assigned by expert panels based on pre-coded answers (on a scale from A to D) that drew on global experience. The panels were a consensus building exercise that ensured that all key stakeholders in the land sector participated in the assessment of the land sector performance and took ownership of the results not only to better implementation, but for comparative analyses across countries for learning.

2.2 LGAF Implementation Process in Uganda

Consideration of the LGAF indicators

The Land Governance Indicators were assessed together with the Forestry Governance indicators. For the Case of Uganda, combining forestry with rights to common land and rural land use regulation did not create an appropriate theme for assessment. It was then decided that the two themes be separated to enable more in depth analysis.

Preparation of the Inception Report

The inception report delved into the background to land governance in Uganda. It sets the context within which the LGAF is carried out in Uganda. It sought to justify the involvement of the Government in the process. The inception report analysed both the typology of land and the institutional map. It gave comprehensive background information on the legal and institutional framework governing land tenure and land rights administration in Uganda. It is on the basis of the inception report that panels 1, 4, 8 and 9 derive most of the information.

The inception report further laid down the methodology that would be applied, the likely challenges that would be faced and the likely timeframe for the execution of the task. It outlined the list of proposed panellists and the details of the expert team.

Expert Background Papers

The Expert Investigation Reports were prepared following the Terms of Reference specified in the LGAF Implementation Manual. Uganda decided to separate rural land use from Forestry and thus the ten technical background papers. The background papers sought as much as possible to link theory to practice save for where there was no documentary evidence available to substantiate the practice. Where there was no documentary evidence, the Expert professional experience was called into play to substantiate assessment of the dimension.

All indicators and dimensions were investigated although some had less information available. The dimensions below were deficient in information to enable conclusive assessments to be made. However, an attempt was made based on available information to score the dimensions and then subjected to the expert panels to support the generation of more information.

Panel 2: Rights common lands & rural land use regulations

4 Effectiveness and Equity of Rural Land Use Regulations

Dimensions

- 4.1 Restrictions regarding rural land use are justified and enforced
- 4.2 Restrictions on rural land transferability effectively serve public policy objectives
- 4.3 Rural land use plans are elaborated/ changed through clear public process & resulting burdens are shared
- 4.4 Rural lands the use of which is changed are swiftly transferred to the assigned purpose
- 4.5 Rezoning of rural land use follows a public process that safeguards existing rights

4.6 For protected rural land uses (forest, pastures, wetlands, parks) plans correspond to actual use

Panel 3: Urban land use, planning, and development

8 Development Permits Are Granted Promptly and Based On Reasonable Requirements

Dimensions

8.1 Requirements for residential building permit are appropriate, affordable & complied with

8.2 A building permit for a residential dwelling can be obtained quickly and at low cost

Panel 5: Transfer of Large Tracts of Land to Investors

16.3 Avenues to Deal with Non-Compliance Exist & Obtain Timely and Fair Decisions

Briefing Notes

Based on the draft background reports, the Country Coordinator prepared the draft Panel briefing Notes following the template provided in the LGAF Implementation Manual. As the briefing notes are prepared, these were sent to the Global LGAF Coordinator in WB Washington for review and/or comments. Revised panel notes were then circulated to the panel members to be used as basis for discussions during the Panel Workshops.

The Briefing notes are based on the ten themes and a preliminary scoring for each of the 119 dimensions was undertaken by the Expert investigators based on the information obtained and assessment of that information. Explanatory notes accompanied the scoring of each indicator. These explanatory notes seek to justify or rather give the relevant information including data sources and reliability that led the expert investigators to score as such. The briefing notes were shared with the panel of experts a week prior to the panel workshops.

Panels

A total of ten panels were conducted and the experts to the panels composed as below. Because of lack of specialization in all fields in the country, and the timing of conducting the panels (just after the festive season and in the New Year) the Expert team categorized the themes into three and experts invited repeatedly to each of these themes. There were a total of ten experts in each particular team with a combination of private sector practitioners, academia, civil society and Government. This ensured that the discussions were rich and new information generated for each of the panels.

Although it is ideal to have a gender representation on the various expert panels, Search for experts revealed that there are very few women experts in the land sector, of those who exist, the majority are in government. The approach to panel composition was to have a balanced representation of the various land sector institutions in these panels for a more balanced engagement. This has left some panels only constituted by Men. It was

the coordinators job therefore to ensure that the views and assessment was no blind to the gender dimension of land sector issues.

Procedure for holding the panels

Upon acceptance of the Panel workshop invitation, the Panel Experts were given the set of dimensions to be assessed, as well as compiled information and data by the Expert Investigators to support the dimension assessment. The Briefing notes were given to the panellists a week prior to running of the workshops to enable them read and find additional information prior to the workshop. This preparatory period was deemed important in enabling constructive engagement at the panels, and reduction in the amount of time that would be spent on clarifications. Panellists were asked to seek clarifications on dimensions prior to the panel sessions. The assessment undertaken by the experts were fine tuned with the panel members based on their knowledge and experience. The material was revised and a preliminary ranking of each dimension made by individual Panel Experts prior to the briefing session. Each individual panellist made his/her own initial assessment on a separate dimension scoring sheet.

The scoring at the panel was done through a participatory process, with each panellist stating what their score was and why. Additional information was solicited at this point. Discussions ensued of the assessment dimensions and consensus built around each dimension. This ensured that the discussions among panellists were based on substantive evidence, statistics, or relevant information supporting a diversity of points of view and expertise. Where there were strong views to the contrary by a dissenting section, the views were captured. The discussions were aided by the use of recorded to ensure that transcribing of the proceedings to reflect a true and correct record could be done.

The moderated discussions were an opportunity to discuss particular cases, potential policy interventions and reform suggestions. Panellists were encouraged to discuss policy options and implications of the dimension scenario. These need to be carefully noted and formed the policy commentary and recommendations that were drawn on each of the indicators.

Country Score Card

A synthesis of all the agreed to scoring of the 119 dimensions of the 27 Land Governance Indicators (LGIs) and 6 Forestry governance Indicators (FGIs) were tabulated into the country score card. The Country scorecard, giving a clear picture of what the country's land governance status is by indicator and dimension.

Preparation of the Final Report

Findings from the into the 119 dimensions of the 27 Land Governance Indicators (LGIs) and 6 Forestry governance Indicators (FGIs) were synthesized into a final summarizing the LGAF indicator and dimension findings and policy recommendations. The policy recommendations from the panel deliberations and other investigations were formulated into a clear policy matrix that sets out policy recommendations in a form

that can be readily communicated to policy makers and other key stakeholders. The Country Coordination is responsible for the preparation of the policy matrix and the draft report submitted to the World Bank for peer review and quality control.

Participation of Government Departments

Whereas the LGAF process is a very transparent one, it was found important to win Government buy-in from the very start. The Coordinator discussed the process with key government Departments thus availing adequate information for the preparation of the inception report and improvement of the panel briefing notes and enriching the final report. There was some high profile information that could not be captured but was taken note of. This caused changes in the panel scores but no recording was done of the sensitive statements that were derived from the panels.

Furthermore, the participation of these functionaries enhances the divulgence of information especially by other government departments and the local governments because they are sure it is for Government use. This also enabled the gaining of political support to the whole process and the sustainability of the impacts of LGAF in Uganda.

Validation

The Draft final report will be subjected to national validation for confirmation (or adjusting) of rankings and articulation of policy messages. Prioritisation will be done of which indicators or dimensions require urgent attention and it is on this basis that follow on actions will be decided.

Follow on actions

Through the LGAF process, key areas have already emerged as points of interest. Key among these are:

Theme 5 - Transfer of Large tracts of Land

Theme 7 - Valuation and Taxation

Theme 8 - Dispute Resolution

Theme 10 - Forestry

These will most likely be endorsed by the validation workshop as the v=critical areas of intervention. There are already actions proposed for each of these areas.

As part of the Legal Aid Conference in March, the issues in the Dispute resolution will be discussed. The High Court Land Division Users Committee takes up dialogues on the efficiency in delivery of justice and to deal with bottlenecks to effectiveness of the chain of justice.

A multi stakeholder working group was composed as a result of the work on panel 5 to develop strategies to respond to the challenges of transfer of land tracts of land. A national Land forum will be composed in April to discuss these matters and raw a clear way forward for engagement and making land work for investment.

A World Bank project will be commencing in Uganda to support REDD+ in Uganda. The issues discussed in panel 10 and panel 4 will be delved into further to give support to the project.

Policy dialogues will be organized for each of the themes once a month in a bid to disseminate the findings and popularise the LGAF in Uganda. This will attract a wide range of actors from different sectors to participate. The Policy dialogues will attract between 70 - 100 participants, mainly comprised of the academia, private sector, government, civil society, farmer groups and consumer groups in Uganda. The aim of these policy dialogues is further to have the identified specific policy actions identified during the validation and LGAF-associated indicators are adopted by the Government and included in the relevant agencies routine reporting to monitor progress.

CHAPTER 3 - COUNTRY CONTEXT

3.1 Geographical features and Demographics

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° south and longitudes 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 south-western highlands.

Table 1: National Background information from the World Development Indicators

| Uganda: Basic Facts | Year data was generated | Statistics |
|---|-------------------------|----------------|
| Population, total (Millions) | 2012 | 36345860 |
| Population growth (Annual) | 2012 | 3.351076628 |
| Surface Area (Sq. Km) (Thousands) | | 241,039 sq. km |
| Life expectancy at birth, total (Years) | 2011 | 54 |
| Literacy rate, youth female (% of female ages 15 -24) | 2010 | 85.47146399 |
| Prevalence of HIV, total (%population ages 15 -49) | 2011 | 7.2 |
| GDP (Current US\$) (Billions) | 2012 | 19881412441 |
| GNI (Current US\$) (Billions) | 2012 | 16759687810 |
| GNI per capita, Atlas Method (Current US\$) | 2012 | 440 |
| Foreign Direct Investment, net inflows (% of GDP) | 2012 | 8.65717715 |

| | | |
|--|------|----|
| Time required to Start a business (days) | 2012 | 33 |
|--|------|----|

Population and human settlements:

The population of Uganda is approximately 36.3 million people growing at the rate of 3.3% 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.

Table 2: National Population Data

| East | | West | | North | | Central | |
|-----------------------------|---------|----------------------------|---------|--------------------------|---------|------------------------------|-----------|
| Amuria | 180,022 | Buhweju | 82,881 | Abim | 51,903 | Buikwe | 329,858 |
| Budaka | 136,489 | Buliisa | 63,363 | Adjumani | 202,290 | Bukomansimbi | 139,556 |
| Bududa | 123,103 | Bundibugyo | 158,909 | Agago | 184,018 | Butambala | 86,755 |
| Bugiri | 266,944 | Bushenyi | 205,671 | Alebtong | 163,047 | Buvuma | 42,483 |
| Bukedea | 122,433 | Hoima | 343,618 | Amolatar | 96,189 | Gomba | 133,264 |
| Bukwa | 48,952 | Ibanda | 198,635 | Amudat | 63,572 | Kalangala | 34,766 |
| Bulambuli | 97,273 | Isingiro | 316,025 | Amuru | 135,723 | Kalungu | 160,684 |
| Busia | 225,008 | Kabale | 458,318 | Apac | 249,656 | Kampala | 1,189,142 |
| Butaleja | 157,489 | Kabarole | 356,914 | Arua | 559,075 | Kayunga | 294,613 |
| Buyende | 191,266 | Kamwenge | 263,730 | Dokolo | 129,385 | Kiboga | 108,897 |
| Iganga | 355,473 | Kanungu | 204,732 | Gulu | 298,527 | Kyankwanzi | 120,575 |
| Jinja | 387,573 | Kasese | 523,033 | Kaabong | 202,757 | Luweero | 341,317 |
| Kaberamaido | 131,650 | Kibaale | 405,882 | Kitgum | 167,030 | Lwengo | 242,252 |
| Kaliro | 154,667 | Kiruhura | 212,219 | Koboko | 129,148 | Lyantonde | 66,039 |

| East | | West | | North | | Central | |
|---------------------------|------------------|-----------------------------|------------------|------------------------------------|------------------|-----------------------------|------------------|
| Kamuli | 361,399 | Kiryandongo | 187,707 | Kole | 165,922 | Masaka | 228,170 |
| Kapchorwa | 74,268 | Kisoro | 220,312 | Kotido | 122,442 | Mityana | 266,108 |
| Katakwi | 118,928 | Kyegegwa | 110,925 | Lamwo | 115,345 | Mpigi | 187,771 |
| Kibuku | 128,219 | Kyenjojo | 266,246 | Lira | 290,601 | Mubende | 423,422 |
| Kumi | 165,365 | Masindi | 208,420 | Maracha | 145,705 | Mukono | 423,052 |
| Kween | 67,171 | Mbarara | 361,477 | Moroto | 77,243 | Nakaseke | 137,278 |
| Luuka | 185,526 | Mitooma | 160,802 | Moyo | 194,778 | Nakasongola | 127,064 |
| Manafwa | 262,566 | Ntoroko | 51,069 | Nakapirip irit | 90,922 | Rakai | 404,326 |
| Mayuge | 324,674 | Ntungamo | 379,987 | Napak | 112,697 | Sembabule | 180,045 |
| Mbale | 332,571 | Rubirizi | 101,804 | Nebbi | 266,312 | Wakiso | 907,988 |
| Namayingo | 145,451 | Rukungiri | 275,162 | Nwoya | 41,010 | | |
| Namutumba | 167,691 | Sheema | 180,234 | Otuke | 62,018 | | |
| Ngora | 101,867 | | | Oyam | 268,415 | | |
| Pallisa | 255,870 | | | Pader | 142,320 | | |
| Serere | 176,479 | | | Yumbe | 251,784 | | |
| Sironko | 97,273 | | | Zombo | 169,048 | | |
| Soroti | 193,310 | | | | | | |
| Tororo | 379,399 | | | | | | |
| Total | 6,116,369 | | 6,298,075 | | 5,148,882 | | 6,575,425 |

The national population statistics per region Uganda Bureau of Statistics 2002 National Census.

Table 3: Demographics by the Uganda Bureau of Statistics

| Population Characteristics | Year of generation | data Quantity |
|--|--------------------|---------------|
| Total Population | 2011 mid year | 32.9 million |
| Female Population | 2011 | 16.8 million |
| Male Population | 2011 | 16.1 million |
| Percentage constituting Urban population | 2012 | 14.7 % |
| Percentage constituting rural population | 2012 | 85.3% |
| Population of Kampala City | 2012 | 1.72 million |

| | | |
|--------------------------------|---------------|-----------------------------|
| Population/Aged under 18 Years | 2008 mid year | 56% |
| Population/Aged 65+ | 2007 mid year | 4.6% |
| Population Density | 2002 | 123 persons/km ² |

Table 4: Percentage population by ethnicity

| Population | Percentage |
|------------------|---------------|
| Baganda | 16.9%, |
| Banyakole | 9.5% |
| Basoga | 8.4% |
| Bakiga | 6.9% |
| Iteso | 6.4% |
| Langi | 6.1% |
| Acholi | 4.7% |
| Bagisu | 4.6% |
| Lugbara | 4.2% |
| Bunyoro | 2.7% |
| Other | 29.6% |

Data Source UBOS 2002 National census data

Table 5: Percentage population by religion

| Religion | Percentage |
|-----------------------|------------|
| Roman Catholic | 41.9 |
| Anglican | 35.9 |
| Muslim | 12.1 |
| Pentecostal | 4.6 |
| Seventh Day Adventist | 1.5 |
| other | 3.1 |
| none | 0.9 |

Data Source UBOS 2002 National Census Data

3.2 Land in economy and society

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.

Table 6: General Land use data for Uganda

| Land Use | Year data was generated | Area applied to land use type | Unit of Measurement |
|--|-------------------------|-------------------------------|---|
| Total area | 2012 | 241 040 | <i>km²</i> |
| Density of population | 2011 | 143.6 | <i>persons per km²</i> |
| Total area per 1000 population | 2011 | 7.0 | <i>km² per 1000 population</i> |
| Land area | 2012 | 197 100 | <i>km²</i> |
| Land area per 1000 population | 2011 | 5.7 | <i>km² per 1000 population</i> |
| Land area (percentage of total area) | 2011 | 81.8 | <i>% of total area</i> |
| Water surface | 2012 | 43 940 | <i>km²</i> |
| Water surface per 1000 population | 2011 | 1.3 | <i>km² per 1000 population</i> |
| Water surface (percentage of total area) | 2011 | 18.2 | <i>% of total area</i> |
| Agricultural land | 2007 | 128 120 | <i>km²</i> |
| Agricultural land per 1000 population | 2007 | 3.7 | <i>km² per 1000 population</i> |
| Agricultural land (percentage of total area) | 2007 | 53.2 | <i>% of total area</i> |
| Agricultural land (percentage of land area) | 2007 | 65.0 | <i>% of land area</i> |
| Arable land | 2007 | 55 000 | <i>km²</i> |
| Arable land per 1000 population | 2007 | 1.6 | <i>km² per 1000 population</i> |
| Arable land (percentage of total area) | 2007 | 22.8 | <i>% of total area</i> |
| Arable land (percentage of land area) | 2007 | 27.9 | <i>% of land area</i> |
| Arable land (percentage of agricultural land) | 2007 | 42.9 | <i>% of agricultural area</i> |
| Permanent crops | 2007 | 22 000 | <i>km²</i> |

| Land Use | Year data was generated | Area applied to land use type | Unit of Measurement |
|--|-------------------------|-------------------------------|-------------------------------------|
| Permanent crops per 1000 population | 2007 | 0.6 | km ² per 1000 population |
| Permanent crops (percentage of total area) | 2007 | 9.1 | % of total area |
| Permanent crops (percentage of land area) | 2007 | 11.2 | % of land area |
| Permanent crops (percentage of agricultural land) | 2007 | 17.2 | % of agricultural area |
| Permanent meadows and pastures | 2007 | 51 120 | km ² |
| Permanent meadows and pastures per 1000 population | 2007 | 1.5 | km ² per 1000 population |
| Permanent meadows and pastures (percentage of total area) | 2007 | 21.2 | % of total area |
| Permanent meadows and pastures (percentage of land area) | 2007 | 25.9 | % of land area |
| Permanent meadows and pastures (percentage of agricultural land) | 2007 | 39.9 | % of agricultural area |
| Forest area | 2007 | 34 542 | km ² |
| Forest area per 1000 population | 2007 | 1.0 | km ² per 1000 population |
| Forest area (percentage of total area) | 2007 | 14.3 | % of total area |
| Forest area (percentage of land area) | 2007 | 17.5 | % of land area |
| Other land | 2007 | 34 438 | km ² |
| Other land per 1000 population | 2007 | 1.0 | km ² per 1000 population |
| Other land (percentage of total area) | 2007 | 14.3 | % of total area |
| Other land (percentage of land area) | 2007 | 17.5 | % of land area |

Source: <http://en.worldstat.info/Africa/Uganda/>

The Agricultural zones of Uganda are clearly defined in the map and elaborated in the table below.

Map 1. Showing the Agricultural zones

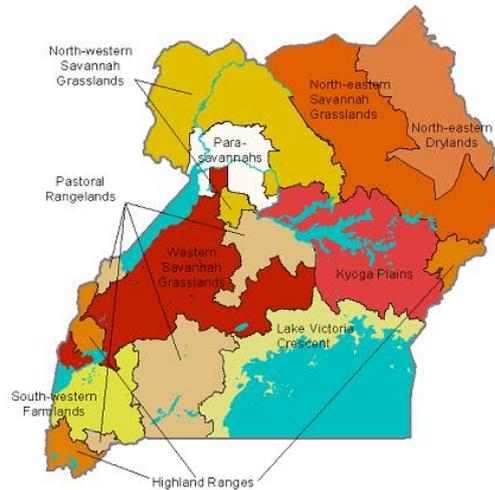


Table 7 Showing Agricultural zones by regions and districts

| Zone | Name of Zone | Districts | Characteristics of the zone | Enterprises |
|------|-----------------------------------|--|--|--|
| 1 | North-eastern Drylands | Moroto northern Kotido eastern Kitgum | <ul style="list-style-type: none"> • Average rainfall - 745 mm • One rainy season: April –September • Soils are moderate to poor • Largely subsistence farming and pastoral activities | <ul style="list-style-type: none"> • Gum Arabica • Simsim • Beekeeping • Goats/skin • Beef cattle/hides • Ostriches • Sunflower |
| 2 | North-eastern Savannah Grasslands | Pader Kitgum eastern Lira Katakwi northern Sironko northern Kapchorwa Nakapiripirit southern Kotido | <ul style="list-style-type: none"> • Average rainfall - 1,197 mm • One rainy season: April-October • Soils are moderate to poor • Predominantly subsistence with a few emerging commercial farms | <ul style="list-style-type: none"> • Beekeeping • Beef cattle/hides • Goats/skins • Simsim • Cassava • Pulses • Sunflower |

| | | | | |
|---|-----------------------------------|--|---|---|
| 3 | North-western Savannah Grasslands | Adjumani western Nebbi Arua Moyo Yumbe northern Gulu northern Apac western Lira | <ul style="list-style-type: none"> • Average rainfall - 1,340 mm • One rainy season: April -November • Soils are good to moderate • Out growers schemes exists • Possibility of block farming • Cross-border trade advantage | <ul style="list-style-type: none"> • Spices • Tobacco • Beekeeping • Cotton • Pulses • Simsim • Robusta coffee |
| 4 | Para-savannahs | eastern Nebbi southwestern Gulu western Masindi | <ul style="list-style-type: none"> • Average rainfall - 1,259 mm • One rainy season: March -November • Soils are good to moderate • Largely park land with potential for livestock farming • Possibility of block farming • Cross-border trade advantage | <ul style="list-style-type: none"> • Spices • Fisheries • Cassava • Beekeeping • Beef/hides • Goats/skins • Cotton |
| 5 | Kyoga Plains | Kayunga Kamuli Iganga northern Bugiri Tororo northern Busia southern Mbale Pallisa Kumi Soroti Kaberamaido southern Lira southern Apac | <ul style="list-style-type: none"> • Rainfall - 1,215 mm • Two rainy seasons • Main season: March –May • Secondary season: August –November • Soils are poor to moderate • Small-scale subsistence with some pastoralism • Possibility of commercial farming | <ul style="list-style-type: none"> • Fisheries • Beekeeping • Maize • Pulses • Beef cattle • Cassava • Goats |

| | | | | |
|----|-----------------------------|--|---|---|
| 6l | Lake Victoria Crescent | Kampala Mukono Wakiso eastern Mpigi eastern Masaka eastern Rakai Kalangala Jinja Mayuge southern Bugiri southern Busia | <ul style="list-style-type: none"> • Rainfall - 1,200 to 1,450 mm • Two rainy season • Main season: March-May • Secondary season: October -December • Soils are good to moderate • Small medium and large-scale intensive farming • Availability of skilled labour • Good infrastructure • Numerous resources • High availability of immigrant labour | <ul style="list-style-type: none"> • Robusta coffee • Fisheries • Spices • Floriculture • Horticulture • Vanilla • Cocoa • Dairy cattle |
| 7l | Western Savannah Grasslands | Holma Kiboga southern Luwero Mubende Kibaale Kyenjojo Kabarole Kamwenge southern Kasese | <ul style="list-style-type: none"> • Rainfall - 1,270 mm • Two rainy seasons • Main season: August-November • Secondary season: March-May • Soils are moderate to good • Out-grower system exists • Moderately developed infrastructure | <ul style="list-style-type: none"> • Robusta coffee • Tea • Beekeeping • Maize • Banana (brewing) • Bean • Beef cattle/hides |
| 8 | Pastoral Rangeland | eastern Masindi Nakasongola northern Luwero central Kiboga southern Mubende western Mpigi western Masaka western Rakai Ssembabule eastern Mbarara southern Ntungamo northern Bundibugyo | <ul style="list-style-type: none"> • Rainfall – 915 to 1,021 mm • Two rainy seasons • Main season: March-May • Secondary season: January- February • Soils are moderate to poor • Communal grazing • Absentee landlords • Moderate to poorly developed infrastructure • Agro-pastoral practices | <ul style="list-style-type: none"> • Beef cattle • Dairy cattle • Goats • Spices • Beekeeping • Citrus • Pineapple |
| 9 | South-western Farmlands | western Mbarara Bushenyi northern Ntungamo Rukungiri northern Kanungu | <ul style="list-style-type: none"> • Rainfall- 1,120 to 1,223 mm • Two rainy seasons • Main season: August –November • Secondary: March-May • Land shortage • Relatively well endowed and organized • Fairly well developed infrastructure | <ul style="list-style-type: none"> • Robusta coffee • Tea • Dairy/hides • Banana (dessert) • Vanilla • Tobacco |

| | | | | |
|----|-----------------|--|--|--|
| 10 | Highland Ranges | northern Mbale southern Sironko southern Kapchorwa southern Kanungu Kabale Kisoro northern Kasese southern Bundibugyo | <ul style="list-style-type: none"> • Rainfall - 1,400 mm • Two Rainy seasons • Main season: September -December (for Kabale, Kisoro and Kasese region) • One long rainy seasons from March to October (first peak in April and second peak in August) for northern Mbale, Sironko, Southern Kapchorwa • Soils are mostly young volcanic soils that are rich in nutrients • Mountainous • Land shortage • Fairly developed entrepreneurial skills | <ul style="list-style-type: none"> • Arabica coffee • Passion fruit • Vanilla • Dairy/hides • Spices • Maize • Irish potato |
|----|-----------------|--|--|--|

Data source: IFPRI: Uganda Support Strategy Paper No 4 2009

Description of the Political system

Uganda is a presidential republic, in which the President of Uganda is both head of state and head of government; there is a multi-party system. Executive power is exercised by the government. Legislative power is vested in both the government and the National Assembly. The system is based on a democratic parliamentary system with universal suffrage for all citizens over 18 of years age. In a measure ostensibly designed to reduce sectarian violence, political parties were restricted in their activities from 1986. In the non-party "Movement" system instituted by the current president Yoweri Museveni, political parties continued to exist but could not campaign in elections or field candidates directly (although electoral candidates could belong to political parties). A constitutional referendum cancelled this 19-year ban on multi-party politics in July 2005.

The Ugandan constitution was adopted on October 8, 1995 by the interim, 284-member Constituent Assembly, charged with debating the draft constitution that had been proposed in May 1993. Uganda's legal system since 1995 has been based on English common law and African customary law (customary law is in effect only when it does not conflict with statutory law). It is in this constitution that land tenure and land rights are enshrined. The Ugandan judiciary operates as an independent branch of government and consists of magistrate's courts, high courts, courts of appeal, and the Supreme Court. Judges for the High Court are appointed by the president; Judges for the Court of Appeal are appointed by the president and approved by the legislature. The decisions of the courts form the body of law in Uganda by setting precedents.

The system of Local Government in Uganda is based on the District as a Unit under which there are lower Local Governments and Administrative Unit Councils. Elected Local Government Councils which are accountable to the people are made up of persons directly elected to represent electoral areas, persons with disabilities, the youth and women councilors forming one third of the council. The Local Government Council is the highest political authority in its area of jurisdiction. The councils are corporate bodies having both legislative and executive powers. They have powers to make local laws and enforce implementation. On the other hand Administrative Unit Councils serve as political units to advise on planning and implementation of services. They assist in the

resolution of disputes, monitor the delivery of services and assist in the maintenance of law, order and security.

The Local Governments in a District rural area are:

- The District
- The Sub-county

The Local Governments in a city are:

- The City Council
- The City Division Council

The Local Governments in a Municipality are:

- The Municipal Council
 - The Municipal Division Council
- The Town Council is also Local Government

The Administrative Units in the rural areas are:

- County
- Parish
- Village

The Administrative Units in the urban areas are:

- Parish or Ward
- Village

The Local Government Act, 1997 gives effect to the devolution of functions, powers, and services to all levels of Local Government to enhance good governance and democratic participation in and control of decision-making by the people. The law also provides revenue, political and administrative set up of Local Governments as well as election of Local Councils.

The powers which are assigned to the Local Governments include powers of making local policy and regulating the delivery of services; formulation of development plans based on locally determined priorities; receive, raise, manage and allocate revenue through approval and execution of own budgets; alter or create new boundaries; appoint statutory commissions, boards and committees for personnel, land, procurement and accountability; as well as establish or abolish offices in Public Service of a District or Urban Council.

The central Government is responsible for national affairs and services; formulation of national policies and national standards and monitoring the implementation of national policies and services to ensure compliance with standards and regulations. Line

ministries carry out technical supervision, technical advice, mentoring of Local Governments and liaison with international agencies.

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 Karimonjong. 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.

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.

List of Key Legal and Policy documents related to land

- The Constitution of the Republic of Uganda 1995 and the 2005 amendment.
- The Land Use Policy
- The National Land Policy
- Land Act Capp 227.
- Land (Amendment) Act 2010.
- Land Amendment Act 2004.
- Land (Amendment) Act 2001.

- Land Acquisition Act.
- Registration of Titles Act.
- Survey Act.
- Surveyors Registration Act.
- Architects Registration Act.
- Town and Country Planning Act.
- Traditional Rulers (Restitution of Assets and Properties) Act.
- Land in Buganda Provisional Certificate Act.
- Auctioneers Act.
- Access to Roads Act.
- Arbitration and conciliation Act.
- Physical Planning Act.
- Building Society Act.
- Bankruptcy Act.
- Chattels Transfer Act.
- Mortgage Act.
- The Succession Act.

Laws and policies still under formulation

- The Marriage and Divorce Bill.
- The Uganda Rangelands Development & Management Policy.

3.3 Land Tenure in Uganda

3.3.1 Evolution of Land Tenure in Uganda

Historical Background to the Land Tenure Systems in Uganda

In common with other African countries, colonization 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 also to firmly confer upon feudal overlords' absolute control of land, which they never had under customary law. For the rest of Uganda, all land was expressly declared to be crown land meaning that the British authorities now held radical title to such land and all land users became, at the stroke of the pen, tenants of the British crown. Thus being holder of radical title, the colonial government proceeded to grant a limited number of freehold estates to selected individuals and corporations. In the second instance by virtue of political sovereignty, the British authorities now asserted the right to control the management and use of land, a power that was previously vested either in communities

or in the political functionaries of such communities. These changes were accompanied by an elaborate system of land administration, which included, in the case of Buganda, a system of land registration purporting to confer indivisible title to the Buganda King, his Princes and other landlords.

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. 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 individuals held these.

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.

The land question in contemporary Uganda

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; but it was because no clear policy principles existed to inform legislators in the enactment of that law.

3.3.2 Land Tenure Systems post 1995

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.

Three principles guided the formulation of the 1998 Land Act:

- A good land tenure system should support agricultural development through the function of land market that 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. The 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.

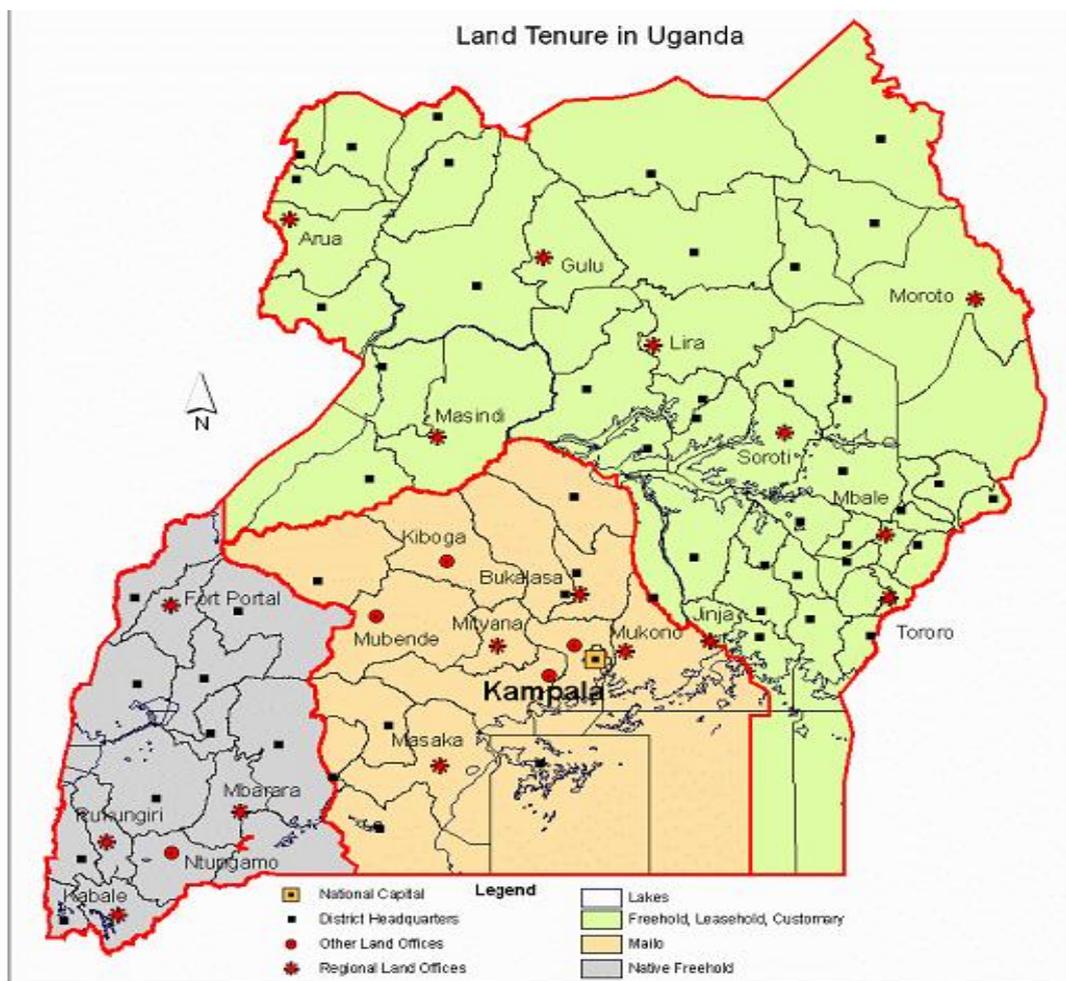
Based on the categorization of rights, land tenure is commonly translated into four major regimes: communal ownership, common property, State/public ownership, and individual or private ownership (Bruce 1998). Theoretically, it is relatively easy and feasible to distinguish between these four tenure regimes where very well defined property boundaries based on *de jure* rights exist. In practice, however, it is often difficult to identify the boundaries of each property regime, in part because formal and informal (customary) tenure systems often differ and exist in parallel, and in part because such customary or formal rights may differ from *de facto* access. *De facto* access may exist *with or without* a corresponding set of norms that in fact recognize or permit such access. Resource users may lack *de jure* rights but may have *de facto* rights that are based upon a number of 'moral' concepts about what is appropriate or just behaviour. *De facto* rights are created through various social-political relations that in practice are not necessarily based upon the legal or formal boundaries but instead result in the emergence of informal, layered, nested and overlapping access regimes. Furthermore, land access may not automatically translate into exclusive *de jure* or *de facto* access to resources on the land, although land access rights may certainly act to strongly condition access to these resources.

Most land in Uganda is currently held under unregistered 'customary tenure'. This means that it is privately owned, either by individuals, families or by clans. (Most farming land is owned by households or families, while clans usually own grazing and hunting land.). People's rights to this land are recognized by law, although they have no documents to prove ownership, and there is no register where their land ownership is recorded. Their land has never been formally surveyed: boundaries are locally

established, usually by trees or other natural markers. Local land judges or clan elders know who owns which land and they will arbitrate in cases of dispute. The ‘traditional’ rules of the people relating to land have legal force – this would include matters concerning the rights of the elderly or children, rights of passage through land, rules about borrowing and lending land, and about selling land. (However, local rules are not allowed to discriminate against women or the disabled). However, these authorities have no power to enforce their decisions except through social pressure (LEMU 2009).

The map below shows the land tenure systems and their geographical coverage in Uganda. Although up to date reliable figures of extent of the area and populations on each tenure type are not readily available, this map gives estimate coverage of the various tenure systems.

Map 2: Land Tenure in Uganda.



Data source: Ministry of Lands, Water and Environment: PSCPII Baseline Evaluation Report 2007

The map shows the central and parts of mid western Uganda holding Mailo tenure system. South Western Uganda has the Native Freehold. Leaseholds are scattered

around the entire country and mostly in Urban areas. Customary tenure is evidently more common in Northern, North Eastern and West Nile Regions of Uganda.

To ensure effective land administration in a decentralized democracy such as Uganda, the country has been divided into land administration zones with a regional zonal office providing this function. The map below clearly shows these zonal offices as spread out across the country.

Map 3: Zonal offices for land administration in Uganda



Data source: Ministry of Lands Housing and Urban Development PSCPII Baseline Evaluation Report 2007

Customary tenure

The first tenure category specified under the Constitution and the Act is customary land tenure. 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. Customary tenure Uganda has persisted for a long time despite its neglect by the legal regime.

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.

Under the communal land system, primarily found in northern Uganda, the household is the primary owner of the land and may include extended members of the family. Communal land in Uganda includes gardens and pastures, grazing areas, burial grounds and hunting areas commonly known as common property regimes. The common property regime is especially utilized by the pastoralist communities in northern Uganda and parts of the cattle corridor in the West. User rights are guaranteed for farming and seasonal grazing, access to water, pasture, burial grounds, firewood gathering, and other community activities. No specific ownership rights of control are conferred on users. Control and ownership are through the family, clan, or community.

Under individual/family or clan customary tenure, emphasis is also placed on use rather than on ownership. Male elders are the custodians of customary land in most communities and determine distribution of the land. However the family rather than the community has more control in the land utilization, and individuals in the family are allocated land. Allocations are only made to male members of the household with very few exceptions. In many places in Uganda customary land has tended to become more individualized and though not initially acceptable, incidents of sale are very high. In many ethnic groups, before a sale is made clan members and family have to be consulted. However the institution of customary land is weakening in many places, people are poorer, and sales, mostly distress sales, have increased.

Existing Gaps/Issues Identified

1. Customary tenure is dynamic and its legal status must not be limited to land registration, but must be left to evolve over time taking into account the rules, and processes relating to inheritance, third party rights and dispute adjudication.
2. Defining incidents of customary tenure in terms of generalities as the Land Act does may not be useful.
3. Providing that customary land rights may be registered and certificates of ownership issued and subsequent conversion to freehold fails to appreciate the complexities of the system.
4. There is obvious contempt of customary tenure regime in legislation as an impediment to agrarian development.
5. There are apparent conflicts in customary tenure that cannot be resolved through customs and norms.
6. There is preferred privatization of land ownership for agricultural development rather than public control of land use.
7. Any reform of customary tenure must take account of social, cultural, and economic realities of Uganda.

Freehold

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 re-grant 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.

Although the most sustainable tenure, its application in contemporary Uganda has been very limited with titles being issued to mainly large scale plantations and religious bodies. 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.

Existing Gaps/Issues Identified

1. Freehold tenure has not made extraordinary contributions to land sector Development in Uganda, thus the need therefore, to review its place in Uganda's property system.
2. Freehold tenure needs to be adapted to the Ugandan Context to encourage the registration of rural land in absolute ownership and creating flexibility in its administration and management to respond to the needs of the rights seeking public.

Mailo

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 Buganda 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 Buganda 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.

The recognition and formalization in the Constitution of overlapping rights on a single land plot, especially on Mailo land is a critical issue requiring redress. On one hand, the Land Act following the Constitution clearly grants registered land owners the right to exercise all of the powers of ownership, including the right to take and use all the produce from the land, the right to engage in any transaction with the land, and the right to bequeath the land. On the other hand, the same Act, also recognizes the rights of tenants in occupancy (lawful occupants as well as *bonafide* occupants) to occupy that land in perpetuity for as long as they continue to pay the annual ground rent of one thousand shillings to the registered owner.

Tenants by occupancy have the right to transact on the land in the same way as the registered owner. A tenant has the right to assign, sublet, pledge, sub-divide, bequeath, or create third party rights in the land. The existence of various consent requirements and rights of first refusal are an attempt to reconcile the conflicting rights.

The Existing Gaps/ Issues

1. The continuation of Mailo as a distinct feudal system is anachronistic. There have been massive evictions of tenants on Mailo primarily due to its failure to offer de facto protection to tenants, making it a non-sustainable land tenure regime.

2. Under Mailo, land is held, governed, and transmitted by Buganda law and custom to exclusively male heirs.
3. Under this under there is argument that even the tenants are assured of security of tenure as long as they pay their dues, it is very popular in Buganda.
4. The issue of absentee landlords especially in the lost counties (Kibaale cannot be overlooked in any tenure policy.
5. The owner of Mailo tenure is not compelled to put land to the best economic use.

Leasehold

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 recognizes leaseholds, even though the conditions of obtaining such a lease may be different from what they would be under freehold or Mailo tenure.

Existing Gaps/issues identified

1. Planning in urban areas has greatly been impeded by the multiplicity of tenure systems and the potential of leasehold tenure not explored as a solution to this problem.
2. The access to land through leasehold or analogous arrangements needs to be promoted especially in urban areas and areas of high land demand.

The Central region has the greatest percentage of registered land comprising 98.04% of all the registered land in Uganda. 50% of this land is under the Mailo Tenure system. Only 0.01% of the land in Northern Uganda is registered.

Table 8: Number of Land titles issued by region

| Region | Mailo/freehold | | Leasehold | |
|---------------|----------------|------------|---------------|------------|
| | Number | % | Number | % |
| Central | 45,470 | 98.04 | 23,624 | 50 |
| Western | 816 | 1.75 | 10,888 | 23 |
| Eastern | 87 | 0.19 | 8,338 | 18 |
| Northern | 5 | 0.01 | 3,897 | 8 |
| Totals | 46,378 | 100 | 46,747 | 100 |

Source: Ministry of Lands, Housing and Urban Development Facts and figures 2010.

Despite this, customary tenure remains predominant in Uganda. The 2002 Census report revealed that 68.8% of households occupied customary tenure, 18.6% Freeholds, 9.2% Mailo and only 3.6% occupied leaseholds. Of that, the largest population on customary land is the rural population. However in the central region, only 2.6% of the population is on customary land. The percentage distribution by tenure and region is shown herein below.

Table 9: The percentage Urban Rural Land Ownership distribution by Region

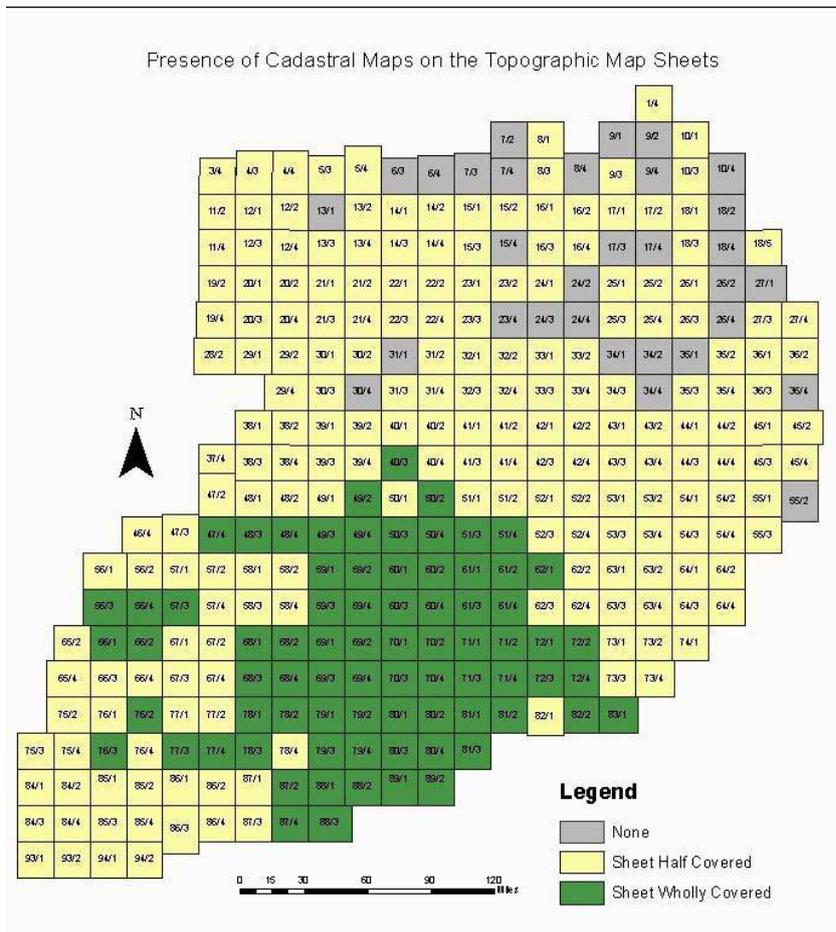
| Land Tenure | Residence | | Region | | | | | |
|--------------|-----------|-------|--------------------|---------|------|-------|------|------------|
| | Urban | Rural | Central Excl. K'la | Central | East | North | West | Total |
| Customary | 37.3 | 70.2 | 2.6 | 2.5 | 8.0 | 92.0 | 4.0 | 68.6 |
| Freehold | 0.7 | 0.3 | 2.0 | 0.0 | 8.6 | 5.5 | 6.5 | 18.6 |
| Mailo | 8.4 | 8.8 | 5.8 | 5.8 | 0.6 | 0.4 | 4.0 | 9.2 |
| Leasehold | 9.6 | 0.7 | 0.1 | 7.0 | 2.0 | 2.1 | 3.1 | 3.6 |
| Total | | | | | | | | 100 |

Data Source: Uganda Bureau of Statistics Population Census 2002

Despite the above data, there is a challenge with verifying the accuracy of the statistics above and there is no complete record of data in the land offices both at the central government and Local Government land offices.

The Cadastral map below reveals that more than three quarters of the country has either no cadastral information or incomplete sheets. This is exacerbated further by the fact that there is no update to these cadastral sheets. The existing data is more than 30 years old.

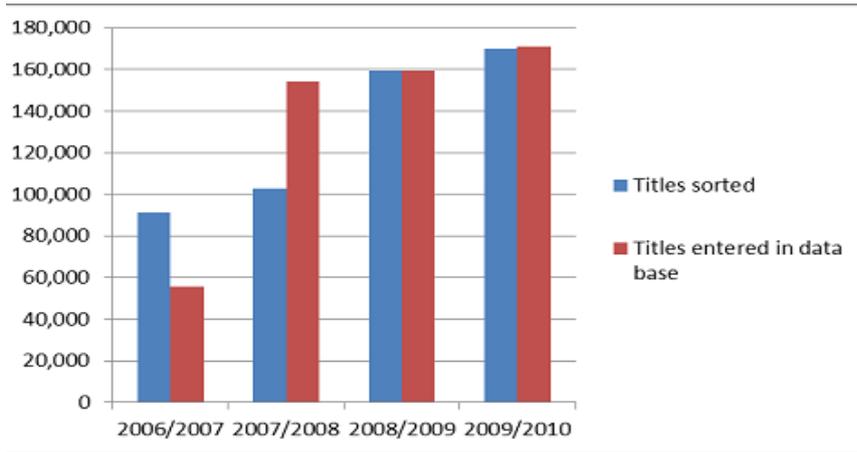
Map 4: Presence of Cadastral maps in Uganda



Data Source: Ministry of Lands, Housing and Urban Development PSCPII Baseline Evaluation Report 2007

The Computerization process whose phase one concluded in 2012 has to date captured mostly Mailo data although the verification exercise is still ongoing. The table below compares the titles entered in the data base and those sorted through the computerization exercise. By 2010, the Mailo register was largely cleaned out although the constitutionally recognized rights of tenants and spouses are still not covered, creating many gaps in the system.

Table 10: A comparative analysis of the progress in computerization



Data source: Ministry of Lands, housing and Urban Development Facts and Figures 2010

Table 7: Typology o the Land Tenure Situation in Uganda

| NO | TENURE | AREA AND POPULATION | LEGAL RECOGNITION AND CHARACTERISTICS | OVERLAPS WITH OTHER TENURE FORMS AND POTENTIAL ISSUES |
|----|-----------|--|---|---|
| 1 | FREEHOLD | No authentic disaggregated data available. | <p>Legal Recognition: Article 237(3)(b) recognizes Freehold tenure. Its incidents are elaborated in Section 3(2) of the Land Act Cap 227. Freehold enables the holder to exercise, subject to the law, full powers of ownership of land including:</p> <ul style="list-style-type: none"> • using and developing the land for any lawful purpose, • taking and using any and all produce from the land, • entering into any transaction in connection with the land, and • disposing of the land to any person by will. <p>Leaseholds granted to Ugandan Citizens created out of former public land and were existing by the coming into force of the land Act 1998 may be converted to freehold (Article 237(5) of the Constitution).</p> <p>Customary tenure may be converted to freeholds (Article 237(4)(b) of the Constitution).</p> <p>Registration/ Recording: Freehold Registry exists. Land is owned in perpetuity or for a period less than perpetuity which may be fixed by a condition (S.3(2)(a) of the Land Act). A freehold may be created subject to conditions, restrictions or limitations which may be positive or negative in their application, applicable to any of the incidents of the tenure.</p> <p>Transferability: A holder of a freehold may enter into any transaction including selling, leasing, mortgaging, pledging, subdividing creating rights and interests for other people in the land and creating trusts of the land.</p> | <p>The creation of terms and conditions on freeholds, especially the flexibility within the law to issue less than perpetuity titles makes it acquire the tenets of a lease. This therefore reduces the strength of a freehold as a tenure that guarantees rights to land in perpetuity.</p> <p>The tenets of Freehold tenure are similar to customary tenure and therefore, there is no incentive to convert customary land to freehold.</p> |
| 2 | LEASEHOLD | No authentic disaggregated data | <p>Legal Recognition: Article 237(3)(d) recognizes Leasehold as a form of tenure in Uganda. The Land Act, in its section 3(5) further elaborates that leaseholds may be created by contract or by operation of law, the terms and</p> | <p>Leaseholds can be created from all the other tenure types. It is probably viewed as the most progressive tenure in Uganda</p> |

| NO | TENURE | AREA AND POPULATION | LEGAL RECOGNITION AND CHARACTERISTICS | OVERLAPS WITH OTHER TENURE FORMS AND POTENTIAL ISSUES |
|-----|-----------------|--|---|--|
| | | available. | <p>conditions of which may be regulated by law to the exclusion of any other contractual agreement reached between the parties.</p> <p>Non-citizens can only acquire leasehold(Article 237(2)(c) of the Constitution) interests for a period not exceeding ninety-nine years (Section 40(1-5) of the Land Act)</p> <p>A citizen with Mailo or freehold tenure who loses citizenship will have his/her interest in land converted to leasehold tenure for a period on ninety-nine years (Section 40(6) of the Land Act).</p> <p>Registration/ Recording: A leasehold Registry exists. The Lessor grants the lessee exclusive possession of the land usually but not necessarily for a period defined, directly or indirectly, be reference to a specific date of commencement and a specific date of ending usually for a sum of money (rent) and/or premium; or may be in return for services or may be free for any required return.</p> <p>Transferability: A holder of a leasehold, subject to the terms and conditions agreed upon, may exercise the powers of freehold, thus, enter into any transaction including selling, leasing, mortgaging, pledging, subdividing creating rights and interests for other people in the land and creating trusts of the land.</p> <p>In case of a sub-lease, it must be less than the lease period giving time for reversion to the original owner.</p> | with the least incidences of fraud. It is accommodated by all tenure because of its flexibility and non-permanency in rights alienation. It is the only tenure that can be created out of customary land and applied according to the customs and norms of a particular group. |
| 2.1 | LAWFUL OCCUPANT | No authentic disaggregated data available. | Legal Recognition: A lawful Occupant (Article 237(8) of the Constitution) for purposes of leaseholds is a person who occupied land as customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold title (Section 29(1)(c) of the Land Act. | |

| NO | TENURE | AREA AND POPULATION | LEGAL RECOGNITION AND CHARACTERISTICS | OVERLAPS WITH OTHER TENURE FORMS AND POTENTIAL ISSUES |
|----|--------|---------------------|--|---|
| | | | <p>A lawful occupant enjoys security of tenure on the registered land (Section 31(1) of the Land Act) and this security of tenure shall not be prejudiced by reason of the fact that he or she does not possess a certificate of occupancy (Section 31(9) of the Land Act).</p> <p>Registration/ Recording: Currently, no register has yet been established to capture these rights. However, the law provides that a lawful Occupant may apply to the registered owner of leasehold for and to be issued with a certificate of occupancy in respect of the land he/she occupies (Section 33(1) of the Land Act). The Certificate of Occupancy can only be issued if ground rent is paid.</p> <p>A tenant by Occupancy may acquire a registerable interest in leasehold, sublease or freehold (if the subsisting lease was acquired out of former public land) through purchase of his interest from the leaseholder.</p> <p>Transferability: Prior to undertaking of any transaction, the Lawful Occupant must apply to the Leaseholder for consent to transact. Consent however should not be unnecessarily withheld (Section 34(4-6)). Upon obtaining of consent, a Lawful Occupant may assign, sublet, pledge, create third party rights in, subdivide, and undertake any other lawful transaction in respect to the occupancy rights.</p> <p>A tenancy by occupancy may be inherited.</p> <p>Where a lawful Occupant wishes to sell/assign his or her interest, he/she shall give the first priority to the leaseholder.</p> <p>Through mutual agreement, the lawful occupant and the leaseholder may agree to subdivisions of the occupancy rights with each party having exclusive occupancy or ownership rights to such portions either as joint proprietors</p> | |

| NO | TENURE | AREA AND POPULATION | LEGAL RECOGNITION AND CHARACTERISTICS | OVERLAPS WITH OTHER TENURE FORMS AND POTENTIAL ISSUES |
|----|-----------------|--|---|--|
| | | | <p>holding the land in common with shares held with terms and conditions that will be determined by both parties, or as joint tenants (Section 36(1) of the Land Act). Appropriate entries will be made on the certificate of title and certificates of title issued to both parties (Section 36(2) of the Land Act).</p> | |
| 3 | MAILLO | No authentic disaggregated data available. | <p>Legal Recognition: Article 237(3)(c) recognizes Mailo tenure. Section 3(4) of the Land Act expounds on this tenure as involving the holding of registered land in perpetuity. Mailo permits the separation of ownership of land from the developments on the land made by the lawful and bona fide occupants.</p> <p>Registration/ Recording: A Mailo Registry Exists. Subservient rights are guaranteed by the constitution and are registerable.</p> <p>Transferability: A Mailo Certificate of Title enables the holder, subject to customary and statutory rights of those persons lawful or bona fide in occupation of the land at the time that the tenure was created and their successors in title, to exercise all the powers of ownership of the owner of land held in freehold and subject to the same possibility of conditions, restrictions and limitations positive or negative in their application.</p> | <p>Mailo tenure is viewed as feudal embedded in a system not any different from freehold tenure. All its characteristics are exactly the same as freehold tenure. The difference is that it was created in 1900 Buganda agreement and titles issued from 1927 making it the oldest tenure type in Uganda. By virtue of its nature, it is a non- progressive tenure. Over and over again, proposals to convert it to freehold, thus dealing with the impasse created through the multiple of rights on the same piece of land would be solved. Mailo land needs to be liberated. It is the tenure where large scale eviction of tenants is experienced.</p> |
| 3a | LAWFUL OCCUPANT | No authentic disaggregated data available. | <p>Lawful Occupants are a Constitutional Creation in Article 237(8) and defined in Section 20(1)(a) of the Land Act as a person occupying land by virtue of the repealed Busuulu and Envujjo Law of 1928; the Toro Landlord and Tenant Law of 1937; or a person who entered the land with the consent of the registered owner, and includes a purchaser.</p> <p>Registration/ Recording: Currently, no register has yet been established to capture these rights. However, the law provides that a lawful Occupant may apply to the Mailo owner for and to be issued with a certificate of occupancy in respect of the land he/she occupies (Section 33(1) of the Land Act). The Certificate of Occupancy can only be issued if ground rent is paid.</p> | |

| NO | TENURE | AREA AND POPULATION | LEGAL RECOGNITION AND CHARACTERISTICS | OVERLAPS WITH OTHER TENURE FORMS AND POTENTIAL ISSUES |
|----|--------------------|--|--|--|
| | | | <p>A tenant by Occupancy may acquire a registerable interest in Mailo or leasehold through purchase or payment of premium respectively to the Mailo owner.</p> <p>Transferability: Prior to undertaking of any transaction, the bona fide Occupant must apply to the registered owner for consent to transact. Consent however should not be unnecessarily withheld (Section 34(4-6). Upon obtaining of consent, a Lawful Occupant may assign, sublet, pledge, create third party rights in, subdivide, and undertake any other lawful transaction in respect to the occupancy rights.</p> <p>A tenancy by occupancy may be inherited.</p> <p>Where a lawful Occupant wishes to sell/assign his or her interest, he/she shall give the first priority to the Mailo owner.</p> <p>Through mutual agreement, the lawful occupant and the Mailo owner may agree to subdivisions of the occupancy rights with each party having exclusive occupancy or ownership rights to such portions either as joint proprietors holding the land in common with shares held with terms and conditions that will be determined by both parties, or as joint tenants (Section 36(1) of the Land Act). Appropriate entries will be made on the certificate of title and certificates of title issued to both parties (Section 36(2) of the Land Act).</p> | |
| 3b | BONA FIDE OCCUPANT | No authentic disaggregated data available. | <p>Legal Recognition: Article 237(8) Recognizes bon fide Occupants. The Land Act in Section 29(2) defines a bona fide occupant to mean a person who before the coming into force of the Constitution had occupied, utilized or developed any land unchallenged by the registered owner or agent of the registered owner for 12 years or more; or a person who had been settled on land by Government or an agent of government, which may include a local authority.</p> | <p>The definition of bona fide occupants has posed enormous challenges to land administration. The burden of proof has been placed on the land owner to prove that the person claiming occupancy rights is not bona fide. This has resulted in extra judicial evictions as many unlawful</p> |

| NO | TENURE | AREA AND POPULATION | LEGAL RECOGNITION AND CHARACTERISTICS | OVERLAPS WITH OTHER TENURE FORMS AND POTENTIAL ISSUES |
|----|--------|---------------------|---|--|
| | | | <p>The Land Act further provides that any person who has purchased or otherwise acquired the interest of the person qualified to be a bona fide occupant shall be taken to be a bona fide occupant (Section 29(5) of the Land Act)</p> <p>Bona fide occupancy therefore exists on all registered land i.e. Mailo, Freehold and Leasehold tenure.</p> <p>Registration/ Recording: Currently, no register has yet been established to capture these rights. However, the law provides that a bona fide Occupant may apply to the registered owner for and to be issued with a certificate of occupancy in respect of the land he/she occupies (Section 33(1) of the Land Act). The Certificate of Occupancy can only be issued if ground rent is paid.</p> <p>A tenant by Occupancy may acquire a registerable interest in leasehold, sublease or freehold (including if the subsisting lease was acquired out of former public land) through purchase of his interest from the registered owner.</p> <p>Transferability: Prior to undertaking of any transaction, the bona fide occupant must apply to the registered owner for consent to transact. Consent however should not be unnecessarily withheld (Section 34(4-6). Upon obtaining of consent, a bona fide occupant may assign, sublet, pledge, create third party rights in, subdivide, and undertake any other lawful transaction in respect to the occupancy rights.</p> <p>A tenancy by occupancy may be inherited.</p> <p>Where a bona fide occupant wishes to sell/assign his or her interest, he/she shall give the first priority to the registered owner.</p> <p>Through mutual agreement, the lawful occupant and the registered owner</p> | <p>occupants have invaded lands of especially Mailo Owners claiming to be bona fide.</p> |

| NO | TENURE | AREA AND POPULATION | LEGAL RECOGNITION AND CHARACTERISTICS | OVERLAPS WITH OTHER TENURE FORMS AND POTENTIAL ISSUES |
|----|--------------------|--|--|---|
| | | | <p>may agree to subdivisions of the occupancy rights with each party having exclusive occupancy or ownership rights to such portions either as joint proprietors holding the land in common with shares held with terms and conditions that will be determined by both parties, or as joint tenants (Section 36(1) of the Land Act). Appropriate entries will be made on the certificate of title and certificates of title issued to both parties (Section 36(2) of the Land Act).</p> | |
| 3c | UNLAWFUL OCCUPANTS | No authentic disaggregated data available. | <p>Legal Recognition: Where a person has occupied and utilized or developed any land unchallenged by the registered owner of the land or agent of the registered owner for a period less than 12 years prior to the coming into force of the constitution, that person should take all reasonable steps to seek and identify the registered owner of the land for the purpose of undertaking negotiations with that owner concerning his/her occupation of the land (Section 30 of the Land Act). This person has no legal protection and no rights guaranteed until an agreement is reached through a mediated process.</p> | |
| 4 | CUSTOMARY | No authentic disaggregated data available. | <p>The constitution of the Republic of Uganda in Article 237(3)(a) recognizes customary land tenure, as one of the ways citizens of Uganda can own land. Legal Definition Customary tenure is how land in a specific area is owned by the people in that area either individually or communally following their customary norms and practices The land is held in perpetuity or forever.</p> <p>S.4 (1) of the Land Act provides that a person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land. An individual, male or female, or a family may apply to the family or clan to transfer to him/her/it, his/her/its portion of land and may cause that portion to be surveyed and transferred to the applicant and registered (Section 22(1)). The holder of a certificate of customary ownership may convert his/her holding to freehold (Section 9). For purposes of holding land under customary tenure, a family is a legal person represented by the head of the family. In this proviso, the law is silent on the definition of 'head of family'</p> | <p>The constitutional provision for the option to Convert customary tenure to freehold undermines the resilience and existence of customary tenure as equal to freehold.</p> <p>The provision for conversion has led to the elite and land speculators especially in the oil and mineral rich parts of Uganda to acquire large chunks of land in the pretext that it is free land that they can obtain free titles over.</p> <p>The option to convert has further exacerbated conflicts over land as the elite and speculative purchasers of land</p> |

| NO | TENURE | AREA AND POPULATION | LEGAL RECOGNITION AND CHARACTERISTICS | OVERLAPS WITH OTHER TENURE FORMS AND POTENTIAL ISSUES |
|----|--------|---------------------|--|--|
| | | | <p>Characteristics</p> <ul style="list-style-type: none"> • It may be individually owned or held by a community i.e communal land • Where it is held as a community, there may be distinct sub divisions belonging to a person, a family or traditional institution • Land is acquired according to the customary norms and practices of that community <p>Registration and Recording: A customary Tenure Registry is no- existent. Section 4 of the Land act provides that any person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land.</p> <p>Transferability: The rules governing the continuum of rights apply to customary tenure. The alienation of rights here vary depending on the quantum of rights a holder possesses. However, the following rights accrue to the rights holder:</p> <ul style="list-style-type: none"> • Leasing the land or part of it. • Permitting a person to have usufructuary rights over the land or part of it for a limited period (usufructuary right means the right to use and derive profit from a piece of property belonging to another while the property itself remains undiminished and uninjured in any way). • Mortgaging or pledging the land or part of it where the certificate of customary ownership does not restrict it. • Subdividing the land or part of it where the certificate of customary ownership does not restrict it. • Creating easements and third party rights with the consent of the person(s) entitled to benefit • Selling the land or part of it where the certificate of customary ownership does not restrict it. • Transferring the land to any other person in response to the order of court or | <p>especially in the mineral and oil rich areas have acquired huge pieces of land without the consent of the community.</p> <p>The law is silent on the definition of family head and this undermines equality as defined in Article 31(2) of the constitution. It means that the definition of household head as understood by customs and traditions will be upheld.</p> |

| NO | TENURE | AREA AND POPULATION | LEGAL RECOGNITION AND CHARACTERISTICS | OVERLAPS WITH OTHER TENURE FORMS AND POTENTIAL ISSUES |
|----|--------|---------------------|--|---|
| | | | land tribunal. • Disposing of the land by will. | |

CHAPTER 4 - FINDINGS OF THE LGAF

PANEL 1- LAND RIGHTS RECOGNITION

The Land Rights Recognition theme delves into the extent to which the legal regime takes cognizance of the range of rights including derived and secondary rights to land. It further investigates the enforceability of such rights within the existing legal framework. This theme considers two indicators with 14 dimensions. The first four dimensions focus on rights recognition within the continuum while the seven dimensions focus on enforcement mechanisms for rights recognition.

LG1-1 Recognition of a continuum of rights: *(The law recognizes a range of rights held by individuals incl. secondary rights of tenants, sharecroppers, women etc.).* The table below delves into the four dimensions relating to the recognition of rights.

Table 1 LG1-i - iv Land rights recognition

| | | Dimension Description | Score | | | | Score Description |
|---|-----|--|-------|---|---|---|--|
| | | | A | B | C | D | |
| 1 | i | Individuals' Rural Land Tenure Rights are Legally Recognized and Protected in Practice | | | | | Existing legal framework recognizes and protects rights held by 70% - 90% of the rural population |
| 1 | ii | Customary Tenure Rights are Legally Recognized and Protected in Practice | | | | | There is legal recognition of all customary rights but these are only partly protected in practice |
| 1 | iii | Indigenous Rights to Land and Forests are Legally Recognized and Protected in Practice | | | | | Indigenous rights are not recognized and not protected |
| 1 | iv | Urban Land Tenure Rights are Legally Recognized and Protected in Practice | | | | | Existing legal framework recognizes rights held by 70% - 90% of the urban population |

LG1 1(i) Individuals' Rural Land Tenure Rights are Legally Recognized and Protected in Practice

The basis for recognition of rural land tenure in Uganda is in the Constitutional declaration in its Article 237(1) that Land vests in the Citizens of Uganda according to four tenure types. Key among these tenure types is the recognition of customary tenure as formal tenure in Uganda. The Constitutional provisions were enforced through Section 4 (1), 9, & 22(1) of the Land Act (Cap 227). These rights are further protected through the decentralization of the land administration and management functions. The lead ministry for the delivery of land services is the Ministry of Lands, Housing and Urban Development through the Directorate of Lands. A number of branch offices around the country are in place to provide local land services (surveying, mapping, valuation and registration).

Whereas the Constitution formalized a tenure that had since been ignored, customary tenure is complex and most of it remains non-registered. Over 80% of the land in Uganda is held under customary tenure by over 90% of the rural populations. Based on the tenure systems and the categorization of rights, land tenure is commonly translated into four major regimes: communal ownership, common property, State/public ownership, and individual or private ownership (Bruce et.al 1994). For the registered tenures, it is relatively easy and feasible to distinguish between Mailo, leasehold and freehold regimes as they are characterized by very well defined property boundaries. It is however often difficult to identify the boundaries of the customary tenure regime because there was neither documentation of custom nor procedures for the recognition of customary tenure. This tenure has remained marred by conflicts especially boundary related disputes, succession and inheritance challenges.

The lack of documentation, although legally do not pose a challenge to proof of ownership, in practice it poses challenges in case of land transactions or land conflicts as the burden of proof is often transferred to the buyer whose good faith wanes in the event of a land conflict.

LGI 1(ii) Customary Tenure Rights are Legally Recognized and Protected in Practice

The constitution of the Republic of Uganda in Article 237(3)(a) recognizes customary land tenure, as one of the ways citizens of Uganda can own land. S.4 (1) of the Land Act provides that a person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land. An individual, male or female, or a family may apply to the family or clan to transfer to him/her/it, his/her/its portion of land and may cause that portion to be surveyed and transferred to the applicant and registered (Section 22(1) of the Land Act). The holder of a certificate of customary ownership may convert his/her holding to freehold (Section 9 of the Land Act). For purposes of holding land under customary tenure, a family is a legal person represented by the head of the family. In this proviso, the law is silent on the

definition of 'head of family' and this undermines gender equality as defined in Article 31(2) of the constitution.

On the other hand, land tenure security especially for women and other vulnerable groups has not been fully ascertained. Uncertainty in tenure rights coupled with lack of information and access to advice renders poor people vulnerable to loss of land. Tenure insecurity has been exacerbated by civil wars especially in the Northern part of Uganda. The World Bank study (*Lessons from Northern Uganda, June, 2008*), found that tenure insecurity had worsened and there was a greater (and increasing) number of land conflicts compared to the pre-displacement period. About 85% of the respondents had experienced threats to tenure security and 59% felt these threats were significant. Land dispute incidences had risen from 12.8% total disputes at the time of displacement to 15.5% during displacement and 16.4% on return (or post conflict). Insecure land tenure was attributed to lack of Public Knowledge on Land Issues and Rights, Land Conflicts and Disputes, inadequate capacity of land administration institutions, loopholes in the policy, laws and institutional frameworks, gender inequities, to mention but a few.

LGI -1(iii) Indigenous Rights to Land and Forests are legally Recognized and Protected in Practice

Minorities and indigenous groups are more likely to be among the poorest of the poor with less access to the basic social amenities. They are marginalized in all dimensions of life where participation in national events is minimal; autonomy is curtailed but where identity and dignity is more relevant to them than achieving a certain level of income and consumption (African Commission on Human and Peoples' Rights: 2009). In Uganda there are 3 indigenous groups: the Batwa (6,700 people), the Benet (20,000 people), and Ik a minority group among the Karimojong).

The Benet lives in north-eastern Uganda while the Batwa live in the south-west of Uganda. The Benet had been earlier evicted from Mt Elgon forest but were later reinstated to their ancestral lands following a test case decided in their favour. The Batwa of south-west⁵ Uganda were evicted from their ancestral habitat of Mgahinga, Bwindi and Echuya forests which were established as conservation areas and declared national parks in 1991 (Couillard et al 2009). Eviction of the Batwa from forests has limited their access to food and familiar shelter. As a result, they are plagued by starvation, sickness and exposure. There is real danger of this group being extinct in the near future.

⁵The Batwa are currently spread in 5 districts of Bundibugyo, Rukungiri, Kisoro, Kanungu and Kabale which also surround the 3 Forests that borders with Ruwanda, the Democratic Republic of Congo and Burudi.

The Constitution of Uganda does not recognize the rights of these minority groups as indigenous peoples because it was argued during the constitutional making debates that except for the minority Asian population, all ethnicities in Uganda are indigenous. None the less, article 32 provides for affirmative action for marginalized groups which most often refers to gender, sex and disability groups. On the other hand, the final national land policy (2013) recognizes rights of minority groups (§ 4.8) and the policy statement reaffirms the intent to recognize and protect the rights to these groups in its use and management of natural resources. It also pledges to promptly pay adequate and fair compensation to ethnic minority groups which may be displaced from their ancestral land. It is noted however, that the Batwa as a particularly vulnerable group is not specifically mentioned. The other legal frameworks such as the Land Act (Cap 227) and the National Environment Act (Cap 153) also protect customary interests in land and traditional uses of forests. None the less, it is these very laws which also authorize the government to exclude human activities in any forest area by declaring it a protected forest. Indeed the National Forest Authority and Uganda Wildlife Authority have subsequently used these laws to nullify the customary land rights of the Batwa who were mercilessly evicted and without offering alternative sources of livelihood.

Political participation of minority groups remains limited and their socioeconomic rights are ignored. While article 36 of the Uganda Constitution affirms the protection of minority groups to participate in decision-making processes, and incorporation of their views and interests in the making of national plans and programmes, the Batwa for example are completely left out of the governance structures in the districts where they reside. For example the African Commission's report (2009:53) noted that although the Batwa are willing to move out to the forest to increase their chances of moving out of poverty, there is no institutional mechanism by which they could be involved in political decision-making processes.

LGI - 1(iv) Urban Land Tenure Rights are legally Recognized and Protected in Practice

It is estimated that 60% of slum dwellers (Somik Lall 2012:17) around the country occupy what was initially public land which translated into customary tenure and ownership through article 237 of the Constitution. Therefore their legal rights are legally recognized and protected.

Meanwhile rapid population growth and urbanization is taking place in the absence of an urban policy. Urban settlements are characterized by informal settlements, inadequate shelter, lack of infrastructure and basic services, urban sprawl, infringement on environmentally sensitive areas such as wetlands and lakeshores.

The urban dynamics are clearly seen in Kampala city and this is because Kampala was initially planned. All the other developing urban areas have a big portion of land being customarily held. It is even common to find freeholds in the urban areas resulting from the constitutional provisions in article 237 that abolished statutory leases in urban areas.

For those under tenancy, the Land (Amendment) Act (No 1 of 2010) regarding evictions protects them as it is not easy to evict them.

The National land policy affirms government intention to ensure the supply of affordable land in urban areas and to provide a framework for regularizing land tenure for dwellers in informal settlements and slums as well as facilitating negotiations between registered land owners with the aim of promoting private-public partnerships to enhance tenure security and stem the growth of slums and informal settlements.

LGI 2 RESPECT FOR AND ENFORCEMENT OF RIGHTS

The table below represents the findings from the LGAF on the seven dimensions assessing respect for and enforcement of rights.

Table LGI 2(i) - (vii) Respect for and Enforcement of Rights

| | Dimension Description | Score | | | | Score Description |
|---|-----------------------|-------|---|---|---|---|
| | | A | B | C | D | |
| 2 | i | | | | | The law provides opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land rights if they so desire. Procedures are not affordable or clear, leading to discretion in their application |
| 2 | ii | | | | | Less than 50% of individual land in rural areas is formally registered |
| 2 | iii | | | | | Less than 50% of individual land in urban areas is formally registered |
| 2 | iv | | | | | The number of illegal land transactions is low and some are unambiguously identified on a routine basis |
| 2 | v | | | | | Existing legal restrictions on land leases, if any, are clearly identified, justified and accepted by all parts of society, but not fully understood by land users, so that compliance is partial |

| | | | | | |
|---|-----|---|--|--|---|
| 2 | vi | Women's property rights are registered | | | Between 15% and 35% of land registered to physical persons is registered in the name of women either individually or jointly |
| 2 | vii | Women's property rights to land are equal to those by men both in law and in practice | | | Equality of women's property rights to those by men is established by law, but there are considerable limitations to exercising such rights in practice |

LGI -2(i) Accessible Opportunities for Tenure individualization Exist

Following the recognition of customary tenure under the Constitution, section 4 (1) of the Land Act empowers an individual, family or community holding land under customary tenure on former public land to acquire a certificate of customary ownership in respect of that land. An individual, male or female, or a family may apply to the family or clan to transfer to him/her/it, his/her/its portion of land and may cause that portion to be surveyed and transferred to the applicant and registered (Section 22(1) of the Land Act).

Where an Association holds land under customary or Freehold tenure, the Association must recognize and verify that all or part of the land it holds is occupied and used by individuals and or families for their own purposes and benefits. Under customary tenure, a family is recognized as legal person represented by the head of the family.

An individual or family within a community wishing to own her/his/its land which under customary norms is available for her/his/its use and occupation may:

- If held by the Association on behalf of the community applies for a certificate of customary ownership or a certificate of freehold title in respect of her/his/its portion of land. The rules that apply for the application for a certificate of customary ownership or freehold certificate of title apply in this case without exception.
- Where the Association holds land under customary tenure, the individual or family applies to the Association to have her/his/its portion of land transferred and registered. If the Association approves, the applicant causes her/his/its land to be demarcated, transferred and registered by the Recorder.
- Where the Association holds the land under freehold, the individual or family applies to the Association to transfer the portion of land to her/his/it. If the Association approves

the application, the applicant causes the piece of land to be surveyed and transferred to the applicant and registered by the Registrar of Titles.

Any person aggrieved by the decision of the Association may appeal to the District Land Tribunal. The District Land Tribunal may:

- Confirm, vary, reverse or modify the decision of the Association
- Make any other orders it is empowered to make under the Land Act, 1998.

The holder of a certificate of customary ownership may convert his/her holding to freehold (Section 9).

Whereas the law is very clear and the fees are prescribed, the failings are in the practice of protecting these rights. To date very few certificates of customary ownership have been issued it at all. There are still ongoing debates within government as to what form the certification process should take, whether an independent register should be instituted, what form the land record will take. All these are fundamental questions that must be resolved quickly if rights protection on customary land is to become a reality.

Secondly, a practical challenge underlies the move toward individualization. Given the complexity in the customary tenure regime, in which no single rights holder can claim that the full bundle of rights vests in him or her. The question that remains unanswered to date in Uganda is whether individualization under customary tenure should be promoted or models for group rights and collective rights recognition should be promoted. This includes land held by the family unit. These dilemmas have stalled the process of enforcement and protection of customary rights through recordation and certification.

Furthermore, survey fees are a deterrent to those who would wish to have their land certified or registered. The survey function in Uganda is privatised and although the cost of registration is low and affordable, the cost of the survey is often far from the reach of the rural poor. It can go up to ten times the cost of land registration. This is a disincentive to those who would have sporadically registered their land.

All the above is compounded by a non-functional decentralized system of land administration. Service delivery is very poor and hardly does a single land office have all the requisite staff required to support rights protection and enforcement. This led to the Ministry creating the zonal offices in a bid to cure this prevailing mischief of lack of capacity and staff in the land offices at district level.

LGI-2(ii) Individual Land in Rural Areas is Registered & Mapped

There is a clear procedure in law for the mapping and registration of customary land, as well as the statutory procedures for the registration of freehold, leasehold and Mailo land.

Below is the procedure for registering customary land which forms about 80% of land in Uganda.

- The applicant submits an application (form 1) to the land committee with the required fees.
- the land committee puts a notice in a known place in the parish e.g. in a market , on a prominent tree, on the church notice board and on the land being applied for
- the land committee confirms and marks the boundaries of the land applied for
- the land committee makes a decision following the customs of the area on any question or matter concerning the land applied for and listens to claims and interests of other people on the land or occupying the neighboring land
- the committee makes a report and submits it to the district land board, gives a copy to the applicant and a copy for any person who submitted a claim on the land
- The land committee produces three (3) copies of the sketch of the land applied for. The original copy is sent to the district land board, a copy given to the applicant and the land committee retains the third copy.
- The district land board considers the application and in doing so must refer to the committees report and recommendations. The board may confirm or reject the report of the committee.
- If the board approves the application, it makes copies of the sketch, sends to the recorder and requests him/ her to issue a certificate of customary ownership. The board must inform the recorder in writing about its decision
- The recorder makes and hands over the certificate of customary ownership to the owner.
- Remember that the land for which a certificate of customary ownership is issued bears a unique parcel identification number (PIN) given by the recorder.

Through the systematic demarcation pilots, a process by which land rights of people living in a given area are identified, ascertained, established, and marked in an orderly and uniform way, two parishes had their rights in land mapped and ascertained in Rukarango-Ntugamo District, Iganga.

In cognizance of the fact that most land in Uganda is under customary tenure therefore it is not registered. There have been attempts to issue certificates of customary ownerships but this has been stalled by the lack of an established system to assign parcel identification numbers which is a responsibility of the department of mapping and surveys. In the central and south-west where most of the land is mapped and under cadastre, the rate of application to acquire freehold titles has been reported to be on the increase.

Through the systematic demarcation process, the main activities carried out during systematic demarcation involve the following:

Planning stage

The first step was to figure out how to implement the objective and constituting a Systematic Demarcation Technical Committee to do this. This committee is comprised of experienced individuals from different sectors and academic institutions. The Team has a total of about 18 members including the technical personnel from the ministry itself.

Baseline Studies

Baseline studies are conducted under the supervision of the Systematic Demarcation Technical Committee, which is a multidisciplinary and multi sectoral committee, for gauging community expectations.

Mobilisation,

Confidence and consensus building are the major elements for the success of the systematic demarcation program.

Training and village to village sensitisation

A training manual was developed to ensure training of the members of the systematic demarcation Team. The process generates substantial amount of information about land parcels, both within and outside the community

Participatory adjudication and demarcation

SD is all inclusive – adjudication and demarcation under SD covers all parcels in a given area, including parcels for the poor. SD calls for wider participation/involvement. SD is highly participatory at all levels - community and central level. The nature of participation implies wider publicity, more transparency and prompt public dispute resolution

By adjudicating and marking boundaries for all parcels of land at the same time, without discrimination, Government is trying to be efficient and pro-poor. Targeting the poor is directly and/or indirectly reiterated in all the pillars of PEAP;

Land Surveying and mapping.

Efficiency – By handling several parcels at the same time, SD has economies of scale

Public display of resultant survey resultants and drawing.

In the display exercise the , the community is expected to improve the process by identifying and proving correct information on the omissions, duplications or inconsistent spelling of names of land owners/neighbours.

Certification/registration.

This process finally results in formal registration of the land rights in the names of the applicant. The applicant is issued with either a certificate of customary ownership or occupancy, or a land title whichever is applicable.

Generation of cadastral database.

Most (over 80%) of the current land records are manual and paper based. Most such records are in a sorry state due to the wear and tear arising from the day to day use. The Systematic adjudication, demarcation, survey and certification/ registration of land rights pilot has opened an avenue to move away from the purely analogue data format to digital records. It is hoped that the database will eventually directly feed into the National Land Information System (NLIS).

Whereas this was government pilots, there is sporadic registration of land ongoing in rural areas. The quantum of rights mapped and registered is not readily available from the land office.

LGI-2(iii) Individual Land in Urban Areas is Registered & Mapped

Over 90% of the registered land in Uganda is in urban areas. Despite this, many parcels in the urban areas especially outside the city and a few major towns is still customarily held.

Through its systematic demarcation program, the Ministry of lands piloted in two urban areas, in Mbale district and Kibaale District. Results from Mbale revealed that a total of 960 parcels have so been surveyed and the application forms for issuance of freehold titles for 382 parcels have been filled. Luki village 363; Masalire 304, and Nasasa village 293 parcels in Mbale district as of November 2008.

In Kibaale district, mobilization, training and sensitization have been done. 200 Area adjudication members of Bwamswa Sub County have been trained. Detailed Systematic Demarcation in Kasingo parish Bwamswa Sub County was scheduled for early January 2009 (MLHUD 2008). Results of this exercise are not available.

UNHABITAT/GLTN applied the Social Tenure Domain Model in Mbale District. The specific objective of the first phase of activities is to pilot test the Social Tenure Domain Model, and the documentation of the process and capacity building requirements around its use and application, in a selected municipality in Uganda for wider learning and application. The first phase will be dove-tailed to the existing project initiative referred to as "Transforming the Settlements of the Urban Poor in Uganda (TSUPU)" by the Government of Uganda as co-financed by Cities Alliance and partly being implemented by Shack/Slum Dwellers International (SDI).

The long-term objective is to address the land information requirements of women and men living in slum communities and to build their capacity in the use and application of the land information systems based on free and open source software packages and in mainstreaming the thinking behind the continuum of land rights.

Through the support and intervention from the Ministry of Land, Housing and Urban Development (MoLHUD) and Municipality of Mbale, the community-driven enumeration

and mapping exercise of the project is a success. Below were the key processes and steps adopted by the project:

Planning and consultations

Earlier in the project implementation, SDI and GLTN conducted a series of consultation meetings and workshops with government authorities (national and local), Actogether (an Urban NGO), Slum Federation and community members. Such consultations yielded in the understanding of the Social Tenure Domain Model, the finalisation of the enumeration questionnaire, the development of an implementation plan, agreement on the roles and responsibilities as well as the identification and mobilisation of the needed resources.

Community mobilisation process

The next step in implementing the project at settlement level is to mobilise the community leaders and members through a vigorous sensitization and awareness building process. Slum Federation leaders and members spearheaded this process in close collaboration with the Municipal officials. Such process generated a wide support from the targeted communities on the project and its implementation. Enumerators from community members were identified and subsequently they were trained on mapping, data collection and administration of questionnaires.

Customisation of STDM

Following the agreement with the local stakeholders and community members on the enumeration questionnaire and identification of the resources available such as satellite imagery and a handheld GPS, GLTN Technical Team proceeded to make some adjustments to customise the STDM system to fit the purpose. The customised version of STDM was well received and appreciated by project stakeholders including by the slum federation members and enumerators.

Mapping and structure numbering

Using STDM, Actogether assisted the Slum Federation and community members to digitise structures from the satellite imagery and produce initial maps. Using the initial map, assigned enumerators and Slum Federation members number all existing structures in the slum settlements using a unique code. They made use of the handheld GPS to identify available community facilities and utilities such as water points, public toilet, dumping ground to update the map as the satellite imagery used in the process may no longer reflect the actual realities on the ground. For example, new structures were built or some structures as reflected by satellite imagery were not existent anymore.

Interviews and data collection

As scheduled and communicated with the community, enumeration teams mostly accompanied by local leaders or elders and municipal officials, conducted house to house

interviews administering the questionnaire. In addition, they collected other information such as supporting documents and photos, with the unique code painted or written in the structure as a background.

Data entry and analysis

With the filled up questionnaires and gathered information including supporting documents and photos, the enumeration teams entered all the data into the STDM system. This process also included the updating of the initial digital maps. STDM, being a simple and user-friendly system, is able to undertake quick analyses and reporting. The slum federation leaders and enumerators were trained on how to use STDM to analyze the data and produce reports.

Data validation and continuous updating

As part of quality assurance, the gathered information were printed and disseminated to community members. Community members then have the opportunity to validate and correct the information. This process enhanced the acceptability of the information and all stakeholders appreciated the fact that the turnaround time between the enumeration exercise and the production of results is relatively fast. After the validation period, enumeration teams and slum federation leaders updated the information in the system. Those community members who were not able to provide their comments and corrections during the validation period may come to the Slum Federation office to update the data. Some Slum Federation leaders and members were trained to manage the system and to continue the updating process.

Most stakeholders including slum dwellers themselves appreciated the added value of STDM in addressing the information requirements of the urban poor particularly for improving tenure security and enhancing planning and access to basic services and infrastructure. Some stakeholders including government officials appreciated STDM as a potential tool for much larger urban development objectives (<http://www.gltm.net/index.php/land-tools/social-tenure-domain-model-stdm>).

Whereas 100% of land in Buganda is mapped and registered, the parent titles only record the primary rights to land. Subsidiary rights, although constitution are neither recognized nor mapped. This includes the rights of tenants on registered land, rights of spouses and rights derived as a result of these secondary rights.

For the other urban areas, apart from the statutory leases that were mapped by 1986, no new lands have been mapped. Most of the land in the urban areas is customary (mainly not registered) or freeholds. The rate of urbanization is not matched by the rate of mapping

and registration. This explains the sprawling development of Uganda's urban areas. To date, there are over 100 town councils that are not mapped.

LGI-2(iv) The Number of Illegal Land Sales Is Low

There are no national official figures on illegal land sales in the country but local media frequently report on this phenomenon. However the research done in the Albertine Rift valley (Rugadya 2009) reveals that the discovery and exploration of oil prospects has led to increased land conflicts as well as rampant fraudulent land sales in the region. To take advantage of the processes of exploration, individuals have taken to alienation of customary land creating large chunks of registered land in form of leaseholds, across the districts in the region. The situation is further aggravated by attempts to degazette parts of the National Park and where neighbouring communities that were supposed to benefit the degazettement were unaware of their rights. The local council officials took advantage of the situation to fraudulently sale the land to new migrants. It was observed that the incident took with it all communal lands and resources which have been privatized to the exclusion of communities who ought to be the rightful holders of such land.

In the other parts of the country Local Council officials have been reported to participate in fraudulent land sales particularly in peri-urban area.

Whereas illegal land sales may seem to be high, this is mostly true for Kampala and the Buganda subregion. If a national average is taken, the percentage drops drastically. Fraudulent land transactions are dependent on tenure type, location of the land and land values. When the land is in a prime location on Mailo land will be more prone to fraudulent dealings than leaseholds or freeholds. There are hardly fraudulent dealings on customary land because the land is often located where the owners live and everybody knows everybody else, ensuring social protection in the event of fraud. The Land Information System affirms that most of the fraudulent dealings are in the urban areas and mainly in Buganda.

LGI-2(v) The Number of Illegal Lease Transactions is Low

Similar to rates of illegal land sales in general, there are no authentic figures regarding illegal lease transactions. According to the Baseline Evaluation Report (MLHUD 2007) quoted by Rugadya, the Land Registry's with the sector ministry also contribute to fraudulent land transactions through back-door practices which lead to loss of land by rightful owners which in turn undermines public confidence in the national land registration system. Consequently, tenure security is compromised also making land transactions uncertain and the subsequent tragic consequences for many families that suffer from such practices. The counterfeit land titles circulating in the market further create additional uncertainty in the market. The existing registration system and procedures are too disorganized and ineffective to prevent such cases. It is further

observed the degraded registry environment, damaged and outdated land records leaves limited chance for the genuine owners and clients to protect themselves or get reliable information about the property.

Despite the above, the leasehold documents are too bulky and in small print that the leaseholder often does not read and internalize the document. Most of the fraudulent dealings arise due to the ignorance of the term and conditions of the lease. For example, many rights holders under leasehold will realize that their lease periods have expired when a speculator applies for the same piece of land upon reversion.

LGI-2(vi) Women's Property Rights are registered

Although the constitution accords equal property rights between women and men, to all citizens of Uganda, women's land rights not yet recorded on the existing titles; moreover the majority of the customary land is yet to be registered. The official statistics of women's ownership of land has remained at 7% due to lack of new nationally updated statistics. There have however been studies undertaken by institutions that infer that this status has long changed. In 2003 a study conducted by Dr. Sebina Zziwa of Makerere Institute for Social Research (MISR 2004), women land ownership under registered tenures was found to be 16% of registered land. After computerization the figure is estimated to be close to 25% of registered land in Uganda. Because of its being out of customary binds for over 50 years, the Mailo tenure has enabled women to own registered land and it has the highest proportion of women landownership. Registered land forms only 20% of land in Uganda.

Experiences from the land offices reveal that there is bias when the issue of women's land rights arises. There are no clear indicators and methods to capture gender sensitive data so different statistics emerge each time. Secondly, there are lots of hidden properties that rightly belong to women but are registered in either male names or companies. It is therefore not possible to ascertain the extent of land registered by women. A methodology has to be developed for the accurate capture of this data. This situation is made worse by the failure of the LIS to capture gender disaggregated data on land parcels.

LGI-2(vii) Women's land rights equal to those of men in law & in practice

Article 32 recognizes the significant role women play in society and obliges a duty on the state to take affirmative action in favour of marginalized groups on the basis of gender for purposes of redressing imbalances, which exist against them. Ugandan law provides for equal rights for women and men but women often are denied their rights in practice. Rural women's land rights are still largely at the mercy of customary practices and traditional legal systems which consider men as sole owners of land. Section 39 of the Land Act as amended, provides for 'security of occupancy' for either spouse; that is, right to access and live on that land. This effectively means one person is the owner while the other is only

entitled to security of occupancy. In practice, customary practices systematically discriminate women from owning land in most parts of the country. The express to accord equal land rights- the Domestic Relations Law has been put aside twice following tabling in parliament.

In October 2010, the Centre on Housing Rights and Evictions (COHRE), a Geneva-based international housing rights watchdog, released a “report card” that examined Uganda’s land reform processes and their impact on women. The report observed that while there have been many advances in land reform in Uganda that grant women legal rights, custom and practice are still lagging behind the law, leading to a regular violation of women’s land rights. The land laws offer a lot of protection to women on paper – but many women – particularly those in rural areas, have not benefited from these policies in reality the report concluded.

Thus there is a huge disparity between the legal pronouncements on equality and the translation of those constitutional principles in law and practice. Equality in practice is a far cry in Uganda.

PANEL 2: RURAL LAND OWNERSHIP AND USE RIGHTS

The rural land ownership and use rights theme considers the extent to which the existing legal framework takes cognizance of group rights including rights of forest dependent communities. It investigates the extent to which collectivity in rights holding is legally recognized and enforced and if the legal provisions are translated into practice through land use planning and management. Although this dimension included forestry, the experts separated this and created a 10th theme that separately delved into the forestry resource. The theme has two indicators with a total of 14 dimensions. The first eight dimensions focus on the recognition, protection and enforcement of group rights through recordation, mapping and demarcation. The following six dimensions focus on rural land use planning and management in light of land rights integrity.

3 RIGHTS TO COMMON LANDS

The table below presents the LGAF findings for eight dimensions related to rights to common lands.

Table 2 LG1-3 Rights to Forest and Common Lands

| | Dimension Description | Score | | | | Score Description |
|--|-----------------------|-------|---|---|---|-------------------|
| | | A | B | C | D | |

| | | Dimension Description | Score | | | | Score Description |
|---|------|--|-------|---|---|---|--|
| | | | A | B | C | D | |
| 3 | i | Common Lands are clearly identified legally and Responsibility for Use is clearly assigned | | | | | Common lands are not clearly identified; but responsibility for land use is clearly assigned |
| 3 | ii | Rural group rights are formally recognized & can be enforced | | | | | The tenure of most groups in rural areas is formally recognized. Clear and appropriate regulations regarding their internal organization and legal representation exist but are not widely used |
| 3 | iii | Use rights to key natural resources on land (incl. Fisheries) are legally recognized and protected in practice | | | | | Users' rights to key natural resources are legally recognized but only some are effectively protected in practice or enforcement is difficult and takes a long time |
| 3 | iv | Multiple rights over common land & natural resources can legally coexist and be registered | | | | | Co-existence is possible by law, and respected in practice but mechanisms to register rights or resolve disputes are often inadequate |
| 3 | v | Multiple rights over the same plot of land & its resources (e.g. trees) can legally coexist and be registered | | | | | Co-existence is legally possible and respected in practice but mechanisms to register rights or resolve disputes are often inadequate |
| 3 | vi | Multiple rights over land & and mining/sub-soil resources on the same plot can legally coexist and be registered | | | | | Co-existence of land and mining rights is possible by law, and respected in practice but ways to resolve disputes are often inadequate or inequitable |
| 3 | vii | Accessible opportunities exist to map & register group rights | | | | | The law provides opportunities for those holding group land under customary, group, or collective tenures to register and map land rights if they so desire. Procedures are not affordable or clear, leading to discretion in their application. |
| 3 | viii | Boundaries of communal land are demarcated | | | | | Less than 10% of the area under communal and/or indigenous land has boundaries demarcated and surveyed and associated |

| | Dimension Description | Score | | | | Score Description |
|--|-----------------------|-------|---|---|---|-------------------|
| | | A | B | C | D | |
| | | | | | | claims registered |

LGI 3(i) Common lands are clearly identified legally and responsibility for their use is clearly assigned

Common land is that land which the community agrees to set aside for common use by members of that community. It comprises grazing areas, wood lots, hunting grounds, swamps etc.

The Land Act 1998 (23) provides for establishment of areas of common land use in a communally-owned land. It states that an association may, and shall, when so requested to do so by the community on whose behalf it holds land, set aside one or more areas of land for common use by members of the group. The boundaries of any area of land which has been set aside for common use shall be marked out in such a manner, including any such manner as is customary among the persons who will use that land, so as to enable those persons to recognise and keep to those boundaries.

With regards to utilization, the Land Act 1998 stipulates that an area of land set aside for common use shall be used and managed in accordance with the terms of a common land management scheme. A common land management scheme shall be made by an association, but it shall only come into effect when it is agreed to by the community on whose behalf the association holds land. This scheme may extend to cover the use and management of more than one area of common land. It further clarifies that a person who is not a member of the community may, with the agreement of the association, which agreement shall not be unreasonably withheld, use common land in accordance with the terms of the common land management scheme applicable to that land. Section 26 clearly sets out the basic rights and duties of the members of the community using the common land.

According to the National Land Policy 2013, the 1995 Constitution and Land Act (Cap 227) do not take into account the role of local communities in the preservation and management of common property resources. As a result most of these resources especially grazing lands have been in the past grabbed, sold illegally or individualized by some members of the local communities. The policy therefore recommends Government to reform laws and regulations for the management of common property resources to conform with the standards for sustainable use and development.

Panel discussions revealed that while the law provides for the establishment of areas of common land use and its management in accordance with the terms of a common land

management regime, almost all common lands are not clearly identified. Nonetheless, for most areas, the responsibility for land use is customarily assigned and practices, but with conflicts ensuing over their use and management. If such areas were established and mapped as required by the law, the responsibility for use would clearly be stipulated. There is a possibility that the communities currently are not aware of the provisions in the law and in the cases where efforts to map and register common lands have been registered, NGOs have been responsible for the move. Government has not currently taken any action for the protection of common lands.

LGI-3(ii) Rural group rights are formally recognized & can be enforced.

Rural group rights can then be derived as those identifiable groups in a rural setting, which people can be easily classified as members or non-members for the purpose of benefitting from specific rights to an area.

Article 26(1) of the constitution provides that every person has a right to own property alone or in association with others. This constitutional declaration in the fundamental rights chapter gives the basis for the provisions in the land Act on group rights.

The Uganda land law defines communal land as the land held by a specific community or group of people recognizing individual rights in that land and regulating its use and management. Communal land may be held on a certificate of customary ownership, freehold or leasehold title by the managing committee on behalf of members of the communal association. Communal land is managed under customary law and any other law such as statutory law. For example, the provisions of the National Environment statute must be followed to ensure conservation of the environment, wetlands and grasslands.

Common land on the other hand is that land which the community agrees to set aside for common use by members of that community. It comprises grazing areas, wood lots, hunting grounds, swamps etc.

For purposes of this indicator, focus will be given to communal land.

The Land Act Cap 227 provides for the establishment of Communal Land Associations (CLA) by any group of persons who wish. The purpose for such a CLA would be connected with communal ownership and management of land, whether under customary law or otherwise. There is in the land Act (Sections 16-18) an elaborate procedure of “incorporation” of the CLAs, determination of the group leadership, and reaching a constitution to govern members. There are provisions in the Act for a managing committee of the CLA, the resolution of disputes, dissolution and decertification of an association, common land, and management schemes, the rights and duties of members of the CLA, and provision for an individual to opt out of an association (Sections 19-26).

The National Land Use Policy 2003, however noted that the rights to resource utilization are at times not properly defined and this has led to misinterpretation by the users. Such an anomaly needs to be rectified to avoid resource degradation.

Wetland Resources: The National Wetlands Policy (1995:7.6i) stipulates that although all wetlands are a public resource to be controlled by the Government on behalf of the public, communal use will be permitted, but only if environmental conservation and sustainable use principles and strategies of this policy are adhered to. This communal use may be terminated by the Government if it is found that the community or any other person has not adhered to the environmental obligations, principles and strategies of this policy.

LGI-3(iii) Use rights to key natural resources on land (incl. Fisheries) are legally recognized and protected in practice.

Section 43 of the Land Act Cap 227 clearly stipulates that a person who owns or occupies land shall manage and utilize the land in accordance with the Forests Act, the Mining Act, and the National Environment Act, the Water Act, the Uganda Wildlife Act and any other law.

For Example:

Wetland Resources: The National Wetlands Policy (1995(7.6i) stipulates that although all wetlands are a public resource to be controlled by the Government on behalf of the public, communal use will be permitted, but only if environmental conservation and sustainable use principles and strategies of this policy are adhered to. This communal use may be terminated by the Government if it is found that the community or any other person has not adhered to the environmental obligations, principles and strategies of this policy.

Section 37 (1) of the National Environment Act Cap 153 states that the authority shall, in consultation with the lead agency, establish guidelines for the identification and sustainable management of all wetlands in Uganda. Section 37(3) of the National Environment Act 1995 states that the authority may, in consultation with the lead agency and the district environment committee, declare any wetland to be a protected wetland, thereby excluding or limiting human activities in that wetland. These provisions in the Act suggest that the right to use wetlands is determined by the National Environment Management Authority.

Fisheries: The substantive law that provides for the regulation of the Uganda Fisheries is the Fish Act (Cap 197). The Act restricts fishing to a person with a valid specific licence issued for that purpose. Subject to this Act (Section13), the chief fisheries officer, or an authorised licensing officer may, in his or her discretion, on application being made in the prescribed manner and on payment of the prescribed fee, issue to an applicant a licence in such manner and subject to such conditions as he or she may deem fit to impose. However

the Act is now considered to be inadequate to cope with the domestic and international changes in fisheries administration and the latest policy thinking. The National Fisheries Policy 2004, under Policy Area No. 2 calls for stakeholders' involvement in the management of fisheries by devolving some decision-making responsibilities to local governments and communities.

Section 6(2) of the Fish Act Cap 197 states that *no person who is not a citizen of Uganda shall fish in any waters of Uganda for the purpose of obtaining fish for sale unless he or she holds a valid specific licence issued for that purpose.* This suggests that as long as one is a Ugandan he/she is allowed to fish. However section 5 requires getting a licence for the vessel used while fishing.

Section 10(1) of the Fish Act Cap 197 states *No person shall fish in any dam unless he or she is in possession of a valid permit issued for that purpose by the fisheries officer in charge of the area concerned in respect of all or any particular species of fish.*

Wildlife Resources: Section 31 of the Uganda Wildlife Act Cap 200 states that; A person, community or lead agency may apply to the authority for one or more wildlife use rights to be granted to them.

Forestry Resources: The Forestry and Tree Planting Act, 2003 provides for the use of different forest categories.

For the forest reserves, a responsible body is expected to manage, maintain and control the forest reserve in accordance with generally accepted principles of forest management as may be prescribed in guidelines issued by the Minister. In this respect, use rights for both extractive and non-extractive purpose may be granted as long as they are in accordance with the forest management plan. For the forest reserves, a responsible body may subject to the management plan grant a licence to an interested person for the cutting, taking, working or removing of forest produce from a forest reserve or community forest, or the sustainable utilization and management of the forest reserve or community forest. Further, Section 33(1), of the National Forestry and tree planting Act, 2003 states that subject to the management plan, a member of a local community may, in a forest reserve or community forest, cut and take free of any fee or charge, for personal domestic use in reasonable quantities any dry wood or bamboo. Under Section 33(2) no materials however may be collected in the strict nature reserves or from sites of special scientific interest.

For the case of group use rights, the Forestry and Tree planting Act 2003, provides for collaborative forest management where a responsible body such as NFA or the local government may enter into a collaborative arrangement with a forest user group for the

purpose of managing a Central or local forest reserve or part of it in accordance with regulations or guidelines issued by the Minister. In this case, communities bordering forest resources exercise specified access and use rights and take on specific roles and responsibilities to ensure sustainable utilization of the forest resource. There are several examples including CFM groups in Mabira CFR and Budongo CFR.

With regards to community forests, Section 19(1) stipulates that any revenue derived from the management of a community forest by a responsible body shall belong to and form part of the accountable funds of the responsible body and shall be devoted to the sustainable management of the community forest and the welfare of the local community.

With regards to private forests, Section 21(1) and 22(1) stipulates that a person may register with the district land board a natural forest or plantation situated on land owned in accordance with the Land Act Cap 227, or a forest or land in respect of which a licence is granted in accordance with this act. Further, Sec 21(2) and 22(2) indicates that all forest produce from such a forest belongs to the owner and may be used in any manner that the owner may determine, except that forest produce shall be harvested in accordance with the management plan and regulations made under this act.

The National Land Policy, 2013 recognizes that the rights to resource utilization are at times not properly defined and this has led to misinterpretation by the users. Such an anomaly needs to be rectified to avoid resource degradation. It therefore defines Policy statement 14 aiming to define resource use rights and responsibilities with key strategies including

- a) Re-define up-date and harmonize the different natural resource policies and legislation as they relate to use-rights and responsibilities.
- b) Encourage community participation in the formulation of policies and legislation to avoid future conflicts.
- c) Sensitize the populace on their resource-use rights, responsibilities, and the need for sustainable resource utilization.
- d) Develop and implement appropriate use rights mechanisms to resolve use right conflicts between communities and protected area authorities.

Panel discussions revealed that although the legal and policy framework is in place and actually very progressive, implementation and practice change remains a challenge. There are no regulations and procedures laid out for the implementation of the legal provisions. This makes it impossible to translate these legal provisions into practice as there are no mechanisms in place to get this done. A lot of work needs to be done to ensure that the requisite changes can be realised in practice. This is compounded by lack of technical capacity in the Government staff to implement these provisions. There is need to build

collaborative arrangements with civil society to ensure that the implementation of certain provisions become a reality.

LGI-3(iv) Multiple rights over common land & natural resources can legally coexist and be registered.

Subject to article 237 of the Constitution of the Republic of Uganda, 1995, all land in Uganda shall vest in the citizens of Uganda and shall be owned in accordance with the four land tenure systems, that is, customary, freehold, Mailo and leasehold. The Land Act Cap 227 (43) clearly stipulates that a person who owns or occupies land shall manage and utilize the land in accordance with the Forests Act, the Mining Act, and the National Environment Act, the Water Act, the Uganda Wildlife Act and any other law.

The co-existence or non co-existence of multiple rights over common land and natural resources is specific for the different resources. The Forestry and Tree Planting Act 2003, recognizes communal rights to forests. Therefore, registration for such a resource recognizes rights over the land and the resource. However, two independent bodies, the District land board and the Ministry of Water and Environment are responsible for registering the land rights and forestry rights respectively.

The panel discussions raised concern about the respect for these rights in practice. An example of the pastoralist rights of the Karimojong was raised and although recognized in law, because of the mineral wealth in this area, most of the land (estimated at 90%) has been issued concessions and mining licences without recourse to the land rights of the pastoralists. This undermines the legal principles that seek to protect the rights of the land holders despite the multiple uses and rights that may accrue on the same piece of land. The same situation is now witnessed in the Albertine region particularly the Kayiso Tonya oil well where the wells exist on customary land but the rights of the owners of such land have been downplayed in favour of the exploration activities.

The panel discussions raised concern over the greyness of the law with regard to discovery of a resource of national importance on communal lands. There are no clear mechanisms in place on responding to such challenges leading to these lands being compulsorily acquired by the state, a move that is not constitutional. There are no clear procedures and mechanisms in place for restitution or compensation in the face of group rights that are unregistered, a situation that is predominant in Uganda.

LGI-3(v) Multiple rights over the same plot of land & its resources (e.g. trees) can legally coexist and be registered

During the reign of the 27th Kabaka of Buganda a system was established under which the Kabaka appointed “abatongole” or agents to administer land affairs, among other things, on his behalf.

This system resulted in four types of customary land tenure in Buganda namely land vested in the Kabaka (ettaka ly’obwakabaka), land vested in clans (ettaka ly’obutaka), interests granted by the batongole to individuals (ettaka ly’obwesenze) and interests granted by individuals to individuals (ettaka ly’obusenze.) In 1900 all these interests were turned into mailo land. In fact the allocations under the 1900 agreement were actually confirmations of these estates.

Once custom is codified, it stops growing and evolving. This is exactly what happened in 1900 because the customary methods of acquiring interests in land were done away with without putting in place a new system to cater for people who had not acquired interests in land at the time. This meant that such people lived on land at the caprice of the new registered owners who exploited them. As a result of an outcry by such people a law to govern the relationship between the new registered owners of land and their lawful or bona fide occupants was enacted under the name of Busuulu and Envujo Law, 1928.

This law achieved two important aims. First, it secured the occupancy of the holder of a kibanja a new type of holding which did not exceed one acre for use for residential and other domestic purposes. Secondly, it provided for economic development of the land by enabling the holder to cultivate cash crops up to three acres without the permission of the owner and up to five acres with his permission. Both the lawful owner and bona fide occupants who were defined to be his wife and lawful customary successor enjoyed rights of the lawful owner of the kibanja by extension. The rights of the registered owner, on the other hand, were recognized in three ways. First by payment to him of a standard rent of Shs.10/= in respect of the one acre. Secondly by getting a tithe from crop revenues and thirdly the holder was under an obligation to be of good conduct towards land owner. There was also a system of how one came to be on the land and size of the holding was consensual.

This system worked well. In a study published in 1953 A.B. Mukwaya showed that in over 400 land cases he examined there was no case of illegal evictions. All the cases involved petty differences over boundaries or issues of succession and the like. After 1975 all hell broke loose after Mailo land and the Obusuulu and Envujo Law were abolished. Land became free for all and there was no respect for landlords anymore. When Mailo land was reintroduced evictions of illegal tenants started in a small way by the time the constitution was made but has become a menace of late as a result of the craze in estate development and large scale farming (Mulira P 2010).

The constitution came in to fill the gap which was created in 1975.

The Constitution

In order to deal with this problem article 237 (9) of the constitution directed parliament to pass a law regulating the relationship between the registered owners and the lawful or bona fide occupants of land. The article reads as follows:

(9) Within two years after the first sitting of Parliament elected under this constitution, Parliament shall enact a law—

- *regulating the relationship between the lawful or bona fide occupants of land referred to in clause (8) of this article and the registered owners of the land;*
- *providing for the acquisition of registrable interest in the land by the occupant.*

The instructions given by the constitution are quite clear and straight forward. The constitution did not tell parliament to enact a Land Act in the fashion of the Land Act, 1908. It limited its intent to the relationship of registered owners and lawful or bona fide occupants of land. In this regard a correct interpretation would be that the intention of the constitution was to put in place a national law on the lines of the Busuulu and Envujo Law or the Toro Landlord and Tenant Law, 1937, and the Ankole Landlord and Tenant Law, 1937.

The terms “registered owner” and “lawful occupant of land” as used in the constitutional provision should not cause any problem. A registered owner is one registered under the provisions of the Registration of Titles Act whereas a bona fide occupant must be one who came on the land with the permission of the registered owner. A bona fide occupant must be one who lawfully claims an interest in the land through a lawful occupant. In this regard section 8 of the Busuulu and Envujo Law, 1928, is instructive. It reads:

“ (8) (1) Nothing in this law shall give any person the right to reside upon the land of a Mailo owner without first obtaining the consent of the Mailo owner except—

- (a) the wife or child of the holder of a kibanja; or
 - (b) a person who succeeds to a kibanja in accordance with native custom upon the death of the holder thereof
- (2) Nothing in this law shall give to the holder of a kibanja the right to transfer or sublet his kibanja to any other person.”

It is clear that this provision excludes a trespasser or a person who bought a kibanja from a lawful occupier without the consent of the owner from the definition of a bona fide occupier. In this sense a bona fide occupant should receive the same treatment as the lawful occupant since his claim is also lawful.

The term bona fide occupier should mean a different thing altogether in areas where Mailo land or individualization of land does not exist as yet. Here acquisition of land is based on the customary rules of particular communities. These rules are location-specific. For example how you come to individually own land in Bugisu is not the same way you will own it in Teso. In this case we must first identify the particular customary system and the rules under it before we can identify who is a bona fide occupant of land (Mulia P. 2010).

The constitution also required parliament to provide the lawful or bona fide occupant of land with registerable interests. The constitutions recognize four tenures of land namely freehold, Mailo, leasehold and customary. The first three tenures are registerable interests and although customary tenure has been recognized it has not become a registerable interest yet. Both lawful and bona fide interests are customary and the challenge posed by the constitution, in our view, was how customary land interests could become registerable. It is our view that the Land Act, 1998 misinterpreted these constitutional provisions.

The Land Act, 1998

The constitution directed parliament to make a law regulating the relationship between lawful or bona fide occupants of land and registered proprietors. However parliament did something different altogether. The preamble to the Act reads: "An Act to provide for the tenure, ownership and management of land; to amend and consolidate the law relating to tenure, ownership and management of land, and to provide for other related or incidental matters." The constitution provided for the different tenures of land and one wonders what other tenure the Act is trying to provide for since ownership of land is governed by the Registration of Titles Act. The preamble is a far cry from the intentions of the constitution (Mulira. P 2010).

Some general comments on the Land Act will suffice.

(a) The Act creates a tenancy by occupancy section 32. This is wrong because what was directed by the constitution was the creation of registerable interests not tenancies. Under the law a tenancy is not an interest in land but is akin to user rights of less than three years

(b) Under the Torrens system of land registration we use in Uganda the title deed is supreme and cannot be cancelled except for fraud. The Act introduces the principle of acquisition of land by prescription a principle which applies in Britain where ownership is evidenced by possession not in countries which follow the Australian Torrens system based on registration and certificate of title.

(c) Section 30 (b) defines a bona fide occupant as a person who occupied or developed any land unchallenged by the registered owner or his agent. Since there was no law

which required a registered owner to challenge a trespasser the provision amounts to retrospective legislation which is not permitted by the constitution. Secondly providing for acquisition of title where the owner did not make a challenge for twelve years prior to the coming into force of the constitution is also wrong for the following reasons:

- (i) An interest in land cannot be taken away without compensation.
- (ii) Since the owner's title deed cannot be legally cancelled the provision has the effect of creating two competing interests in the same land.
- (iii) The provision confers rights on a trespasser which other laws deny him.
- (v) There is no determination of the size of the holding.

Tenants by Occupancy are tenants on registered land which may be under freehold, mailo or leasehold title. Their tenancy is recognized because of their presence on land or because of the fact that they occupy and utilize land in spite of the existence of a registered landowner. The Land Act 1998 recognizes two types of tenants by occupancy:

Lawful Occupants

These are defined as tenants occupying land in any of the three ways described below⁶:

- a) Persons who occupy land as a result of having paid rent under the Busuulu and Envujjo law of 1928, Toro Landlord-Tenant Law of 1937 and the Ankole Landlord-Tenant Law of 1937. Such persons are mostly found on either mailo land or native freehold.
- b) Persons who occupy land with approval of the landowner in possession of mailo, freehold or leasehold land. It is implied / assumed that the owner granted permission to occupy his/her land basing on some form of agreement, contract or understanding. This includes buyers or purchasers of such land occupied.
- c) Persons who were customary tenants on former public land, whose existence (tenancy) on land was not made known or was not paid for (compensated) by the landowner at the time of acquiring a leasehold title.

Bonafide Occupants

These are defined as tenants occupying land in any of the two ways described below⁷:

⁶ Section 30(1) Land Act

⁷ Section 30(2) Land Act

- a) Persons who occupied and utilized or developed land that has a freehold, mailo or leasehold title, unchallenged (concealed or openly) by the landowner (titleholder) or his/her agent (representative) for 12 consecutive or more years.
- b) Persons settled by government or agent of government (representative of government) or a local authority on land that is already titled either as mailo, freehold or leasehold. This includes persons in resettlement schemes, who will be facilitated to register their rights of Occupancy in such land. Government was supposed to have compensated the owners of such land by the year 2003.

Any person who buys land from a Lawful or Bonafide Occupant takes on the same status. However, Persons who occupy registered land (mailo, freehold or leasehold) and are not landowners, and do not fall in the categories defined above i.e. are not Bonafide or Lawful Occupants. They must seek and identify the owners of the land they occupy and negotiate with them. The terms or conditions set for occupying land (tenancy) for those who do not qualify as Bonafide or Lawful Occupants are not spelt out in the Land Act. Such terms and conditions are subject to agreement between themselves and the landowners (Obaikol 2007).

Land Occupancy and Land Reforms

Lawful and Bonafide Occupants shall enjoy security of tenure. This legal guarantee of continued occupancy rights for the tenants by the Land Act is aimed at enhancing productivity and sustainable livelihoods, and to reduce recurring instances of massive evictions in the country. Tenants may acquire certificates of occupancy on the land they occupy if they so wish. This is evidence of their ascertained rights. However, not having one does not mean, one loses the right to the tenancy. This certificate of occupancy can be mortgaged, pledged, transferred or passed on by will with the permission of the landowner. In granting permission, the landowner may impose conditions, which must not discourage the transaction from taking place.

Tenancies may be terminated by mutual agreement or by failure to pay ground rent for two (2) consecutive years which results into notice of one year to the tenant to show sufficient reason for not paying. If after one year of notice, the tenant is still unable to pay, the Land Tribunal will terminate the tenancy.

Tenancies by occupancy, although viewed by some as detrimental to development because both the land owner and the tenant do not put the land to optimal productive use, this opinion is countered by that of ensuring security of tenure to the citizens of Uganda; which in turn is a production incentive (Obaikol 2007).

Panel discussions raised the challenges that exist between government departments. For example, the Uganda Wildlife Authority has overlapping claims with the National Forestry

Authority over forests found in wildlife areas. Whereas Uganda Wildlife Authority lays claim over these forests, the National Forestry Authority lays claim over the carbon. This overlapping claim has created confusion and conflicts between the two departments.

LGI-3(vi) Multiple rights over land & and mining/sub-soil resources on the same plot can legally coexist and be registered

Interpretation: Having registered rights for both the land and the mining resources found in/under that land

Subject to Article 237 of the Constitution, all land in Uganda shall vest in the citizens of Uganda and shall be owned in accordance with the four land tenure systems, that is, customary, freehold, Mailo and leasehold.

Article 244(1) of the constitution of the republic of Uganda states “ subject to article 26 of this constitution, the entire property and the control of, all minerals and petroleum in, on or under, any land or waters in Uganda are vested in the Government on behalf of the republic of Uganda. . Clause (5) specifies that mineral does not include clay, murrum, sand or any stone commonly used for building or similar purposes. This therefore implies that sub-soil resources are the property of the nation, not the individual owner of the surface rights

Further Section 3 of the National Mining Act 2003 stipulates that the entire property in and control of all minerals in, on or under, any land or waters in Uganda are and shall be vested in the Government, notwithstanding any right of ownership of or by any person in relation to any land in, on or under which any such minerals are found. Nonetheless, section 4(1) stipulates that subject to the provisions of this Act, a person may acquire the right to search for, retain, mine and dispose of any mineral in Uganda by acquiring such right under and in accordance with the provisions of this Act.

Panel discussions revealed that the benefit sharing close was excluded from oil and gas. This means that the many that live or whose lands are found in the oil and gas areas will not benefit from the exploration of oil and gas. This exclusion however does not have a constitutional basis and there needs to be an interpretation as to why this has become the case.

Secondly when concessions are given to miners, the lands are fenced off and the communities living around the resources cannot access the common properties in the area. There is need to include a disclaimer to the concession agreements that permit the communities continue the derivation of benefits from the resources within the

concessions areas. The role of civil society in influencing practice change in this regard should be encouraged as the hands of the technocrats are quite tied on this matter.

LGI-3(vii) Accessible opportunities exist to map & register group rights

Structures for mapping and registering group rights do exist at sub-county level, which is the lower local governance structure in a district.

Area Land Committees

Area Land Committees (ALC) are established at sub-county or division level. Their role is to adjudicate upon and demarcate land. During land adjudication an ALC may be required to resolve land disputes over boundaries or conflicting claims over land. In hearing and determining any claim, ALC is required to use its best endeavours to mediate between and reconcile parties having conflicting claims to land.

Recorders

The Recorder at the sub-county level is the sub-county Chief or assistant Town Clerk at the division level. The role of the Recorder is to issue certificates of customary ownership and certificates of occupancy and to register subsequent land transactions on the basis of the said certificates.

The district Land Board facilitates the registration of rights with the support of the District Land Office.

Land Act provides for the establishment of Communal Land Associations (CLA) by any group of persons who wish (Section 15). The purpose for such a CLA would be connected with communal ownership and management of land, whether under customary law or otherwise. The district registrar of titles is meant to keep a public register of associations, and to exercise a broad and general supervision over the administration of the associations within the district (Section 15 (3)). The formal procedures concerning the formation and operations of the CLA as provided for in the Land Act are too elaborate, and require a reasonable degree of literacy and “external” assistance in terms of provision of information and guidance. As a result, the CLA provisions for the law have not been taken advantage of (e.g. RCI, 2006), with only a few examples such as the initiative being undertaken by ECOTRUST to secure legal CLA formation for two communal forests in Masindi district.

Some detailed procedures for mapping and registering group rights as provided for in the Land Act 1998 (15) include

- Not less than 60 percent of the group determine so to incorporate themselves into an association

- Elect not more than nine nor less than three persons, of whom not less than one-third shall be women, to be the officers of the association
- The officers elected shall be responsible for preparing a constitution for the association.
- The district registrar of titles shall assist the officers in preparing a constitution for the association and may provide the officers with a model constitution containing such matters as may be prescribed.
- A constitution prepared by the officers shall be submitted to the district registrar of titles for his or her certification that it complies with such matters as may have been prescribed or where no matter has been prescribed, that it provides for a transparent and democratic process of management of the affairs of the association.
- A constitution which has been certified as complying with subsection (3) shall be put before and voted on by a meeting of the members of the association specifically convened for that purpose.
- A constitution shall be the approved constitution of the association when and only when it is approved by an absolute majority of all the members of that association at the meeting referred to in subsection (16)
- The officers of an association which has voted to approve a certified constitution shall apply to the district registrar of titles on the prescribed form to be incorporated under this Act.
- Upon the issue of a certificate of incorporation, the persons named in it as the officers shall become a body corporate with the name specified in the certificate and shall have perpetual succession and a common seal
- The group then proceeds to secure a legal ownership of a specified resource which calls for
 - Surveying and clear demarcation of boundaries
 - Submission of the survey report to process the land title
 - Gazettement by the Minister in charge
 - Public declaration of a resource as a designated communal resource

Section 15 of the forestry and tree planting act, 2003 allows communities to enter into CFM
 Section 17 of the forestry and tree planting act, 2003 allow communities to register community forests.

Section 31 of the wildlife act states that: a person, community or lead agency may apply to the authority for one or more wildlife use rights to be granted to them.

Panel discussions highlighted that although government has not ventured into the registration of group rights, NGOs have made an effort to establish these. The Uganda Land Alliance and The Land and Equity Movement have both made attempts applying different

approaches. To achieve this however, services of a surveyor are required to ensure that the mapped land is included in the cadastre. This makes the costs to go higher such that the communities cannot afford it if done outside of a project. It also requires a level of literacy within the communities to understand the procedures if the legal procedures are to be followed.

The whole procedure for mapping and recording of group rights is clear but not affordable. The government has never managed to draw or even estimate the total cost of mapping and recording rights. The only costs that have been stipulated are the registration cost which is the lowest of all the transaction costs.

LGI-3(viii) Boundaries of communal land are demarcated

While communal lands are often informally known by the user group, formal/legal boundaries are lacking. This has overtime resulted into conflicts between members and non-members of particular user groups. Although provided for in law, there have been attempts by various agencies and institutions to clarify the methodology or boundary demarcation over common lands⁸. To date, there is no agreed to methodology and no parcels have conclusively been certified as such by the Ministry of Lands, Housing and Urban Development.

4 EFFECTIVENESS AND EQUITY OF RURAL LAND USE REGULATIONS

The Table below presents the findings of the LGAF on the above named indicator.

Table LG1-4 Effectiveness and Equity of Rural Land Use Regulations

| | Dimension Description | Score | | | | Score Description |
|---|-----------------------|-------|---|---|---|---|
| | | A | B | C | D | |
| 4 | i | | | | | Regulations regarding restrictions on rural land use effectively serve public purpose but enforcement is weak |
| 4 | ii | | | | | There are a series of regulations that are for the most part serve public purpose but that are not enforced |
| 4 | iii | | | | | Public input is not required and/or sought in preparing and amending land use plans |

⁸ Uganda Land Alliance undertaking Communal mapping in Karamoja
 LEMU undertaking mapping of customary Lands in Oyam District, Northern Uganda
 Budongo Community Forestry in Masindi District

| | | | | | | |
|---|----|--|--|--|--|--|
| | | through clear public process & resulting burdens are shared | | | | |
| 4 | iv | Rural lands the use of which is changed are swiftly transferred to the assigned purpose | | | | Less than 30% of the land that has had a change in land use assignment in the past 3 years has changed to the destined use |
| 4 | v | Rezoning of rural land use follows a public process that safeguards existing rights | | | | Processes for rezoning are not public but care is taken to safeguard existing rights in virtually all cases |
| 4 | vi | For protected rural land uses (forest, pastures, wetlands, parks) plans correspond to actual use | | | | The share of land set aside for specific use that is used for a non-specified purpose in contravention of existing regulations is between 10% and 30%. |

LGI-4(i) Restrictions regarding rural land use are justified and enforced

According to the Physical Planning Act, “rural area” means any area not within a municipality or a town. Under section 5, the Act declares planning for areas of towns set out in the first schedule to the Act, and is regarded as planning areas. Further, If in respect of any rural area or any area partly within and partly without any municipality or town the board, upon representations made by or after consultation with every local authority concerned, is of the opinion that an outline scheme should be made in respect of that area and makes recommendations to that effect to the Minister submitting with its recommendations a plan of the area, the Minister may by statutory order declare the area to be a planning area .Although now repealed, the Physical Planning Act No.5 of 2010, the new law does not provide for planning for the rural areas.

In respect of every area declared to be a planning area under section 5, there shall be a planning committee or planning committees. When the area declared a planning area is a municipality, the planning committee shall be the municipal council. When the area declared a planning area is a town, the planning committee shall be the town council.

This implies that by law, there are no legal provisions for rural land use.

However, the Land Use Policy, 2007 highlights the lack of inter-sectoral linkages in land use planning. Each sector has its own land use activities, which are not always integrated with those of other sectors. These alternative land uses have led to conflict and disharmony over land use allocation. There are inadequate consultations between sectors both in land use

allocation and formulation of laws. Lack of common guiding principles has led to each sector or institution pursuing its own objectives when it comes to planning for land utilization.

Hence, it stipulates Policy statement 28 “To promote integrated land use planning and management with a view to achieving coordination among various sectoral land use activities. The key strategies include:

- a) Develop, review and harmonize the different sectoral laws and policies relating to land use and management
- b) Develop a national land use plan for the country
- c) Develop district land use plans in conformity with the national land use plan

The Policy further reveals that some laws relating to land management and administration are weak and outdated. In addition, land is subjected to different uses and thus its management falls under different sectoral institutions that have limited human and financial resources. Furthermore, decentralization introduced new institutions aimed at improving service delivery at grassroots level, but these are beset with weak implementation due to lack of adequate professional expertise, as well as poor coordination between central and local Governments. Inadequate sectoral coordination has also had negative impact on land use, just as weak inter-sectoral and district coordination has resulted in contradictory land use patterns.

Hence, it stipulates Policy statement 32 “To revise and harmonize all existing laws and policies related to land use planning and develop implementation capacity”. Some of the key strategies include:

- a) Complete the on-going revision of the Town and Country Planning Act (1964), and harmonize it with related Policies and legislation.
- b) Review the following pieces of legislation (as amended) and harmonize them with the aim of enabling smooth implementation of the Land Act (1998): The Mortgage Decree (1975); The Registration of Titles Act (1964); The Land Acquisition Act (1965); and The Local Government Act (1997).
- c) Strengthen links among sectors, between sectors and local governments, and among local governments in order to improve their coordination.
- d) Provide financial support and train local government staff in order to attain efficient service delivery.
- e) Strengthen the land use planning and management systems provided for in planning legislation.

These laws have since been amended accordingly.

Panel discussions revealed that the Physical planning Act does not provide for rural land use planning. Recourse must therefore be had to other laws such as the National Environment act, the National Forestry and Tree Planting Act, The Uganda Wildlife Act to give direction on rural land use planning and management. Despite the existence of these legal frameworks, most of them do not have regulations to ensure implementation. This therefore creates practical challenges in regulating the use of rural lands. Wetlands are particularly challenged as they are provided for under the National Environment Act but have no substantial law regulating their use and thus the enormous abuse currently realised.

The Ugandan situation is compounded by the lack of the National Land Use Plan, intended to ensure the planning of the entire country. In the absence of this, it is impossible to undertake any planning of rural lands. This is particularly crucial given that Uganda's investment climate is shifting away from the urban areas to the rural areas as agricultural investments increase and so is the exploration of mineral wealth. Furthermore, Uganda is experiencing a population explosion that necessitates planning if it is to harness its resource capacity to feed the nation.

LGI-4(ii) Restrictions on rural land transferability effectively serve public policy objectives

According to the Country and Town Planning Act, 1951(5), if in respect of any rural area or any area partly within and partly without any municipality or town the board, upon representations made by or after consultation with every local authority concerned, is of the opinion that an outline scheme should be made in respect of that area and makes recommendations to that effect to the Minister submitting with its recommendations a plan of the area, the Minister may by statutory order declare the area to be a planning area.

Although since repealed by the Physical Planning Act, other laws such as the National Environment Act Cap 153, the National Forestry and Tree Planting Act 2003 and the Wildlife Act Cap200 provide restrictions on the transfer of rural lands for purposes of environmental conservation and protection. This serves public policy objectives.

Panel discussions revealed that there are guidelines for land use change. These are however not enforced due to lack of technical capacity to enforce them. However, when it comes to conversion of resources on private lands to public purpose, guidelines do not exist. For example, there are no guidelines for the conversion of wetlands on private land to public resources. What is clear is the gazzetement and de-gazzetement procedures.

LGI-4(iii) Rural land use plans are elaborated/changed through clear public process & resulting burdens are shared

There are no rural land use plans, but a part of the rural land may be changed to become part of planning area (town or municipality). In this case, according to Country and Town Planning Act (6(2)) any person aggrieved by a decision of any committee may appeal to the board.

Under Section 7, when an order declaring a planning area has been published under section 5, the board may, if it comes to its notice that any building or development in the area has been allowed, which appears to it to be contrary to the provisions of any scheme that is being prepared, direct the local authority or any other person who has given a permit for the erection of the building or for the development to cancel the permit. Any person who has been granted a permit to erect any building or proceed with any development whose permit is cancelled under subsection (1) shall be entitled to such compensation as the board shall think fit to grant. An appeal shall lie from any award made by the board under subsection (2) which shall be determined under section 21.

One the area has been declared as planning areas, section (10) provides that the board shall in respect of any area declared a planning area under section 5, in consultation with the committee or committees, prepare an outline scheme in respect of the area. Section (11) further states that when an outline scheme has been prepared, a copy of it shall be deposited in such place as the board shall decide.

Notice of that deposit shall be published by the board in the Gazette and at least one newspaper circulating in Uganda. Any person may, within three months of the date of the notice of that deposit, inspect and make representations to the board respecting the scheme.

Despite declaring the whole country a planning area, the new law (Physical Planning Act) does not provide for rural land use planning and there are no mechanisms in place to ensure that this is done. As such in practice, there is no rural land use planning now.

LGI-4(iv) Rural lands the use of which is changed are swiftly transferred to the assigned purpose

According to Section 5 of the repealed Town and Country Planning Act Cap 246, when an area has been declared a planning area under this section, the value of any building or land in that area shall, for the purposes of determining the amount of compensation payable under this Act, be deemed to be the value of the building or land on the day twelve months immediately prior to the declaration together with the value of any improvements and alterations carried out during those twelve months and subsequently approved by the board.

Where a planning area has been declared under this section in any municipality or town, and the boundaries of the municipality or town are subsequently varied, the Minister may by statutory order vary the boundaries of the planning area so as to conform with the varied boundaries of that municipality or town.

Under Section 7, when an order declaring a planning area has been published under section 5, the board may, if it comes to its notice that any building or development in the area has been allowed, which appears to it to be contrary to the provisions of any scheme that is being prepared, direct the local authority or any other person who has given a permit for the erection of the building or for the development to cancel the permit. Any person who has been granted a permit to erect any building or proceed with any development whose permit is cancelled under subsection (1) shall be entitled to such compensation as the board shall think fit to grant. An appeal shall lie from any award made by the board under subsection (2) which shall be determined under section 21.

Once the area has been declared as a planning area, section (10) provides that the board shall in respect of any area declared a planning area under section 5, in consultation with the committee or committees, prepare an outline scheme in respect of the area. Section (11) further states that when an outline scheme has been prepared, a copy of it shall be deposited in such place as the board shall decide.

Notice of that deposit shall be published by the board in the Gazette and at least one newspaper circulating in Uganda. Any person may, within three months of the date of the notice of that deposit, inspect and make representations to the board respecting the scheme. Under section (12), as soon as is convenient after the period referred to in section 11(3), the board shall consider any representations made under that subsection and any other matters that may have come to its notice and shall if it sees fit amend or vary the scheme. The board after considering the scheme shall submit the scheme or, in any case where the scheme has been amended or varied, the amended or varied scheme, to the Minister for his or her approval. If the Minister approves the outline scheme, the board shall deposit the scheme with any modifications made by the Minister in such places as it shall consider desirable and shall by statutory instrument declare the scheme to be in force and inform the public where it is available for inspection. So soon as the statutory instrument has been published, the scheme shall have full force and effect, and no authority shall pass or approve any plans for building or development that contravene the provisions of the scheme.

Although the law was repealed, the land administration system still executes its mandate swiftly. Panel discussions gave examples of the de-gazettement of the Namanve Forest Reserve in 1997 into an industrial park. The Land administration system executed its mandate swiftly although developing the park has been slow.

The degazettement of part of Lake Mbuho National Park for purposes of ranching happened swiftly and the land use change happened quite quickly.

LGI-4(v) Rezoning of rural land use follows a public process that safeguards existing rights

There are no rural land use plans but a part of the rural land may be changed to be a part of the planning area (town or municipality). In this case, according to according to Section 6 of the Country and Town Planning Act provides that any person aggrieved by a decision of any committee may appeal to the board

Under Section 7, when an order declaring a planning area has been published under section 5, the board may, if it comes to its notice that any building or development in the area has been allowed, which appears to it to be contrary to the provisions of any scheme that is being prepared, direct the local authority or any other person who has given a permit for the erection of the building or for the development to cancel the permit. Any person who has been granted a permit to erect any building or proceed with any development whose permit is cancelled under subsection (1) shall be entitled to such compensation as the board shall think fit to grant. An appeal shall lie from any award made by the board under subsection (2) which shall be determined under section 21.

One the area has been declared as a planning area, section (10) provides that the board shall in respect of any area declared a planning area under section 5, in consultation with the committee or committees prepare an outline scheme in respect of the area. Section (11) further states that when an outline scheme has been prepared, a copy of it shall be deposited in such place as the board shall decide. Notice of that deposit shall be published by the board in the Gazette and at least one newspaper circulating in Uganda. Any person may, within three months of the date of the notice of that deposit, inspect and make representations to the board respecting the scheme.

Panel discussions revealed that there is a lacuna now in the law as there were no saving provisions for these provisions. Furthermore, Uganda is in the early stages of developing planning laws. It is therefore not possible for the country at this point in time to have rural land use plans and therefore undertake rezoning since the National Land Use Plan does not yet exist.

LGI-4(vi) For protected rural land uses (forest, pastures, wetlands, parks) plans correspond to actual use

Almost all the rural land uses do not have land-use plans. There are a few exceptions where farmers are involved in tree planting schemes such as the SPGS, TGB and other carbon schemes in which beneficiaries are expected to prepare land use plans prior enrolment in to the scheme.

Panel discussions delved into the forest resources and it was agreed that although mapped in the 1950s and their uses clearly stipulated, forests are heavily encroached. Efforts to ensure that forest reserves are used for purpose are being made.

100% of national parks are used for purpose and there is little or no encroachment of the National Parks. This is because the Uganda Wildlife Authority has been vigilant, working with the local communities and local governments to ensure that the wildlife reserves are protected. The achievements in this area have mainly resulted from collaborative arrangements between the Wildlife Authority, Local Communities and Local governments, in which communities have benefited from wildlife uses or from eco-tourism. These have acted as incentives to good wildlife husbandry and protection of wildlife reserves.

Although efforts have been made by government to ensure the protection of gazetted areas such as wetlands, Kampala remains a problematic area with wetlands being converted into high end developments causing flooding of the city and lowered absorption of effluent from the industries within the city. Lubigi and Nakivubo channels have in particular been impacted by urban developments.

For Rangelands management, the Sustainable Land Management Project is piloting in Nakasongola and Kamuli with the aim of having land use plans developed. Results of this pilot will be a determining factor of whether the process should be up-scaled along the entire cattle corridor. This project is preparing land use planning guidelines that will be relevant for rangelands management in Uganda.

PANEL 3: URBAN LAND USE, PLANNING, AND DEVELOPMENT

Urban Land Use and Planning in Uganda is regulated under the Town and Country Planning Act Chapter 246, revised in 2000 and the Physical Planning Act enacted in 2010. Urbanization is growing in Uganda at a rate of 4.5% p.a.⁹ and 60% of the population is slum dwellers¹⁰. This means that there is a high growth of informal settlements and this creates

⁹ Somik Lall, Planning for Uganda's Urbanization, Inclusive Growth Policy Note 4.

¹⁰ Damaris Kathini Muinde, Assessing the Effects of Land Tenure on Urban Developments in Kampala, Master's Thesis ITC March 2013.

challenges for urban planning. The growth of urbanization is resulting from a myriad of factors ranging from rural poverty, search for employment, and access to social services & opportunities, reclassification of land use and, the exploding population in the country.

Planning is key issue to urban development because it plays a significant role on what and how developments will occur, when and where they will occur. Urban planning in Uganda can be traced back to 1890s when the first European footprint can be traced through spatial and urban planning that set Kampala to be similar to a European city¹¹. The Ideas and theories of planning emerged from the British concept of cities taking into consideration health, aesthetics and exclusive settlement areas and this was made law through the Uganda’s Town and Country Planning Act of 1951. In this period, physical planning formed one of the grounds for compulsory acquisition of land and as such the area would be declared a planning Area.

In 1995, physical planning ceased to be a ground for compulsory acquisition of land. Land further was vested in the Citizens of Uganda according to four tenure systems, Leasehold, Freehold, Mailo and Customary Tenure. In effect, this did away with public land that vested in the state. It also provided that all leases out of public land were convertible to freeholds and this included statutory leases to urban authorities¹². The Constitution in its Article 237(7) provides that Parliament make laws to enable urban authorities to enforce and implement planning and development. The implications of this provision is that regardless tenure type, an area can be declared a planning area and planning regulations and development enforceable. This however does not come without challenge especially where rights to land are fuzzy.

This theme has four indicators with 14 dimensions.

5 RESTRICTIONS ON RIGHTS: LAND RIGHTS ARE NOT CONDITIONAL ON ADHERENCE TO UNREALISTIC STANDARDS

The table below presents the LGAF findings on the restrictions of rights indicator. It has got two dimensions.

Table LG1-5 Restrictions on Rights

| | Dimension Description | Score | | | | Score Description | |
|---|-----------------------|--|---|---|---|-------------------|---|
| | | A | B | C | D | | |
| 5 | i | Restrictions on urban land ownership and transferability effectively serve | | | | | There is a series of regulations that are for the most part serve public purpose but enforcement is deficient |

¹¹ Frederick Onolo Okalebo, Division of Urban and Regional Studies KTH Royal institute of Technology, Stockholm Sweden; Journal of Planning History 2010.

¹² Article 237 (5) and (6) of the Constitution of the Republic of Uganda 1995.

| | | | | | |
|---|----|---|--|--|--|
| | | public policy objectives | | | |
| 5 | ii | Restrictions on urban land use effectively and comprehensively serve public policy objectives | | | There are a series of urban land use regulations that are for the most part serve public purpose but that are not enforced |

LGI-5(i)Restrictions on urban land ownership and transferability effectively serve public policy objectives

According Article 237 (7) of the Constitution, tenure security supersedes planning. Land tenure security refers to enforceable claims on land, with the level of enforcement ranging from national laws to local village rules, which again are supported by national regulatory frameworks. It refers to people’s recognized ability to control and manage land– using it and disposing of its products as well as engaging in such transactions as the transferring or leasing of land (IFAD, 2008). The Ugandan constitution defines four tenure systems elaborated in the typology as Mailo, Freehold, Leasehold and Customary. Theoretically, it is relatively easy and feasible to distinguish between these four tenure regimes where very well defined property boundaries based on *de jure* rights exist.

In practice, however, it is often difficult to identify the boundaries of each property regime, in part because formal and informal (customary) tenure systems often differ and exist in parallel, and in part because such customary or formal rights may differ from *de facto* access. *De facto* access may exist *with or without* a corresponding set of norms that in fact recognize or permit such access. Resource users may lack *de jure* rights but may have *de facto* rights that are based upon a number of ‘moral’ concepts about what is appropriate or just behavior. *De facto* rights are created through various social-political relations that in practice are not necessarily based upon the legal or formal boundaries but instead result in the emergence of informal, layered, nested and overlapping access regimes. Also, land access may not automatically translate into exclusive *de jure* or *de facto* access to resources on the land, although land access rights may certainly act to strongly condition access to these resources.

For purposes of planning particularly in urban areas, the complexity of tenure comes into play as over 60% of city dwellers in Uganda are informal settlers on land. Therefore although land tenure creates security to land holding, it has a direct effect to development as the perception of the holders of rights only perceive their security of tenure in light of the proposed developments. In other words if an area is declared an industrial park, the land owners in that area who live and derive benefit from such land begin to perceive themselves as insecure in light of the physical development plan. This often causes resistance and failure of enforcement mechanisms to be executed making development control difficult. This is corroborated by the findings by UNHABITAT (2007), MLHUD (2008), and Giddings (2009).

The proposed Urban policy recognizes this as an issue and has as one of its Policy statements under Urban Housing “*Government will ensure the supply of affordable land in urban areas and provide a framework for regularizing the tenure system in the informal settlement.*” It envisages achieving this through the identification of land for public housing and implementation of the National Land Policy for effective and efficient land administration and management in urban areas.

Whereas this sounds pretty simple and the right thing to do, the complexity surrounding this is that the land is privately owned with complex layers of rights existing over a single parcel. This is particularly true for the Central region whether the Mailo Certificate of title gives rise to subservient rights whose interests are guaranteed by the Constitution. How then will government find this land and streamline informal settlements through the regularization of tenure? Since physical planning is not a ground for compulsory acquisition under Article 26 of the constitution, the only option Government would be left with is to purchase such land on a “willing buyer-willing seller basis.” This is a costly process that is unlikely to yield any results given that the land sector is underfunded.

Not only is underfunding the challenge, the regulation of tenants by occupancy poses a challenge today in Uganda. The Land Act in its section 31 places the burden of proof on the land owner of registered land to show cause why that occupant is not lawful or bonafide. With fluid grounds of claiming bonafide occupancy, more often than not land owners are unable prove the contrary. Transacting in land is thus hampered by the fuzziness of the tenure system providing incomplete rights to the land owner and the tenant, both of whom must be compensated for their interests in the same parcel, moreover with an unverifiable evidence of such rights to land. This was illustrated by Damaris Kathini Muini et.al. Pg.35 when he analyses the development of the real estate industry being constrained by a sudden influx of tenants seeking compensation for their rights to land and the challenge of proving that they are not entitled to such compensation as they are not rights holders. This is compounded by lack of regulation for compensation of the occupants by occupancy making it difficult to amass land for development.

Furthermore, the non-eviction law¹³ protects tenants by occupancy from eviction except for the non-payment of ground rent. This compounds the complexity of urban planning in Uganda. There are good plans on paper that are challenging to enforce in practice because of the land tenure regime.

However, where Government is the land owner and where leaseholds exist in urban areas, regulation and enforcement of planning is possible and is executed. In situations where there are unplanned areas occupied by informal settlements, it has been proved by GLTN

¹³ The Land (Amendment) Act 2010

through the Mbale pilot that it is possible to regularize these informalities and have rights recorded.

Currently, it is only leaseholds that have planning restrictions described in the lease agreement and enforcement effected. These are leaseholds granted by urban authorities out of former government land. In Kampala city for example, leasehold tenure accounts for 26% of the land in the city. 57% of the land is privately owned under Mailo, 14% is official Mailo belonging to the Buganda Kingdom and 3% is freehold owned by schools, mosques and churches (MLHUD 2013).

The panel discussions mainly revealed that despite the good legal provisions, the lack of enforcement mechanisms pose a challenge to the entering of generic restrictions in every certificate of title. Such restrictions would be easements, the use of wetlands and building restrictions that would form restrictive covenants. The challenges to enforcement are mainly as a result of corruption tendencies of the officials holding the mandate of enforcement.

LGI-5(ii) Restrictions on urban land use effectively and comprehensively serve public policy objectives

There is no urban policy to take into consideration the restrictions that should be instituted on urban land use. However, there are currently supporting legal frameworks to which regard must be had in land use management. These are the National Environment Act Cap 153, the National Forestry and Tree Planting Act 2003 and the Wildlife Act Cap200, the Wetlands policy and regulations, regulations on the use of hill tops and river banks. All these provide restrictions on the use of urban lands to avoid disaster situations and for purposes of environmental conservation and protection. This serves public policy objectives.

Panel discussions affirmed that the regulatory framework does exist but is clearly not enforced and thus the chaotic growth of urban areas in Uganda. Building standards and structural plans are not followed despite the existence of regulations. Failure in enforcement is marred by political interests and high-handedness from politicians, ignorance by the people and therefore their input in preparation of the plans is very low. The people will often not be consulted as they do not even know that they do have a right to participate.

6 CHANGES IN LAND USE/MANAGEMENT REGULATIONS ARE MADE TRANSPARENTLY & PROVIDE BENEFITS FOR ALL

The table below presents the findings of the LGAF indicator measuring whether changes in land use are made transparently and provide benefit for all.

Table LG1-6 Changes in Land Use/Management Regulations

| | Dimension Description | Score | | | | Score Description |
|---|-----------------------|-------|---|---|---|--|
| | | A | B | C | D | |
| 6 | i | | | | | Information on planned urban expansion and infrastructure development is publicly available with sufficient anticipation but the way in which land rights by those affected are dealt with is largely ad hoc |
| 6 | ii | | | | | Public input is sought in preparing and amending land use plans and the public responses are used by the official body responsible for finalizing the new plans, but the process for doing this is unclear or material not publicly accessible |
| 6 | iii | | | | | Less than 30% of the land that has had a change in land use assignment in the past 3 years has changed to the destined use |

LGI-6(i) Processes of urban expansion/infrastructure development are transparent and respect existing rights.

Urban expansion in Uganda is characterized by reclassification of land use from rural to urban through spatial expansion by annexing the adjacent townships and rural areas, converting farmlands and villages into urban areas. Kampala city for example has grown from an administrative township measuring 0.7Sq Km in 1902 to over 195sq km by 1968 and now estimated at about 839sqkm. Urban Expansion in Uganda is estimated at a rate of 6%p.a, which is much faster than the global rate of urbanization (Somik Lall 2012:5).

Beyond spatial expansion, administrative reclassifications have influenced the pace and magnitude of urbanization. The Local Governments Act authorizes the Ministry of Local Government to classify cities, municipalities and town councils as urban areas. This classification is followed by the gazettment of these areas. Furthermore, all district headquarters are classified as towns. For all these classifications, it is only the municipalities which require master plans, water services and capacity to provide services.

The Physical Planning Act 2010 in its Section 29 provides that the National Planning Board within 14 days after the approving the district, urban or local development plan publish in the Gazette whether or not it has approved the plan with or without modification and where the plan can be found for inspection. This is an attempt to make the process transparent. This proviso has not been implemented to date.

The growth of urban areas in Uganda has been unplanned – with high rates of spatial expansion (sprawl) and unplanned growth, lack of integration between sectoral and spatial planning, inadequate provision of basic services, weak urban management capacity and significant fiscal constraints (Somik Lall 2012:17). The land use change and management in Uganda is characterized by corruption and high handed actions of the officials. As a

consequence, congestion and chaotic development is setting in making it impossible to develop organized living environment within the towns and cities. As stated earlier, over 60% of those living in the urban areas are slum dwellers living in unplanned neighbourhoods, with poor road network, poor drainage, sanitation and waste disposal characterized by solid waste dumping in the neighbourhood and liquid waste disposal into the water sources leading to contamination water sources and increase in disease especially during the rainy season.

Part of the urban chaos is due to the lack of the urban policy and a weak legal framework. This has left the aspect of planning to individual interests and manipulation of systems and processes has been at the forefront of shaping land use restrictions. This lack of transparency has resulted in riots and violent acts in towns as the ordinary people begin to realize that they are powerless and voiceless.

Tom Goodfellow (2012) describes urban planning in Uganda as "*Planning through the barrel of the gun.*" The Ugandan urban planning situation is best described by the words of Giddens as 'the reflexive monitoring of action that both draws upon and reconstitutes the institutional organization of society'. This implies more attention to social action as a factor in determining how planning happens in Ugandan urban centres and the reproduction of formal institutional matrices relying on popular action and civil defiance; after all, 'institutions do not just work 'behind the backs' of the social actors who produce and reproduce them' (Giddens 1979: 71).

The issue of agency in the reproduction of institutions for urban planning in Uganda raises questions of power. Informal institutions are arguably reproduced and reinforced by the powerless as well as the powerful through strikes, riots and street action, even if they are not in the former's immediate interests. They may take on 'functional' qualities over time as they become 'locked in', because 'social adaptation to institutions drastically increases the cost of exit from existing arrangements' (Pierson 2000b: 492). This is the case when the President of Uganda in many instances sides with the urban dwellers especially in the big cities, leaving the technocrats making effort to enforce planning in the cold.

Examples were given in the panels of infrastructure development in major towns and Kampala where people are not involved in the preparation phase and are only made aware when infrastructure expansion begins to happen by the surveys carried out. At that point is when issues arise as to how they might be affected and what kind of compensation will be paid to those affected.

Kampala city has got an approved plan, but it is not widely publicized and thus keeping all the residents in ignorance. This impacts on infrastructural development which in most cases than not opposed by the city dwellers.

LGI-6(ii) Changes in urban land use plans are based on a public process with input by all stakeholders and benefit sharing

In Uganda, power relations have evolved in a manner that there is less scope for the powerful to exercise either total domination or 'three dimensional' power, state-society conflict is overt and may be expressed through a politics of 'noise.' The interesting point about this sequence of events is not that there was corruption and elite collusion in the sale of the market lease, or that vendors were angry about it, neither of which is surprising. The point is the way in which rioting became almost the 'normal' mode of political interchange through which a large group of urban-dwellers participated in engagement with the state. As it became evident that rioting was more effective than complaining to the City Council, there were clear incentives to riot; yet at the same time, rioting was not effective enough to end the matter once and for all, causing incentives for more riots to win further attention and concessions. The government's decision to respond with both fire power and public rhetorical interventions in vendors' favour was a way of both subduing and conciliating them without actually giving too many concessions. Vendors' expectations that government would respond only to riots, and government expectations that a limited response would suffice to placate the vendors, have both perpetuated rioting as a form of political dialogue.

In the smaller urban areas, the relatively powerless often continue adhering to, and thereby reinforcing, existing norms that are seemingly detrimental to them, even in the absence of overt coercion. Whether this happens because they are deceived as to their 'real' interests, or because they find it expedient to conform but are actually resisting internally, has been a subject of much debate. The urban dwellers even though excluded from planning and decision making processes regarding urban planning seem aloof and mere observers of developments in their locality.

Despite all these challenges that emerged, the issues paper for the development of the Urban Land Policy (MLHUD 2013b) does not consider lack transparency and participation of urban dwellers and stakeholders as challenges to urban planning requiring policy response. It still considers urban planning as a technocratic top-down process with skewed power relations, where it is only the state that knows what is good for the citizen. The issues paper only considers the technical aspects of urban planning and not integrated planning and decision making that takes into account the interests and needs of the society that makes up an urban area. The only mention of stakeholder participation is in the final chapter of the draft National Urban Policy (MLHUD 2013c) in which it is required that simplified versions be distributed to all stakeholders and the inclusion of stakeholders in

the preparation and implementation of subsequent plans and programs of the Urban Policy. Moreover, the definition of stakeholders is restricted to Ministry Departments and Agencies, Development Partners, Private Sector, the Academia and Civil society organizations. There is no stake for the urban dwellers and the community that makes up the urban area to participate in planning processes irrespective of the fact that they shape the development path and shape the fabric of urban space.

It is most probable that the Urban Policy when developed will have little or no significant effect in improving urban planning because of the non-consideration of transparency and participation as important ingredients to sustainable urban planning, development and growth. Communities largely influence the development path and fabric of urban space. Disregarding their participation works to the detriment of urban planning and development.

Technical staff from the Ministry of Lands, Housing and Urban development however explained that the reason for limited participation is because planning is a very technical subject and it would cost a lot for the government in terms of time, human resource and money to ensure that there is meaningful participation. All three elements are currently lacking so there is no way to have participation improved in the current circumstances.

Where consultations have been made, local governance structures are used with the hope that they will take back the information to their constituents. The cost of public mobilization and facilitation is really high and unaffordable.

Furthermore, it was noted at the panels that women often shy away from these consultations probably because they assume it is “a man’s issue” and they have very little or no value addition in the process. Planning therefore loses the gender dimension and focus.

LGI-6(iii) Changes in assigned urban land use are swiftly followed by actual land use changes

Undertaking physical planning requires huge sums of money to compensate the informal settlements in order to ensure that the changed land use can be developed according to the plans. Furthermore, there is need to compensate land owners of areas designated through planning for public facilities such as roads, public open spaces, public health facilities, e.t.c. Local governments do not have the budgets to undertake these compensations and therefore forfeit planning altogether.

As a result, the outcomes of urban management in Uganda are unpredictable. Planned outcomes are often not achieved because urban areas develop as a result of millions of

consumption and production decisions by different individuals, groups and organizations. It is common to find pockets of well planned, services, developed and managed neighborhoods, industrial parks or transportation corridors (TAHAL 2005:37) amidst widespread impoverishment. Successes in urban services delivery can be found in smaller secondary towns dotted all around the country especially where the urban managers and political leadership is keen to see planned and sustained urban growth and development. The larger part of urban development in Uganda is occurring largely informally with inadequate planning and regulation (Lwasa & Kadila 2010:30).

The failures in urban planning are due to a myriad of issues including lack of resources and regulation enforcement. However, it is also true that those engaged in urban planning have neither been well linked to the values of planning and urban development nor to the knowledge bases that guide development (Lwasa 2006:36). This has resulted in urban development occurring largely informally with no service provision.

Panel discussions revealed that land use changes are never communicated to the current land users. An example was given on Nakasero Hill in Kampala city that has its land use change from residential to commercial. However, this change was never communicated and people have continued to reside in the area and even build residential houses in this area.

Furthermore, Land use change implementation depends on the implementer. If it is private sector driven, land use change always happens quite quickly compared to if it is Government proposing the land use change.

7 LAND USE PLANS ARE CURRENT, IMPLEMENTED, DO NOT DRIVE PEOPLE INTO INFORMALITY, AND COPE WITH URBAN GROWTH

The table below presents the findings of the LGAF indicator 7 which has four dimensions.

Table LG1-7 Land use plans

| | Dimension Description | Score | | | | Score Description |
|---|-----------------------|-------|---|---|---|--|
| | | A | B | C | D | |
| 7 | i | | | | | There is a policy for low cost housing & services but implementation has major gaps so that the number of those with inadequate shelter actually increases |
| 7 | ii | | | | | In the largest city, while a hierarchy of regional/detailed land use plans is specified by law, in practice urban spatial expansion occurs in an ad hoc manner with infrastructure provided some time after urbanization |
| 7 | iii | | | | | In the four major cities in the country, while a hierarchy of regional/detailed land use plans is specified by law, in practice urban development occurs in an ad hoc manner with infrastructure provided some time after urbanization |

| | | | | | | |
|---|----|---|--|--|--|--|
| 7 | iv | Urban planning processes are well suited to cope with future urban growth | | | | In the largest city, the urban planning process/authority cannot cope with the increasing demand for serviced units/land as evidenced by the fact that almost all new dwellings are informal |
|---|----|---|--|--|--|--|

LGI-7(i) A policy to ensure delivery of low-cost housing & services exists and is progressively implemented

There is no policy on law cost housing. However, the Draft National Urban Policy (MLHUD 2013c). Issue 17 (MLHUD2013b:14) estimates that currently Uganda has approximately 1 million households living in 4.5 million housing units with an average of 4.7 persons. The national occupancy density is estimated at 1.1 households per housing unit, giving a total national backlog of 612,000 housing units. At national level, there is a backlog of about 1.6 million units of which 211,000 units are in urban areas and 1.295 million units are in rural areas.

According to UBOS (2006), the urban areas have a total housing stock of 700,000 housing units with a backlog of 153,000 housing units compared to the rural areas with a stock of 4,580,000 housing units and a backlog of 458,000 housing units.

Panel discussions revealed that there is actually a housing policy under review that includes the provision of low cost housing. A copy of the policy was not however readily available for reference. The mandate to provide housing used to rest with the National Housing and Construction Corporation. Since privatization was embraced in the 1980s, the role of the National Housing and Construction Company changed to doing business and no longer providing affordable housing. The National Slum Upgrading Strategy exists but requires financing if it is to deliver on its mandate.

LGI-7(ii) Land use planning effectively guides urban spatial expansion in the largest city

Home to 1.6 million, Kampala dominates the urban landscape, accounting for one-third of Uganda’s urban population, Uganda has started its journey into urbanization and economic development. The pace of urbanization is picking up – currently at 4.5% per year, and likely to accelerate with rising incomes. The urban population is projected to increase from 13.3 million in 2010 to 20 million in 2030 (Somik Lall: 1).

The process of urban expansion is not unique to Uganda or the Kampala Metropolitan Area. Figure 4 shows Kampala’s spatial expansion between 1995 and 2001 where suburban built up area has come up on previously open rural space. Urban expansion – measured by the change in built up area is around 6 percent annually, which is faster than either the regional or global pace of urban expansion. However, average densities have declined much

slower -- at around 2 percent annually (suggesting redevelopment within the city), which is faster than regional trends but in line with what is happening globally (Somik Lall: 5).

The fast rate of urban growth is not matched by urban planning which has led to sprawling development of Kampala. Development has been guided more by infrastructure and industrial development in the country that dictate the economies of scale rather than spatial planning.

Panel discussions revealed that Kampala does have a plan, but this does not guide spatial planning simply because enforcement mechanisms are weak. The towns neighbouring the city such as Kira Town Council does not have a plan. This leads to sprawling and uncontrolled developments to emerge. As such many times people settle in areas without infrastructure plans. Roads and other infrastructural developments often are provided long after settlements are established. This creates problems of sewerage disposal and lack of easements for electricity and water services.

LGI-7(iii) land use planning effectively guides urban development in the 4 next largest cities

The next largest town is Kira with 179,000 located barely 4 kms from Kampala's CBD¹². The Northern cities of Gulu and Lira are two other cities with more than 100,000 people and Mbale. The skewed distribution of city sizes is of considerable concern to policymakers who would like to stimulate growth in small and medium sized cities. However, this pattern of city sizes is not an outlier, but an empirical regularity across countries and over time (Somik Lall: 6).

Urbanization rates in Uganda are higher than official estimates if one considers an alternate measure – the Agglomeration Index, which considers density, urban size and proximity to the urban center. In fact, this can be thought of as the shadow of the core urban area – with vibrant economic and social interactions with the urban core. The agglomeration index does not use statistical definitions of urban areas. It instead uses three indicators to estimate the level of urban concentration in a country or region – population density, the population size of large urban centers, and travel time to the nearest such urban center (Uchida and Nelson 2008). Using this index, Uganda's urbanization moves up from 13 percent to 25 percent using proximity to cities of 50,000 people; however the index drops to 14 percent if cities of 100,000 or more people are considered

There is absence of physical development plans for most of the urban centres in Uganda. Over 100 urban centres in have no maps to guide their planning. The lack of up-to-date information including topographic maps, cadastre information and land tenure maps impacts on the ability to have controlled development of urban areas (MLHUD 2013b:60). Formulation of physical development plans requires competent and qualified staff. The

majority of districts lack competent staff and equipment to undertake planning. The use of GIS for planning is a foreign concept and manual approaches are still being used by some districts. Limited qualified personnel, materials, equipment, planning, implementation, resource mobilization and management, coordination, monitoring and evaluation of the implementation of urban development initiatives are a detriment to controlled and organized urban development. This is compounded by lack of coordination among sectors mandated to carry out planning. Key among these is the urban local governments, the District Local governments, Ministry of Local Government and Ministry of Lands, Housing and Urban Development.

Panel discussions affirmed that the next four are towns and not cities. Uganda's Vision 20140 makes mention of four cities but these are not named. This regardless, there is an ongoing World Bank Project whose main objective is to link planning to infrastructure development. 14 municipal councils are benefiting from this project. The main challenge experienced by this project is land acquisition for infrastructure development. The cost of this is a deterrent to many of the municipal council's implementation and achievement of project goals.

LGI-7(iv) Urban planning processes are well suited to cope with future urban growth

The Fundamentals of urban planning is that it should meet the needs of the population or enable people to innovate and meet their own needs. Urban land use planning processes in Uganda have been challenged by population growth rate, management and governance challenges.

The emerging rapid increase in the urban population is not matched with growth and development in the basic physical infrastructure, housing, social amenities, management and skills. This has led to overcrowding, sprawling development of slums and informal settlements, dilapidated housing and poor sanitation. The quality of the urban environment is being degraded due to the proliferation of informal settlements and slums, industrial emissions and effluent, deforestation and uncontrolled soil erosion.

There is lack of integration of physical planning with socio-economic planning arising out of a low appreciation of the significance of land use planning and this has led to the increase in informality and disorderly urban development in Uganda. Whereas physical planning provides a spatial framework for development of urban centres, socio-economic planning ensures that there is adequate allocation of human, technical and financial resources to support the implementation of the physical development plans. There is absence of good will from the political leadership to commit financial resources to physical planning. While many of the old districts have structure plans, there is lack of institutional capacity and technical and financial resources to implement them. In many instances,

Development has preceded planning and thus uncontrolled the sprawling urban development (MLHUD 2013b:12).

Furthermore, undertaking physical planning requires huge sums of money to compensate the informal settlements in order to ensure that the changed land use can be developed according to the plans. Furthermore, there is need to compensate land owners of areas designated through planning for public facilities such as roads, public open spaces, public health facilities, e.t.c. Local governments do not have the budgets to undertake these compensations and therefore forfeit planning altogether.

Panel discussions revealed that very few people go through the process of formalizing housing. Furthermore, most of the lands are serviced by the parcel owners and not by the local administration. This is because the local administration does not have the human and financial capacity to service parcels within the city neither can it cope with the demand for services. Lots of new slums are mushrooming in the city. Furthermore, the work of the local administration is heavily influenced by politics that undermines their work. Examples of these are the Acholi quarters in the Kiwanataka area, the Luzira Landing Site and all of which have attracted media attention in 2013 when the Kampala City Authority sought to enforce development plans.

8 DEVELOPMENT PERMITS ARE GRANTED PROMPTLY AND BASED ON REASONABLE REQUIREMENTS

The table below presents findings of the LGAF on the above indicator.

Table LG1-8 Development permits are granted promptly and based on reasonable requirements

| | Dimension Description | Score | | | | Score Description |
|---|-----------------------|-------|---|---|---|---|
| | | A | B | C | D | |
| 8 | i | | | | | Requirements to obtain a building permit are over-engineered technically and not affordable |
| 8 | ii | | | | | All applications for building permits receive a decision within 3 months |

LGI-8(i) Requirements for residential building permit are appropriate, affordable & complied with.

There is no readily available information stipulating the obtaining residential building permits. Most processes followed is the approval of building plans. The procedure is neither clear nor defined for the general public. This makes it not easy to assess.

Panel discussions however revealed that the requirements for building permits are over-engineered and are too bureaucratic that ordinary people would rather avoid going through the processes. In the past, 1980s to early 1990s, building permits were issued and procedures were followed. These are currently non-functional and there is no clear explanation for the dysfunctionality of this service.

LGI-8(ii) A building permit for a residential dwelling can be obtained quickly and at low cost

Section 32 of the Physical Planning Act places a duty on the physical planning committee to prohibit or control the use of land and buildings in the interest of proper orderly development of its area. Section 33(1) then requires a developer to obtain development permission from the physical planning committee of the area prior to commencing development. The committee's approval is subject to the physical development plan, development intensity and the land use of the area.

Despite these legal provisions, there are no regulations in place to stipulate the detailed procedures. The law is quiet regarding timeframes. This makes it difficult to obtain the development permission. Experience in Uganda is such that upon lodgment of applications and the acknowledgement of receipt of the lodgment by the physical planner, development commences. Many buildings have been complemented without the approval of plans and issuance of development permits. The alternatives available to many developers are to pay bribes to speed up the process and even then it takes a minimum of six months to receive the approval to develop.

Given the growing informality, there is evidence in most urban centres of developers building at night and during weekends to avoid law enforcement. Once the building is erected, it becomes difficult for the planning committee to erase it.

On a regular basis, it is commercial premises in the city centre that acquire development permits prior to commencement of development. This flaw in the system has resulted in the collapse of several buildings across the city of Kampala. In just 2013, a total of five buildings collapsed in the city centre leading to death of over 30 people.

Panelists gave experiences in approval of building plans saying corruption is at the center stage. The rigour that was employed in the 1970s and 80s in the approval of building plans is completely absent today. Job cards used to take 2-3 days to be issued. Today it takes forever if one is not a person with great political influence or with money to pay. Physical

planning committees are not as effective as the Councils used to be when they had the mandate to approve plans. This has resulted into many developers commencing construction with no approvals given.

9 TENURE REGULARIZATION SCHEMES IN URBAN AREAS

The table below presents the LGAF findings on tenure regularization schemes in urban areas. Three dimensions are investigated.

Table LG1-9 Tenure regularization schemes in urban areas

| | Dimension Description | Score | | | | Score Description | |
|---|-----------------------|--|---|---|---|-------------------|--|
| | | A | B | C | D | | |
| 9 | i | Formalization of urban residential housing is feasible and affordable | | | | | The requirements for formalizing housing in urban areas are such that formalization is deemed very difficult |
| 9 | ii | In cities with informal tenure, a viable strategy exists to delivery tenure security, infrastructure & housing | | | | | Existing regulations do not provide incentives for new informal occupations and a strategy exists to regularize land rights and provide services to existing informal occupants |
| 9 | iii | A condominium regime allows effective management and recording urban property | | | | | Common property under condominiums is recognized and the law has clear provisions for management and publicity of relevant records but these are not always followed in practice |

LGI-9(i) Formalization of urban residential housing is feasible and affordable

There are many initiatives and interventions in the urban sector by different actors/stakeholders e.g. government agencies at both national level and local government level; development agencies, donors, NGOs, CSOs, CBOs and the Private Sector which impact on slum/informal settlement issues. Through Public Private Partnerships, government with support from donors and the private sector has undertaken the following housing projects to meet the housing needs of the urban poor:

- I. Under the DANIDA-Masese Women's Self Help Project, 400 houses have been constructed out of the planned 700 for residents in Jinja;
- II. A total of 460 houses have been constructed, out of the planned 484, for residents in Mbale under the Malukhu slum-upgrading Project;
- III. Under the Oli Housing Project of Arua, a total of 156 houses have been constructed;
- IV. The UN-Habitat-Mpumudde Housing Project constructed for women in Mpumudde Division in Jinja Municipality.
- V. Namuwongo slum upgrading and low-cost housing project in Kampala.

These projects have benefited about 2000 households of whom 30-37% are female households(MWHC:2003).

The general pattern has been to plan the settlements for redevelopment and service these settlements with roads, piped water, electricity, sanitation facilities and social services like healthy facilities and schools. The beneficiaries are allocated land with MLHUD title deeds and given loans to construct their houses.

They are mobilized at community level to ensure full community participation in planning, implementation and management of the project activities.

According to the Ministry of Works, Housing and Communications³¹, the implementation of the upgrading projects has resulted in the following benefits:

- (i) improved housing conditions, improved access to services;
- (ii) increased opportunities for income generation;
- (iii) increased employment opportunities;
- (iv) increased security of tenure;
- (v) increased stability of the population and social cohesion;
- (vi) increased sense of belonging, dignity and assertiveness;
- (vii) increased propensity to save and invest;
- (viii) reduced morbidity and mortality rates;
- (ix) improved quality of the urban environment;
- (x) increased values of land;
- (xi) higher development potential as more developers are attracted to the settlements; and
- (xii) Increased market for various products.

The Housing and Urban Indicators Programme, which has been running through the Department of Human Settlements for now over 10 years should be having useful information on housing conditions, urban conditions, access to basic urban infrastructure and services which is critical in designing strategies for slum/informal upgrading and monitoring the progress in implementing these strategies. The newly created Department of Urban Development has embarked on an urban sector profiling exercise, compiling information about the urban situation throughout the country. The end product will be a national urban development bank which can be used to plan strategies for slum upgrading (MLHUD 2008b:30)

In addition to the above, Government, through the Department of Human Settlements, in collaboration with Slum Dwellers International (SDI), started in 2003 a Slum Upgrading Program (SUP) in 3 parishes in the Central Division of Kampala City (Kisenyi I, Kisenyi II and Kisenyi III) and 6 other slums in Jinja Municipality. The SUP is comprised of the following major components:-

- (a) Slum profiling and household baseline survey (i.e. collecting data pertaining to slums)

- (b) Conducting housing demonstrations
- (c) Carrying out exchange programs
- (d) Mobilizing slum dwellers communities into saving and loans schemes
- (e) Conducting sensitization exercises
- (f) Infrastructure development

It should however be noted that these are donor funded projects. It is however not clear how the above processes happen outside projecterised funding as there are no clear procedures for the formalization of housing should an individual; or community seek to do so.

Panel discussions posed a main challenge of all the housing projects being project driven rather than demand driven. Thus, the Government cannot on its own develop housing outside external support or funding. This poses a challenge on the future of housing in Uganda if there is no deliberate move by Government to address the problem.

LGI-9(ii) In cities with informal tenure, a viable strategy exists to delivery tenure security, infrastructure & housing

The Ministry of Lands, Housing and Urban Development under the Department of Human Settlements developed the National Slum Upgrading Strategy and Action Plan in 2008.

The development of the National Slum Upgrading Strategy in Uganda is primarily driven by recognition that actions related to slum-upgrading, environmental management, infrastructure development, service delivery and poverty-reduction at large cannot be achieved unless there is a direct recognition that slums are a development issue, which needs to be faced.

The aim of regularizing tenure in slum areas is to confer de jure security of tenure for land owners and de facto security of tenure for occupants and tenants. While recognizing the complexity of land relations within slum settlements and in order to mobilize these hidden resources, effort will be made to achieve sufficient tenure security (real and perceived) through sustainable, practical and socially progressive ways of improving tenure security and rights. There are five issues that the strategy considers to respond to tenure security infrastructure and housing.

Issue 1: In dealing with land tenure, this Strategy will emphasize three aspects which are key in upgrading;

- (a) Beneficiary identification; with accurate knowledge of land ownership patterns and existing tenure conditions of possible beneficiaries. Good processes of land ownership analysis, beneficiary selection and subsequent tenure arrangements must prevent local speculators, wealthy landlords and non-residents from surreptitiously taking

undue advantage of slum development and diverting limited resources away from the intended beneficiaries.

- (b) Establishing the Legal status; who owns the land? Is it owned by the local government, or a government agency, or a traditional authority? Is it in the absolute ownership of a few absentee landlords? Has it been leased to private landlords by a public agency, and is it now informally squatted upon by the slum dwellers? If informal land markets exist, how do they work? Is some of the land under customary or traditional administrative structures? Does all the land fall under a single ownership pattern? If not, what are the different patterns?
- (c) Cost of the land for accommodating tenure for slum dwellers on private land is much higher than it is on public lands. One method of easing this burden is to average out the effective costs of public and privately-owned squatted land – either on a site-by-site basis or lowering official valuations of squatted land, or conversely, allowing private owners to transfer development rights to other properties. To the extent possible efforts will be made to control land markets and to curb resident displacement or rising rents.

The strategies included in the National slum Upgrading strategy are (MLHUD 2008b:36):

- a. Participatory land ownership and tenure analysis and beneficiary selection that is participatory and transparent and allowing communities to be consulted to verify 'official' census data. The beneficiary selection process may also include an assessment of beneficiaries' willingness and ability to pay for better tenure and upgraded services.
- b. Participatory Poverty mapping exercises, environmental and infrastructural assessments, and socio-economic surveys result in an updated census enlisting those households and individuals who are the intended beneficiaries of the comprehensive upgrading project.
- c. Offering recognizable rights to land and housing; where possible ensure legalization of tenure in accordance with existing land laws of Uganda.
 - i. where a slum is situate on privately owned land, compensation, land sharing and readjustment or land swaps will be encouraged
 - ii. where a slum is situate on customary land, efforts will be made to identify the various levels of claims and interests ranging form ownership, use and allocative rights of customary holders and adapting them (with their attendant customary

- rules) to embracing upgrading initiatives by innovatively supporting the creation of occupancy interests in the form of urban access and urban use rights
- iii. Offer slum residents priority for relocation to sites that offer employment opportunities and access to urban services
 - iv. Allow for direct tenure transfer where beneficiaries negotiate with the landowner and procure their tenure rights individually and directly. In such cases the upgrading agency or the local government or urban authority should act as a legal broker and guarantor between the two parties. This option is ideal when tenure transfer happens after upgrading is completed.
- d. Simplifying land tenure regimes using intermediate forms of legal recognition in accordance with existing land titling laws of Uganda, this include but are not limited to;
- i. Community ownership of the entire project site by the community or group title administered through project specific land committees as a buffer against premature sale of titles in order to cash in on property, this ideal when land is privately owned, and when individual beneficiaries' ability to negotiate with landlords is weak.
 - ii. Arranging for staged process of legislation with initial recognition granted to an upgrading site and individual titles or parcel will be completed later.
 - iii. Freehold and outright sale of land with or without a mortgage especially in areas where the land costs are very low, and the beneficiaries' ability and willingness to pay is high.
 - iv. Leasehold agreement, granting beneficiaries a long-term rental of the land and services at affordable prices. This might include an option to purchase the land within a specific period of time of continued and uninterrupted occupancy.
- e. Upgrading in some instances will inevitably require Government to purchase land for upgrading and resettlement purposes. Land banking is a possibility even though it is costly and administratively difficult.
- f. Providing assurance on investments made on land or housing against confiscation or demolition or eviction.

- g. Slum upgrading should consider environmentally sensitive areas and discourage relocation of settlements in ecologically sensitive areas.

Issue 2 : Regulatory frameworks directly affect the ability of poor households to access land and housing through legal channels. High planning and building standards have both direct and indirect impacts on development costs. Often, the poor and sometimes even middle-income households cannot afford to conform to official standards.

The key strategies here were to review of the regulatory framework, which is the single most effective tool for reducing future slums and unauthorized settlements. It is essential to make sure that the regulatory framework does not impose unrealistic or unachievable requirements, making access to legal housing cheaper and easier by (MLHUD 2008b:38):

- a) Relating plot sizes to those found within unauthorized settlements will be a basis for revising minimum planning standards with the involvement of communities who live in these settlements.
- b) Reducing road reservations to the minimum consistent with safe circulation.
- c) Permitting the most efficient use of available land, by relaxing constraints on the forms of development and uses to which people can put their plots.
- d) Simplifying planning procedures so that conformity is easy and affordable. Such as basic standards for all, in ways that can be upgraded later, are preferable to high standards now for a minority.
- e) Identifying specific factors impeding legal and affordable access to land and housing, so that revisions can be made when and as required.

Issue 3: Increasing the supply of affordable land for the Urban Poor is important to stem the growth of new slums. Such pro-active response will require the preparation of a Site Development Briefs for local governments or urban authorities to initiate proposals without having to seek recourse to unpopular, time consuming and inefficient land acquisition and development procedures.

The Slum upgrading strategy and Action plan envisages the following techniques(MLHUD 2008b:39);

- a. Urban Land pooling³³ and Land Readjustment³⁴ for managing and financing urban land development. Local or central governments undertake projects to assemble and convert the rural land parcels in selected urban-fringe areas into planned layouts of roads, public utility lines, public open spaces and serviced building plots. Some of the plots are sold for project cost recovery and other plots are distributed to the landowners in exchange for their rural land parcels.

- b. Public-Private Partnerships or more comprehensive Multi-Stakeholder Partnerships under such arrangement are best introduced through pilot projects, as an opportunity for all stakeholders to experiment with and learn from new approaches.
- c. Local Development Plans (for Local governments and Urban Authorities) provide a coherent framework within which land-owners can subdivide their parcels and make a reasonable profit. In areas where customary systems of land management ownership exist, it is advisable to incorporate the traditional leaders into the planning and decision-making process to ensure social legitimacy to proposals.
- d. Creating an efficient land use plan within new urban developments, and keeping in mind the existing land use patterns and transportation networks. It is better to integrate the new development into the existing urban fabric.
- e. Tenure policy also exerts a major influence on access to land and housing. Measures include;
 - i) Encouraging a range of tenure options so that all sections of demand can be matched with appropriate supply options.
 - ii) Private rental housing is often a vital option for very poor households and provides valuable rental income for households

Issue 4: In the past there has been inadequate human settlement planning both in the rural and urban areas which has resulted not only in haphazard development in urban areas, but also wasteful and inappropriate settlement systems and patterns. The biggest problem is that the growth of housing has been left to market forces which don't favor massive investment in affordable shelter. Policies in place and those still in formulation are yet to adequately cater for the needs of the urban poor and respond to the deteriorating situation in slums or even remarkably stem their endemic growth. It is therefore important that(MLHUD 2008b:40);

- (a) The strategy creates conditions in which all sections of urban society, especially the poorest and most vulnerable, can obtain access to legal, affordable and appropriate shelter in ways that prevent the need for future slums and unauthorized settlements
- (b) The regularization of existing slums takes care of the additional demand of the additional poor expected to live in the urban areas. Planning for future urban (new) settlement is less expensive than upgrading consolidated informal settlements.

This strategy lays emphasis on governments, local governments and urban authorities, puts in place a framework of planning and urban management that creates pluralistic

systems of supply (housing and infrastructure) which can respond to a range of, and to variations in, demand and needs. The role of the Government in this context will be to create and maintain a 'level playing field' in which different suppliers of housing, services, credit and building components can compete on equitable terms and to extent possible encourage investment in affordable housing for the urban poor and in the slum areas. Accordingly, it implies the following;

- a) Revisiting and enforcing standards and administrative procedures to reduce entry costs and accelerate the supply of new legal development.
- b) Making sure land and housing prices are within the ability of all sections of society to pay for them, by balancing supply to demand, and for subsidies to be carefully considered and targeted, this can be achieved through preparation of a land budget, to assess how much land will need to be urbanized over a 10 and 15 year period, based on population growth estimates and other trends such as employment and transportation in all urban areas.
- c) In preparing a land budget and assessing the amount of land required 7 inputs or key considerations are factored;
 - i. The projected demand for commercial and industrial land and the demand for land for new housing development.
 - ii. Density levels for specified types of housing and other land uses - based on minimum official plot sizes, occupancy levels, and road widths.
 - iii. Requirements for communal facilities such as schools, clinics, religious sites, public open spaces, etc, at central and neighborhood levels.

- iv. Topography and ground conditions: these include consideration of issues such as steep slopes, load-bearing capacity, and vulnerability to flooding.
 - v. Accessibility of available land.
 - vi. Public transportation networks, location of economic activities, and
 - vii. access to physical and social infrastructure.
- d) A major component of the land budget will be to understand the need for new housing. This involves preparing a Housing Needs Assessment. This needs to be prepared for the same time periods as the Land Budget, say for 10 and 15 years
- i) The replacement of existing units which will have fully depreciated during the plan period, estimates need to be made over a reasonable period.
 - ii) The upgrading and replacement of deficient units whose upgrading are not economically feasible; a large proportion of substandard housing can usually be improved, providing the owners feel secure and have access to credit.
 - iii) Estimating the proportion of the existing housing stock which can be upgraded where this is economically feasible.
 - iv) Estimating the nature of housing needs because not all households want, or can afford, the same type of housing. Affordability will be largely determined by incomes, though savings may also be relevant.
 - v) Additional housing expected to be provided on newly urbanized land in the urban periphery.

Issue 5: The rapid urbanization however, has not been matched with capacity to plan and manage the urban growth. With inadequate capacity to plan, guide and enforce development control, besides managing the present levels of urban growth, it is envisaged that the informal settlements will become more densely populated and new squatter settlements will mushroom on marginal lands such as wetlands, hill slopes and forest reserves. The growth and expansion are associated with lack of infrastructure, social services and pose planning and environment problems. In general, the present condition of urban infrastructure is poor, the services provided are inferior and the financing systems for infrastructure and services are inadequate.

The strategy is premised on the thinking that slum residents are willing to pay for the services they value most, this is a proxy indicator for demand. Therefore(MLHUD 2008b:41);

- a) Urban infrastructure and services will be designed to allow for incremental upgrading as poor communities improve their incomes and capacity to pay for services increases.

- b) In the event of resources constraints, single-sector interventions in services will be encouraged as opposed to a full range of services (i.e. roads, water, sanitation, drainage, solid waste, electricity etc)
- c) Assessment of willingness to contribute to infrastructure services and costs by slum residents, provided they are availed adequate information regarding trade-offs will be a key ingredient of slum upgrading interventions.
- d) Partial recovery of costs in infrastructure services intervention is critical. Beneficiaries and targeted users will explicit within planning and execution of upgrading schemes to sustain basic operations and for maintenance, not exceeding 10% of total infrastructure costs.
 - i) These costs need not be made up-front payments but rather introduced in an incremental manner.
 - ii) Government, Local Governments and Urban Authorities will provide the necessary political will to support cost recovery initiatives in upgrading areas
- e) Mainstreaming the delivery and maintenance of upgrading services for slums in urban authorities and local governments' plans, departments and resources.
- f) Community led and demand led approaches should be used to prioritize and influence the content of initiatives and to weigh on standards and services options to ensure acceptability and enhanced demand responsiveness.
- g) Government and Urban Authorities support initiatives by slum organisations by adopting a more 'enabling' approach to the delivery of basic services accessible to the poor through the more effective mobilisation of community resources and skills to complement public resource allocations.

LGI-9(iii) A condominium regime allows effective management and recording urban property

The Condominium Property Act No. 4 of 2001 was developed to provide for the division of buildings into units and common property; to provide for individual ownership of those units by issuance of certificates of title in relation to the units, to provide for ownership of common property by proprietors of units as tenants in common and to provide for the use and management of the units and common property.

Section 2 of the Condominium Property Act provides for the possibility of a developer wishing to break down the building into units does prepare a condominium plan and present it for registration. The registrar upon receipt of the application for registration or a condominium plan closes part of the register relating to the parcel described in the plan and opens a separate part for each unit described in the plan and upon payment of the prescribed fees issue a certificate of title in respect of each unit (Section 3).

Part IV of the Act provides for the management and use of the condominium property. Section 19 provides for the formation of a corporation of persons who own units in the parcel to which a condominium plan relates. Section 20 details the functions of the corporation, key among which is to manage the common property that is endorsed on the plan as such. Common property is defined by the Act as that part of the condominium property which does not belong to any specific unit and which is used in common by the owners of the units and includes, without prejudice to the general effect of the foregoing, the land on which the property is situated, support structures, infrastructure and services (Section 1).

To fulfil this duty, the corporation may appoint managing agents (Section 28) but must have annual general meetings of the corporation (Section 27). The Act further provides for penalties for non-compliance with the rules governing the corporation. This makes the set structure self regulate due to fear of punitive measures (Section 30).

Panel discussions gave practical examples where this law is being implemented and working effectively in Kampala City. Titles have been issued for condominium of Bukoto, Bugolobi, Wandegaya and Buganda road. These have management bodies to oversee the management and use of the commons. Wandegaya flats in particular is a model condominium as it greatly improved when the properties were divested under the condominium law. Bugolobi straggles with the management of the commons. The differences between the two condominiums lies not in the weaknesses of the legal framework, but the management of the condominiums and there is a need to study this further.

PANEL 4: PUBLIC LAND MANAGEMENT

The LGAF defines public land as land in the custodianship of the state, municipality, or local authority, as opposed to private land.

Public land in Uganda has evolved with the land question in Uganda, a process which has always been at the centre of the constitutional and legal discourse. The result is that land

issues are mired in a bed of complex constitutional structures and processes, drawing legitimacy from historical as well as contemporary political exigencies. Today, the mention of Public land in Uganda is foreign. A brief background to this evolution is herein below.

The 1900 agreement between the Kingdom of Buganda and the British Crown created a system of land registration for the kings of the main tribes thus Buganda, Tooro and Ankole to a quantum of known sizes. The rest of the land in Uganda was expressly declared 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 asserted the right to control the management and use of land, a power that was previously vested either in communities or in the political functionaries of such communities. These changes were accompanied by an elaborate system of land administration, which included, in the case of Buganda, a system of land registration purporting to confer indivisible title to the Buganda King, his Princes and other landlords.

Upon the attainment of independence in 1962, the Government of Uganda retained the system of land tenure introduced by the colonial government declaring all former crown lands public land in 1969, with an Act of Parliament, the Public Lands Act to govern its management. In 1975, however, the Government of President Idi Amin issued '**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 individuals held these.

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 and included customary tenure as formal tenure in Uganda. 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 in its Article 237(1) 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. It further stated that all leases out of former public land could be converted to freeholds and abolished the powers of the former controlling authorities to administer public land, instead creating a decentralized

land management system in which the District Land Board facilitate the registration of land and own land in a district not owned by anybody. The Uganda Land Commission was created to manage and administer Government Land. In the language of the 1995 constitution, public land was no more.

The authority to regulate the ownership, administration and use now vests in agencies of the government, consisting of Ministry of Lands, Housing and Urban Planning, land boards in every district, NEMA. Etc. The Constitution also made it clear that District Land Boards were to operate independently of it (the Constitution?) and would not be subject to the direction or control of any person or authority. They were, however, expected to be guided by national policies and regulations set by the central government and district council policies on land.

The Constitution, thus, reaffirms the sovereign authority of the State to make laws regulating the use of land. It also enjoined Parliament to enact a specific law regulating the relationship between occupiers of land held by users under Mailo, freehold or leasehold land so as to ensure security of occupancy to them and to provide for the acquisition of registerable interest in land. That obligation was discharged in 1998 through the enactment of a Land Act which further clarified the content of the various categories of tenure created by the Constitution, provided for the nature and exercise of the police power of the state, and set out in detail the powers and functions of land boards and tribunals.

Implications of the abolition of Public land and how the land policy development process attempted to address the issue

The National Land Policy Consultative processes generated a common stand throughout Uganda with regard to the public land/ government land issue. It became apparent that over the years, the state and local governments have demonstrated systematic arbitrariness, inefficiency, and lack of transparency in the exercise of these powers, at the risk of some communities becoming landless and in continuous land conflicts with their neighbors. The state therefore became both an inefficient land manager and a predator on land which belongs to ordinary land users. In particular, the constitutional and legal framework lacked clarity on:

- implications of shifting the *radical title* to land from the *State* to the *citizens* of Uganda at large;
- proper *role of the central governments* and local governments in land use and development control (the police of the State);
- land taxation;
- scope and exercise of the power of compulsory acquisition;

- Control and management of public land and government land;
- doctrine of public trusteeship;

10 IDENTIFICATION & MANGEMENT OF PUBLIC LAND

The table below presents the LGAF findings of indicator 10 which has six dimensions.

Table 3 LG1-10 Identification of public land and clear management

| | Dimension Description | Score | | | | Score Description |
|----|-----------------------|-------|---|---|---|---|
| | | A | B | C | D | |
| 10 | i | | | | | Public land ownership is justified by provision of public goods at the most appropriate level of government but management may be discretionary |
| 10 | ii | | | | | Between 30% and 60% of public land is clearly identified on the ground and on maps |
| 10 | iii | | | | | All the information in the public land inventory is only available for a limited set of public property and there is little or no justification why records are not accessible |
| 10 | iv | | | | | The management responsibility for different types of public land is unambiguously assigned but this is not always consistent with objectives of equity and efficiency or institutions are not always properly equipped so that sometimes these are not achieved |
| 10 | v | | | | | There are significant constraints in the financial and/or human resource capacity but the system makes effective use of limited available resources, with limited impact on managing public lands |
| 10 | vi | | | | | Key information for public land allocations (the locality and area of the land allocations, the parties involved and the financial terms of the allocation) is recorded or partially recorded but is not publicly accessible |

LGI-10(i) Criteria for public land ownership are clearly defined and assigned to the appropriate level of government

The Identification of Public land/government land is not clearly defined. A consultancy was initiated in 2004 to document or inventory Government land which suffers from no registration and heavy encroachment. The contract was however not concluded leaving only 8 districts inventoried. Government divided the country into Seven (7) lots for the purpose of accessing the workload for developing a government land inventory. The zoning was based on regional diversity. One typical district was selected from each of the lot to represent that lot, Kampala district was also included, it being a special case given its small size and yet having a high concentration of government land parcels.

The Criteria that was proposed and followed for this process was:

- a) *Location:* This indicates the Administrative or Local district, county, sub-county, Parish and Village(s), in which the given land parcel is located. For each land parcel, a representative hand held GPS reading was taken, to enable represent the location for each parcel in the form of UTM coordinates, i.e. the metric Easting (E) and Northing (N).
- b) *Land-Tenure, Survey and Registration Status:* The land Tenure for each parcel was documented, either to be Mailo, Customary, Freehold or Lease Hold as these are the four main Land tenure Regimes, recognised under the Land Act 1998 and the Uganda Constitution of 1995.

It was also documented for every parcel inspected whether the land is surveyed or not and also whether it is registered or not. Where the given parcel was registered the recorded plot number, Block number, Area size, and sheet number and or road name where available, were documented. For some of the land parcels that are not surveyed, several hand held GPS readings were taken along the boundaries of the given land parcel, to enable a fair estimate of the land size for the un-surveyed land parcel.

For some un-surveyed parcels it was not possible to take the hand held GPS readings mainly due to hostility from the local communities, as they lacked appreciation of the objectives of carrying out the field exercise, as some misconstrued it to mean land grabbing!, this occurrence was more common in Arua district.

- c) *Land Use:* The Designated User government department was documented for each inspected land parcel, and the current land use was also recorded, the current land use took the form of the actual government activity or activities such as schools, hospitals, forests, prisons, Agricultural farm etc on the land, at the time of inspection. The predominant government activity on the given land parcel at the time of Inspection was taken as the name for that Land Parcel.
- d) *Levels of Encroachment on the Land,* for every Inspected parcel of land, the level of encroachment was determined by the approximate size of the area encroached upon as a percentage of the overall area of the given land parcel.

The consultant where possible investigated the circumstances behind the encroachment, documenting under what circumstances the encroachment begun, gauging the attitudes of the encroachers as regards to vacating the given Government land and any steps taken by the User or Designate government Department to end /stop encroachment.

e) *Additional Information documented*, for each inspected Land Parcel additional information was recorded such as:

- Major features on the land, like Water points, schools, hospitals, hills, wetlands, local government offices, Telecommunications masks, Power substations, etc.
- Clear directions to each Inspected Land Parcel from the major Trading Centres, this was in form of Surveyors Sketch map and descriptive notes.
- Where available the distance between each Inspected Land parcel and the nearest control point and the directions of each control point from major trading centre, (this was in the form of the Survey Control Point Location Description Cards).
- Possible unique challenges in the execution of the government land inventory that have had a direct bearing on the expected workload, such as insecurity, and poor or difficult Access due to a poor road net work were recorded where ever encountered.

This exercise however, led to the recommendation for the improvement of the criteria based on the following field findings and experiences.

a) *Location and Land tenure, survey and registration status*, are recommended to be the way they are.

b) *Land Use* is comprehensive enough for government land used ordinarily such as offices, schools, hospitals, agricultural farms, etc, but for Government land held in trust such as:

- The Forest Reserves
- The Wild Life Reserves
- The Road Reserves
- The wetlands Reserves,

The issue of encroachment cannot be investigated/documentated in the envisaged project time period, because:

- Most of these reserves are quite large in size, (hundreds of hectares).
- The boundaries defining these Reserves on the ground (forest reserves, wetland reserves) are not certain.
- Only very few road reserves have been surveyed and gazetted, hence raising the question whether the government has ever actually acquired and owned these Road reserves,
- In a number of Forest Reserves, it would require protracted approach to come up with meaningful data concerning encroachment status on these reserves, as it is already known that some of these reserves have been heavily encroached on.

c) *Estimated Land Value* (where deemed necessary)

At the time of preparing a government land inventory, it is not critical to determine the value of the given land parcel, as it is at the stage of policy decisions as regards to land use, that the value of land is deemed necessary to be known and particularly so, when carrying out a cost benefit analysis of any given government land parcel.

Secondly the value of land is always a variable with time, hence a value obtained at the time of Inspection, may be quite misleading several years after the date and time of inspection and valuation of any given land parcel. *It is therefore our recommendation that this be deleted from the Field Data Collection Form.*

d) *Major features on the land*, access from the trading centres, and available survey and mapping information be maintained on the data collection sheet.

e) *Survey Control points nearest to the Land*. The cost benefit analysis indicates that it is not worth the cost, and hence it should be excluded from the field data collection form.

With the advent of using Global positioning Systems (GPS) to extend survey control, it is recommended that at the time of survey an average cost for extending survey control within a radius of at most fifty kilometres, be included.

It is established that at least in every district there is a known survey control point certified by the commissioner lands and survey, and that the average radius of any of the eight sampled districts is about forty (40) Kilometres.

It requires more time to establish the location and status of these survey control points, than the inspection time for a given land parcel.

LGI-10(ii) There is a complete recording of publicly held land.

The Public/government Land inventory was never completed. The field data collected was arranged in the agreed format so as to form a *Mini Inventory for the Government Land in the eight sample districts*. The mini inventory details the location of the land parcels visited, their status, the designated and current land use and encroachment if any. It should be noted that these are mini inventories of government land for the sampled eight districts, in the sense that even though they contain all the required information for any given government land parcel inspected, not all the identified government land parcels in these sample districts were inspected. They will become full inventories when all the government land in these districts has been visited and their data captured and recorded. Appendix three of this report contains the Mini Inventory for Government Land in the eight sampled districts of Kampala, Mukono, Pallisa, Nyakapiririt, Kibaale, Mbarara, Kitgum and Arua.

Table 4: Summary of findings from land inventory

| Parcel Inventory data Findings from the pilot | Parcels |
|--|------------------|
| Total number of land parcels Available in the Eight sample districts | 646 |
| Total number of the Inspected land parcel (33 % of total land parcels available) | 216 |
| Total number of Surveyed land Parcels (34% of those inspected) | 73 |
| Total number of encroached on parcels (30 % of those inspected) | 58 |
| Total Land government land Inspected | 24341 Ha |
| Estimated area of inspected government land encroached upon(equivalent to 4%) | - 1118 Ha |
| Average size of land parcels (excluding those parcels in Kampala) | 20 Ha |
| Average size of the sampled district | 4000 sq.km |
| Total number of man-days for inspection | 64 man days |
| Average number of land parcels inspected per day by one field team | 4 land parcels |
| Average number of land parcels in the sample districts(with exception of Mukono, Mbarara, Kampala) | 110 land parcels |

Data Source: MLHUD the Assessment of Government Land and the Expected Workload for Developing an Inventory of Government Land

Table 5: The Mini Government Land Inventory

| District Name | District Size In Km ² | Number of Land Parcels identified / Aailed | No of Land parcels visited | | No of Sub-counties | | Time Input Man days | | Security Situation | Accessibil ity | Encroach ment | Visited Parcels |
|---------------|----------------------------------|--|----------------------------|--------------|--------------------|-------------|---------------------|------------------------------|--------------------|----------------|-------------------------------|--------------------------------|
| | | | Surveyed | Not Surveyed | Visited | Not visited | Data Collection | Travel And data organization | | | No of parcels | Over identified parcels |
| Arua | 3177.95 | 33 | 8 | 17 | 12 | 24 | 4.0 | 4.0 | Fair | Fair | ¹¹ / ₂₅ | ²⁵ / ₁₃₃ |
| Kampala | 193.94 | 40 | 15 | 7 | 5 | 0 | 4.0 | 4.0 | Good | Good | ⁵ / ₂₂ | ²² / ₄₀ |
| Kibaale | 4386.28 | 119 | 13 | 10 | 17 | 3 | 3 | 5 | Fair | Fair | ¹⁵ / ₂₃ | ²³ / ₁₁₉ |
| Kitgum | | 102 | 7 | 21 | 11 | 8 | 2.5 | 5.5 | Fair | Fair | ³ / ₂₈ | ²⁸ / ₁₀₂ |
| Mbarara | 1797.34 | 35 | 11 | 19 | 22 | 24 | 3.5 | 4.5 | Good | Good | ⁵ / ₃₀ | ³⁰ / ₃₅ |
| Mukono | 13768.25 | 29 | 12 | 7 | 16 | 12 | 3 | 5 | Good | Good | ³ / ₁₉ | ¹⁹ / ₂₉ |
| Nakapiripirit | 6204.12 | 81 | 2 | 44 | 9 | 1 | 2.5 | 5.5 | Fair | Fair | ¹² / ₄₆ | ⁴⁶ / ₈₁ |
| Pallisa | 1336.97 | 107 | 5 | 18 | 11 | 0 | 3 | 5 | Good | Fair | ⁹ / ₂₃ | ²³ / ₁₀₇ |

Note that the Total number of identified government land parcels per district, indicated in this table does not include, government land parcels, falling under Forestry Reserves, Wild life conservation areas, Road reserves and wetlands.

Panel discussions revealed that all properties mapped prior to 1986 are the only public properties for which records are complete and existent. Properties acquired thereafter have neither a clear record nor maps. It is therefore very difficult to trace these and ensure management of them is carried out efficiently and effectively.

LGI-10(iii) Information on public land holdings is publicly accessible

The Study on the government Land Inventory (MLHUD 2009) found that many factors constrain the building of a public land inventory and therefore, hampers the availing of public information on the same. These constraints include:

- Delay in the flow of information from the ministries to local government leaders and, as a result, reception in some districts was characterized by suspicion, apprehension, indifference, resistance and the key officials that would have provided the necessary data/information were not available at their stations. Some Local Government officials thought that the exercise is intended to identify and seize their land.
- Furthermore there was lack of cadastral sheets. Most of the new parcels are falling on areas where there are no cadastral sheets constructed. There is need to construct new cadastral sheets where they do not exist.
- There is difficulty in determining block boundaries during the plotting by the district cartographer.
- There are overlapping surveys in the districts. New surveys are plotting on already surveyed plots of land.
- Block and cadastral plot numbers for the areas already covered could not be readily obtained in the course of developing the inventory.
- The land users were suspicious about the purpose and motive behind the documentation of public land.
- Some districts like Nakapiririt lack Institutional offices and others like Kibaale lack organized land records, making it difficult to access the necessary and vital information.
- Because of lack of records, it is not possible to make public information regarding public land.

Panel discussions revealed that there is some information available but this is not easily accessible by the public because of political reasons and the need to know why the public would want to have that information. By government practice, information is not easily accessible and public officers are not willing to provide such information just in case it creates problems for them leading to loss of employment. Statistics are never available but rather aggregate values. Most of the available information is still archived in paper form, however, with the Land Information System, there is no reason why particular information should not be availed in due course.

LGI-10(iv) Management responsibility for different types of public land is unambiguously assigned

The findings of an audit carried out by Adam Smith International in 2011 revealed that the management of public land is ambiguous with no guiding legal framework or guidelines. An excerpt on this report never made public in the Uganda's dailies below clearly elaborates the state of affairs.

Case Study 1: Management of public land in Uganda

The Uganda Land Commission should stop holding and allocating public land because it neither has an enabling law nor an approved structure, a consultant has recommended.

Uganda Land Commission illegal, says audit report Audit report calls for overhaul of the underperforming ULC

The Uganda Land Commission should stop holding and allocating public land because it neither has an enabling law nor an approved structure, a consultant has recommended. The number of commissioners, who have been costing the taxpayer Shs 8 million per month in sitting allowances, should also be reduced from eight to four.

The commissioners have been working full time, yet the Constitution provides that they should meet at least once every two months. According to a preliminary report, a copy of which The Observer has seen, the government needs to amend Article 237 (1) of the Constitution and the Land Act Cap 227 to authorize the state (the Commission) to exercise power on behalf of Ugandans.

The recommendation is one of several arrived at after a forensic audit of the Mayanja Nkangi-led Commission that exposed the legal loopholes in this government body that, according to the Constitution, holds and manages land in Uganda that is vested in or acquired by government in accordance with the law.

The unflattering report, presented to the ministry of Public Service early this month, is to serve as a review for restructuring of the Commission to address inconsistencies, weaknesses, duplications, overlaps, conflicts, ambiguities and performance gaps so as to ensure cost effectiveness, affordability and efficiency in service delivery.

The audit was carried out by an American consortium, Adam Smith International. The report noted, among other findings, that there are conflicts within the existing public accountability laws. For instance, it was established that some land under ULC jurisdiction is neither surveyed nor titled, and is either allocated to users without the knowledge of ULC or simply grabbed and utilized.

This is contrary to the Budget Act, which requires all institutions holding and using public assets to keep them safely and securely. This particular issue has been the root cause of many conflicts on public land. The report also shows that government land for sale or allocation is not availed to the public as required by the Public Procurement and Disposal of Assets Act (PPDA) because the process is done without public advertisement.

The matter was noted by the Auditor General in his management letter to ULC for the 2009/10 financial year, in which he took the Commission to task for flouting PPDA provisions. There is also lack of a clear distinction between government land, public land and local government land. "These terms are used interchangeably or taken to mean the same thing. There is no clear distinction between government land in any existing laws of Uganda. There is confusion when land is being allocated as to who has the authority or ownership of the land being allocated," the report says.

Regarding ULC's conduct of business, the findings show that there is lack of an effective working and collaborative relationship between the Commission and other partner institutions like local governments in the execution of its duties. "This has resulted in double or even triple allocation of the same land to different developers with different lease titles, thus resulting in costly court cases that take long to resolve," the report says.

There is also the case of the Commission allocating land to user institutions without involvement or reference to District Land Boards in the respective local governments. The Commission is further faulted for "misplaced emphasis and engagement in non-core activities" by, for instance, concentrating more on allocation of land to individual developers with little regard to purchasing land for current and future use by government, especially in prime urban areas. "Currently, most government offices are in rented premises, spending staggering sums of

money,” the report says. It adds that in resettling people displaced by natural disasters, the ULC is not only performing a non-core function, but is also duplicating the responsibilities of the Office of the Prime Minister.

Lack of structures

The report further noted that ULC is too lean to carry out its mandate, has a narrow skill mix and provides for functions which could be divested to more appropriately skilled institutions, such as banks. The consequences of this arrangement include limited access to resources, failure to realize its mandate, misallocation and misappropriation of government/public assets and duplication of roles and responsibilities.

It is, therefore, proposed that ULC’s offices are regionalized, management is separated from the executive (chairman and commissioners to be part time) and that the Land Fund is relocated and domiciled to a financial institution with which ULC shall enter a memorandum of understanding.

Lack of funds

While ULC is in custody of a lot of public land, funding from government has been at a minimum, with Shs 7.2 billion of the Shs 8.6 billion allocated to the Commission since 2002 going to land compensation. This has resulted in failure to pay rates on properties occupied by government around the country (Shs 500 million per year), failure to acquire appropriate office space and logistics to keep delicate government assets under strong lock and key.

In order to remove overlaps, gaps and conflicts between ULC and other agencies charged with management of land-based resources, such as Uganda Properties Holdings Ltd, Uganda Investment Authority, and the National Forest Authority, among others, there should be a review of the law, the consultant advises.

The other recommendations include: appointment of a Commission lawyer on secondment from the ministry of Justice and Constitutional Affairs; outsourcing of the services of valuers and surveyors on a case by case need basis rather than providing for them on ULC’s establishment and payroll, as well as the services of a physical planner.

http://www.observer.ug/index.php?option=com_content&view=article&id=14572:uganda-land-commission-is-illegal-&catid=34:news&Itemid=114

This report was never made public.

LGI-10(v) Responsible public institutions have sufficient resources to fulfil their land management responsibilities

In Uganda, where the land market is only beginning to develop and where the surveying, land management and real estate professions are not well established, the absence of reliable land information makes land transactions difficult, risky and prone to principal agent problems. The current state of affairs is partly due to a long history of underfunding public agencies responsible for land administration and the production of land information. This has significantly contributed to the creation of an unregulated land market environment that allows graft and opportunistic brokers to operate with impunity.

Support for public officials whose role in execution of the activity is considered indispensable, especially if mandated by law has to be considered to ensure capacity limitations do not become an insurmountable bottleneck for the fulfillment of their mandates. The nature of the public-private interface mandated by existing laws for executing any land demarcation and registration exercise are not clearly defined and resources for ensuring adequate capacity do not exist to enable completion of the activities. These have to be budgeted to account for conditions necessary for the successful execution the mandates under the law.

Provision of human, technical, material and financial support to District land officers to help overcome the constraining capacity deficits for supporting such project activities: (i) the dedicated amount of time, (ii) the backlog of normal office work created as a result of the demands of inventorying public/government land, (iii) the abnormal volume of additional work generated (computing, plotting and preparation of deed plans) during the period required for such project activities.

A similar arrangement to provide extra support to facilitating the processing of the bulk of work required to be processed in the surveys and mapping department, Entebbe, and less so for the land administration and final registration stages is required in order to avoid inordinate delays in execution of tasks.

Because of inadequate resourcing of these institutions leads intermediaries such as banks and mortgage finance institutions, real estate agents, land developers, solicitors and other land related businesses who are expected to play an important role by facilitating all manner of land transactions are forced to assume higher levels of risk that ultimately undermine their competitiveness. These specialized intermediaries form a conduit through which the land information gap between public sector land administration institutions and land owners and private sector participants in the land market can be resolved. However, in spite of these observations, how to improve access and delivery of land services in a manner that is inclusive and improves the overall efficiency of the land market remains elusive (Ahene 2012).

In practice however, panellists revealed that there is often a clash between technical interests to protect and manage the public resources and the political interests that override technical interests. An example was given of the Uganda wildlife Authority which can no longer enforce the conservation of breeding grounds for the wild animals in the Marchison Falls National Park due to the granting of the construction of a road to service the oil exploration inside of the National Park.

Furthermore, for Public institutions that have commitment to the management of public resources, the financial resources allocated to them is very limited, reducing the management capacity that could have otherwise been employed.

LGI-10(vi) All essential information on public land allocations to private interests is publicly accessible.

The computerization of the land registry has only been made complete this year and the LIS system displayed for the first time to the public on 28th November 2013. Prior to this, records in the land registry were manually managed and in very poor state. As a result, service delivery was very slow and cumbersome, and title searches and/or verification of claims is frustrating. The process was prone to mistakes and occurrences of fraud, which makes land assets unreliable and risky as collateral security for loans. The Land Registration business process fails to provide clear and reliable information to the public. It is therefore impossible currently to know how much public land is allocated to neither private interests nor the processes such allocations take. The Uganda Land commission itself does not have information regarding public and government land.

Panel discussions highlights that for whatever information is collected a decision has to be made as to which information can be made accessible. Private people are given leases and all this information is available in the national land registry and the Uganda land commission. The moment the procedure gets more stringent and constraining on the technical staff, the more accessibility of the information becomes difficult.

Examples were given of the Uganda Land Commission’s (ULC) efforts to ensure that transactions over divestiture of public lands belonging to Uganda Television Corporation and Shimoni Schools within the city follow proper procedures. This was not possible due to political pressures and influence. The public therefore knows that the land was divested at giveaway prices but do not know the challenges that technical departments face when situations like these arise.

The media plays a major role in providing information to the public but sometimes it is not possible to divulge information that would otherwise be public due to the existing vested interests. A case in point was when the Sunrise news paper sought information on divestiture of the Naguru estate. No officer was committal on divulging this information due to fear of repercussions. Resultantly, the media instituted a legal case in court, which mater is ongoing making it sub-judice. Despite this, the media has not got the information to date.

11 THE STATE ACQUIRES LAND FOR PUBLIC INTEREST ONLY AND THIS IS DONE EFFICIENTLY

The table below represents the LGAF findings of indicator 11 and its three dimensions.

Table 6 LG1 -11 Justifications and time-efficiency of acquisition processes

| | Dimension Description | Score | | | | Score Description |
|----|-----------------------|---|---|---|---|---|
| | | A | B | C | D | |
| 11 | i | There is minimal transfer of public land to private interests | | | | More than 50% of land expropriated in the past 3 years is used for private purposes |
| 11 | ii | Acquired land is transferred to destined use in a timely manner | | | | More than 70% of the land that has been expropriated in the past 3 years has been transferred to its destined use |
| 11 | iii | Threat of public land acquisition does not lead to pre-emptive behaviour by private parties | | | | A lot and regressive |

LGI-11(i) There is minimal transfer of public land to private interests

Expropriations of public land in Uganda's have not been for public interests. They have mainly been for private interests. Over the past ten years particularly, key public lands have either been divested or faced threat of divestiture. There are no guidelines or criteria guiding the expropriation of public land. It is quite clear that more and more public land is being divested for private benefit and not public interest. A few Examples of public land expropriations are:

Case 2: Discussions to give away 7,100 Ha of Mabira to Metha Group for Sugar cane growing looming since 2007

President Museveni may have inadvertently re-opened the controversies surrounding his push to favour developers over the environment and other community concerns. During the opening of the NRM caucus in Kyankwanzi on Saturday, the President blamed the failure to get Amuru Sugar Factory started and his wish to give-away part of Mabira Forest for sugarcane growing on Members of Parliament.

"The other obstacle that has obstructed development is the interference by the political class. What do we do with Lugazi industrial city? I can't go on begging as if you are doing anything for me," Mr Museveni said.

He added: "How can you block the development of Amuru sugar factory? Now these investors are about to go away and you are surrounded by others who need these factories and so what are you going to do? Import sugar and [what if] it is blocked by MPs?"

Resisting plans

Some Acholi leaders have resisted Mr Museveni's suggestion to give away their land for establishment of a sugar enterprise. They say they were not consulted and that the land is communally owned, making it hard to be given away.

Oponents to the Mabira project, meanwhile, observe that the central forest reserve is home to 300 bird species and is a key part of the country's eco-system.

The President wants 7,100 hectares of the forest to be parcelled out to the Sugar Corporation of Uganda Limited, a Lugazi-based company owned by Mehta Group. However, legislators and environmentalists have warned the Mehta group to stay away from the forest, saying "Ugandans can survive without sugar but they can't survive without oxygen or a green environment."

In 2007, the Mabira give-away stirred up tensions, with furious protestors attacking people of Asian origin because they shared a race with Mehta.

<http://ugandaradionetwork.com/a/story.php?s=11376>

Case 3: Lack of Transparency in Expropriation of Public Land

One of the aspects of governance where the NRM government has acquitted itself most poorly is public land management and disposal. A lot of public land has been given away to private individuals; some indigenous, some foreign, under mysterious circumstances.

Last week, it was Kololo Secondary School in Kampala which woke up to the realization that part of its sports playground had been fenced off. No prizes for guessing; it was 'sold' to an investor. Yet the Kololo Secondary School playground is only the latest on the ever-growing list of public lands that have been given away under unclear circumstances.

Among these are some prominent ones that Ugandans will probably never forget. Sometime back, part of Butabika Hospital land in Luzira was shared amongst some well connected individuals. The country's only mental referral hospital had plans for expansion, but this didn't stop the Uganda Land Commission from dishing the plots out. No major reason was given for the change of land use, and the criteria for picking the beneficiaries were not revealed either.

Then there were the Shimoni institutions in the city centre, which were hurriedly destroyed so as to have a five-star hotel in their place in 2005. Five years later, there is no hotel and Ugandans don't even know who owns that prime piece of land right now!

A chunk of Kitante Primary School land was also fenced off some time back. It is not clear what became of the plans to 'develop it.'

The authorities often arrogantly cite 'investment' to explain away these land giveaways. They forget that most Ugandans would actually like to see more investors coming to help develop our country.

But that shouldn't be used as an excuse to treat public property as if it were private. Ugandans have the right to know why their land is being disposed of, and how.

All we are demanding is transparency. Let the Uganda Land Commission first of all justify why a particular piece of land has to be given away, and then publicise it so that those interested can bid.

Why should public land transactions be conducted under the table?

http://www.observer.ug/index.php?option=com_content&view=article&id=10914:editorial-what-criteria-for-disposing-of-public-land

Case Study 4: Members of Parliament appalled by lack of acquisition procedures

of Kampala, that there is no set procedure for the giveaway of public land in the capital city. The MPs have vowed to investigate Kampala City Council (KCC) and rid it of officials who are behind a long list of shady business and administrative practices.

Kijjambu, who appeared before the committee yesterday, failed to explain how Kampala City Council (KCC) has managed to distribute prime plots of land in Kampala without established procedure. She admitted that a precedent had been set in which individuals would approach KCC with a specific plot of land and proposed developments that would be approved by the Council

The MPs were angered that Kijjambu could not explain the ownership of Valley View Estates, the company that was granted a lease to construct apartment blocks at the Lugogo sports ground. She had no information on the management, the location or the experience of Valley View Estates and asked for time to investigate the company.

Elias Lukwago, MP for Kampala Central, says he and other committee members were appalled by the revelation. He says the land giveaways by KCC defy all set regulations for the development of Kampala City.

"I was terribly shocked!" Lukwago says KCC acted illegally by failing to carry out a due diligence study of Valley View Estates to establish its propriety before leasing to it a prime plot of land. He says KCC has no capacity to approve developments of the nature proposed by Valley View Estates.

The Mayor of Kampala, Nasser Ntege Ssebagala, defends Valley View Estates. He says it is a U.S.-based company with the relevant experience to develop Lugogo sports ground.

<http://ugandaradionetwork.com/a/story.php?s=11376>

Panel discussions revealed that actually almost all the divestiture that has happened in the recent past has been for private purposes and none going to public use. Apart from roads, no other public purpose has benefited from divestiture.

Although there are laws in place, there is need to develop guidelines to guide divestiture. There is further a need to differentiate between government land and public land because the two serve different purposes. In Uganda there is an assumption among policy makers

that public land constitutes government land and therefore it can be made applicable to private use as Government is a legal person that can do business.

LGI-11(ii) Acquired land is transferred to destined use in a timely manner

It takes an average of 47 days to get the acquired land transferred to its destined use. This if compared to the OECD average which is 24.1 days may seem like a delay. However, the provision of this service has greatly improved over the last three years because of the computerization of the Land Registry. The sub-Saharan Africa Average is 58.9. Uganda has gone up two places in the doing business ranking by the World Bank from 128 in 2013 to 126 in 2014 (World Bank 2014). It is the only improvement Uganda registered in the Ease of Doing Business Index 2014.

LGI-11(iii) Threat of public land acquisition does not lead to pre-emptive behaviour by private parties

Although there are no reports to this effect, the Experts on this panel have had hands-on experience and conclude that pre-emptive action is a lot.

Examples were given from the panel discussions of incidences of pre-emptive actions in light of compensation. The Southern By-pass is a new project of infrastructural development in Kampala City. Some of the parcel owners within the area of interest for compensation undertook shoddy construction works faking grave yards or long term occupation of structures so as to be compensated more. Some of the infrastructure development projects that have grossly suffered from pre-emptive action are the Bujagaali power dam project which was shut down momentarily due to the negative impacts of pre-emptive action. Nile power, the company had to pay compensation to the communities forcing it to shut down its operations. Mubende-Mityana road faced the same challenge and this stalled the road construction completion. Currently, the Albertine region is faced with the same challenges, mainly fuelled by speculators.

12 TRANSPARENCY & FAIRNESS OF EXPROPRIATION PROCEDURES

The table below presents the LGAF findings of indicator 12 and its five dimensions.

LG1-12 Transparency and fairness of expropriation procedures

| | | Dimension Description | Score | | | | Score Description |
|----|-----|---|-------|---|---|---|---|
| | | | A | B | C | D | |
| 12 | i | Fair compensation is provided for expropriation of all rights regardless of their registration status | | | | | Compensation, in kind or in cash, is paid for some unregistered rights (such as possession, occupation etc.), however those with other unregistered rights (which may include grazing, access, gathering forest products etc.) are usually not paid |
| 12 | ii | Land use change resulting in selective loss of rights is compensated for | | | | | Where people lose rights as a result of land use change outside the expropriation process, compensation is not paid |
| 12 | iii | Those expropriated are compensated promptly | | | | | Between 50% and 70% of expropriated land owners receive compensation within one year |

| | | | | | | | |
|----|----|---|--|--|--|--|---|
| 12 | iv | Independent and accessible avenues for appeal against expropriation exist | | | | | Avenues to lodge a complaint against expropriation are not independent |
| 12 | v | Timely decisions are made regarding complaints about expropriation. | | | | | A first instance decision has been reached for between 50% and 80% of the complaints about expropriation lodged during the last 3 years |

LGI-12(i) Fair compensation is provided for expropriation of all rights regardless of their registration status

Uganda has experienced enormous challenges with the compensation processes, many times court action has ensued or public outcry as a result of low compensation rates. Currently the compensation claims are represented in the table below:

Table 7: Land Compensation

| Claim | Basis for compensation |
|---|---|
| Owners of Registered land | Cash compensation based on the market value of land + a disturbance allowance (15% or 30%) <i>Section 77(2) Land Act</i> |
| Owner of non- registered land (Customary owner) | Have no claim to compensation for the value of the land. Entitled to compensation for developments and improvements on the land + a disturbance allowance (15% or 30%) <i>No legal basis for this as customary tenure is legal tenure***</i> |
| Tenants by occupancy (<i>on registered land</i>) – defined by law | Entitled to compensation as apportioned to their interest in the land + a disturbance allowance (15% or 30%) <i>Section 77(2) of the Land Act</i> |
| Licensee | Have no claim to land. Entitled to compensation for developments and improvements on the land + a disturbance allowance (15% or 30%) <i>Section 77(2) of the Land Act</i> |
| Owner of non permanent buildings | Cash compensation based on replacement cost as determined under the District compensation Rates + a disturbance allowance (15% or 30%) <i>Section 77(2) of the Land Act</i> |
| Owner of permanent buildings | Cash compensation based on the market value of land <i>Section 77 (1)(b) of the Land Act</i> + a disturbance allowance (15% or 30%) <i>Section 77(2) of the Land Act</i> . The current replacement cost is taken into account |
| Crops and Trees | Cash compensation based on replacement cost as determined under the District compensation Rates + a disturbance allowance (15% or 30%) <i>Section 77(2) of the Land Act</i> . Rates for crops are determined on a net or an expected one season output. Where time allows, a claimant should be given an opportunity to harvest crops that are due for harvesting. |
| Protected areas (National Parks, wildlife Reserves and Forest Reserves) | It is presumed in practice that protected areas are owned by government and acquisition has to happen reasonably unless these are licensed to a private user under a special lease. Consent to enter and use the land in protected areas should be sought at first instance. |
| Land under diminution | As a result of the restrictions the land value is diminished (in value) also known as diminution. The diminution rates vary depending on the circumstances. |

Source: Government of Uganda 2013

Calculation of the compensation rates does not have a clear and transparent procedure. The lack of transparency raises challenges with the acceptance of the rates. Severally districts for example have stated in meetings with activists that the rates are handed down to them by the chief Government valuer. The chief government Valuer on the other hand claims the rates are set by the Districts. The reality is that 95% of the districts in Uganda do not employ valuers. How then can they generate district compensation rates?

Although customary tenure is a creation of statute, valuation methodologies currently applied do not recognize the value of customary land. The owners of such land have only been compensated for the improvements and developments on the land which is unconstitutional. This injustice has led for the

public outcry and campaigns that there be a Government program to issue certificates of title to the land owners of customary land if that will give justice. People have incurred inconceivable losses through the compensation for appropriation of land.

Rates for crops are determined on a net or an expected one season output. Where time allows, a claimant should be given an opportunity to harvest crops that are due for harvesting. The “one season” principle has caused financial loss to farmers of perennial crops and fruit trees where the life of the crop is not factored into the compensation process.

It can be concluded that the valuation for compensation methods applied in Uganda are in contravention to the constitutional provisions enshrined in article 26 (2) of fair and adequate compensation.

Panellists affirmed that when a land owner has a certificate of title, he/she has better bargaining power in the face of compensation. Compensation is paid for some unregistered rights such as access to tree and forest products while other rights are never compensated such as common lands. The reason often raised in this regard is the failure to identify the person to be compensated or what form collective compensation should take.

Where communities are informed and are consulted they have negotiated for community benefits in the form of reparations. Such as in the Albertine region some communities have negotiated for boreholes and schools as compensation.

In the recent past, compensation has taken different forms especially in light of the fact that monetary compensation often does not restore the person to the same status s/he was in before the taking of his/her property. In projects such as the Bujagaali project, some people negotiated for alternative pieces of land with housing structure instead of monetary compensation. In Buliisa where oil exploration is on-going, Total did not want to give the government money to compensate the people affected. Instead, Total wanted to get a reputable institution to pay and this payment regarded as a cost to the government. Whereas this was a good ploy as the people would get adequate compensation through the process, the government felt very vulnerable and not supportive of the idea.

There are concerns about the valuers. Ugandan valuation law is very porous as it gives the valuer the premise to use his own sense of judgement and in instances where the communities are not in position to bargain properly, especially in cases of collective rights, lots of losses are realized by the communities.

LGI-12(ii) Land use change resulting in selective loss of rights is compensated for.

Uganda is experiencing an unprecedented growth of the extractive industry that is causing excitement bringing opportunity and growth to the mineral and oil and gas rich areas. The development and exploitation of natural resources requires extensive land holdings. Associated infrastructure to service, supply and support the development of energy resources further increases the requirement for land. Mining and Energy project proponents require prudent commercially based arrangements with landholders that comply with and recognise the statutory provisions relating to land resumption within specific fields.

Landholders in these regions are subjected to increasing interest and activity by mining and energy developers in their land impacting on rural enterprise. This is the biggest land use change area in which compensation challenges have been brought to the spotlight.

A recent acquisition has been in Kabale Parish – Buseruka Sub –county Hoima district in Western Uganda, along the Albertine Graben, a sub county surviving on subsistence agriculture and pastoralism. Approximately 32Sq KM were acquired for Uganda’s oil refinery. Through this process, 13 villages were affected with a total of 7000 people displaced by this process. There were only 10 people with land titles. If the valuation methodology above was applied, and which it was, only these 10 people were compensated for the value of land because they were the registered owners. The rest were compensated for developments on the land as if they were licensees. This has created tensions with the government and oil companies as disgruntlement increases. To compound the poor compensation rates, the compensation has not been paid in time. To date, approximately 2000 people are camping at the sub-county due to lack of alternatives. Case Study 1 below elaborates this further.

Whereas these developments are happening, the valuation methods have not changed with the times. Valuation principles applied currently are those intended to serve the real estate market where the traditional methods of valuation apply. When appraising real estate, the valuer considers two separate entities: land, which is the non-wasting portion of the real estate; and improvements, which are the wasting portion subject to various forms of depreciation. Land and improvements are frequently valued separately so that the trends and factors affecting each can be studied. However, the final analysis for an improved property must be as a unit.

The first step in this kind of land valuation is identifying the property. The valuer must know the size and location of the subject parcel. Once the land has been properly identified and described, an analysis of the subject can be made. The analysis should include the collection of site-specific data, a study of trends and factors influencing the value, and the physical measurement of the site. The term site means more than just “land”. A site is a parcel of land that has been made ready to use for some intended purpose.

Once the subject is analyzed, the assessor must classify the land. Land may be classified as residential, commercial, industrial or agricultural depending on its primary use. Zoning can be important in determining land classification because zoning ordinances often prescribe exactly what uses are permitted for the property.

Land, in a general sense, can be unimproved (raw) or improved (ready for development). Land that is undeveloped or in agricultural use is considered unimproved. Land that has been developed to the extent that it is ready to be built upon is considered a site. A site analysis requires the collection and analysis of information about trends and factors affecting value.

The appropriate unit of comparison is typically determined by the marketplace as sites are bought and sold. There are six acceptable methods of establishing unit land values.

1. Sales Comparison Method
2. Allocation Method
3. Abstraction Method (Also known as extraction or land residual technique.)

4. Capitalization of Ground Rent

5. Land Residual Capitalization

6. Land Build-up Method

The law governing compulsory acquisition does not consider land for investment as one of those grounds that would warrant the taking of land. The constitution further provides that where minerals are found under somebody's land, there shall be benefit sharing between the land owner, the local government and the Central government. This would therefore mean that there is no taking of land but rather compensation for surface rights and the deprivation of the use of the said land. The surface rights to land are privately owned in Uganda save where they fall under the ambit of trust property vested in the state. This is significant, considering the fact that the Constitution vests land in the citizens of Uganda. These surface rights include farming rights, right to build, right to possess and enjoyment of economic trees, both natural and artificial, right to alienate, etc. Compulsory acquisition for exploration and extraction of mineral wealth and oil and gas is not constitutionally provided for. It means that whereas the minerals, oil and gas would vest in the state or government respectively, the ownership of land is not tampered with. The State therefore, can compensate the land owner for surface rights which would comprise the development on the land but not for the land value and for deprivation of use for the duration of the taking. Deprivation of the use of land or a particular use of the natural surface of the land for the purposes of this discussion refers to the prevention or denial of economic and beneficial use of land or restriction of use rights. The deprivation can be either total or partial, depending on the scale of the curtailment. There is total deprivation when all the use rights of land of an owner or lawful occupier are affected, and partial deprivation is the curtailment of a particular use right or part of the land.

A case Study 5: Compensation for land use change

More than 7,000 people displaced by the construction of the oil refinery in Kabale Parish in Buseruka Sub-county, Hoima District have rejected the government's valuation price for their land. They say the government undervalued their land and the properties thereon and vowed not to leave unless they are paid the appropriate price for their property.

Kabale Parish in the Albertine oil belt, comprises 13 villages. The government commissioned a Swiss firm, Foster Wheeler, to carry out a study to establish a suitable place for constructing the refinery, which is expected to cost at least \$2b (Shs5.2 trillion). The firm recommended Kabale Parish as the most ideal site.

The government started the process of resettling and compensating the affected residents by paying them cash or relocating them to an alternative land.

One of the affected residents, Mr David Besigye, 80, from Kyaplalonyi Village, said the government undervalued their properties. *"They are forcing us to give them the land and they can't even allow us to bargain on how much we want to be paid,"* Mr Besigye said. The residents accuse the government of hatching a plan to underpay them. Residents in various villages said suspected security and State agents had been threatening land owners to take what the government has offered them and leave the area.

Several residents said the government did not consult them to discuss the valuation of their property. They said the government consulted the district administration to decide the amount for each resident instead of discussing with the land owners.

Government then hired a consultancy firm, Strategic Friends International (SFI) to conduct the Resettlement Action Plan (RAP) to guide the compensation process based on the prevailing market rate. In its report, SFI said 7,118 people and 221 households would be affected by the refinery project.

Refinery Project Communications Officer Bashir Hangi, said: "All valuations for property were set at the district headquarters, but were approved by a chief government valuer. All preliminary outcomes from the components of the RAP study were shared with the affected persons."

The SFI has been re-contracted by the government to implement its recommendations. This has sparked off suspicion of foul play. "If SFI erred in conducting the initial survey, it's likely to err adversely during the implementation stage," said MP Theodore Ssekikubo, chairman of the parliamentary Forum on Oil and Gas recently.

The affected communities have branded the exercise a "rip-off". While a plot of land around Hoima Town is valued at between Shs3m to Shs5m, residents have been either paid the same, less or more depending on the developments on the said land. All valuations were approved by the district chief valuer. "What is even worse is that the rates are based on the 2011/2012 financial year yet we are a year ahead," said Mr Ezekiel Kabanda, a resident.

Some of the displayed compensation rates, value an acre of banana plantation at between Shs350,000 and Shs1.4m; an acre of maize between Shs330,000 and Shs1.2m and a coffee garden between Shs300,000 and Shs2m. "If they don't give our people enough compensation money we will mobilise them against the project," Mr Banarbas Tinkasiimire, (MP for Buyaga County in Bunyoro) warned during a recent meeting with the affected people.

<http://www.monitor.co.ug/News/National/Oil-refinery--Residents-reject-government-pay/-/688334/2019962/-/d0x1ei/-/index.html>

Failure of valuation to make this distinction has led to multiple grievances that may escalate into conflict, a situation that can be averted by embracing valuation approaches accommodative of the interest of the land owners. While communities affected by mining and oil exploration activities hold companies responsible for a series of social, economic and environmental changes, the lack of action by government agencies result in a surrogate government capacity. Community consultation and appropriate compensation packages, among others, can help prevent or effectively resolve land use conflicts in mining areas. Though there are various forms of compensation for land taken, the determination of the amount of compensation in monetary terms is by the process of valuation in which values are not created, but arrived at through the application of relevant economic and legal principles.

Compensation has neither been fair, nor prompt in the case of land use change. The ruling of the High court Judge below demonstrates that Government overlooks its roles and responsibility in the course of compulsory land acquisition

Case study 6: Sheema Cooperative Ranching Society & 31 Others Vs. The Attorney General, HIGH COURT CIVIL SUIT NO.103 OF 2010

The Plaintiffs jointly and severally filed this suit against the Attorney General in his representative capacity as a Statutory Defendant for allegedly illegal actions of the officials of Government of Uganda against them when they allegedly grabbed their land and illegally and unilaterally parceled them out to other people without fair, adequate and prompt compensation.

The Plaintiffs in their amended plaint sought for:-

- (i) A declaration that they are entitled to a fair, timely and adequate compensation for their respective tracts of land that was trespassed upon and permanently alienated from them by officials of Government of Uganda.
- (ii) A declaration that the valuers in the Valuation Report commissioned by the Chief Government Valuer as a basis for their compensation are neither fair nor adequate as basis for compensation.
- (iii) An order that compensation should be based on the more up to date Valuation Report commissioned by themselves.
- (iv) In the Alternative but without prejudice, that interest at commercial rate be awarded to them from the date of trespass to their land to the date of judgment.
- (v) An order that general damages for trespass and inordinate delay of compensation be paid to the Plaintiffs.
- (vi) Costs of the suit.

Justice Opio Aweri ruled as follows:

Issue No. I: Whether or not the taking over of the Plaintiffs' land was lawful.

It is trite law that compulsory acquisition of land is a prerogative of the state. **Elements of Land Law by Gray and Gray 5th Edition** puts this beyond doubt at page 1387:

"... deeply embedded in the phenomenology of property is the idea that proprietary rights cannot be removed except "for cause". The essence of "property" involves some kind of claim that a valued asset is "proper" to one; and the "propertiness" of property depends, at least in part, on a legally protected immunity from summary cancellation or involuntary removal of the rights concerned. Yet it is also quite clear that the modern state reserves the power, in the name of all citizens, to call on the individual, in extreme circumstances and in return for just compensation, to yield up some private good for the greater good of the whole community.

.... The exercise of powers of compulsory purchase for supervening community purposes constitutes, without doubt, the most far reaching form of social intervention in the property relations of individual citizens. The public power to requisition land – or the power of "eminent domain" as it is sometimes known, has been aptly described as "the proprietary aspect of sovereignty"

The above principles are enshrined in the Constitution of Uganda and the Land Act.

Article 26(2) of the Constitution of the Republic of Uganda states:

"No persons shall be compulsorily deprived of property except where the following conditions are satisfied:

- (a) *Where the taking of possession or acquisition is necessary for*
 - *public interest*
 - *in the interest of the defence*
 - *public safety*
 - *public health*
- (b) *Where the compulsory taking of possession or acquisition of property is made under a law which makes provision for*
 - *Prompt payment of fair and adequate compensation prior to the taking of possession.*
 - *A right of access to a Court of law by any person who has an interest or right over the property."*

Article 237 of the Constitution Government can only take over someone's land if it is in the interest of the public. In **Bhatt & Another v Habib Rajani [1958] EA** public interest was defined to mean the same purpose or objective in which the general interest of the community as opposed to the popular interest of individuals is directly and virtually concerned.

Thus **Article 26 and 273 of the Constitution** only allows Government to use its coercive power to force a transfer in public interest and upon fair and prompt and adequate compensation. Thus in **UEB v Launde Stephen Sanya CACA No.1 of 2000**, UEB which was a Government Corporation entered on land, destroyed trees, crops and building materials and placed thereon survey marks and high voltage power lines thereon

without the consent of the land owners. **Twinomujuni JA** held the UEB could not just enter on anybody's land without first acquiring it and paying compensation thereby contravening **Article 26(1) (2) and Article 237 of the Constitution**. The Court further held that UEB should have first notified the persons affected before taking over the land which they did not do.

In the instant case the evidence on record clearly shows that the Plaintiffs' Ranches were compulsorily acquired following a Government policy to restructure ranches in the Government sponsored Ranching Schemes in Ankole, Masaka, Singo, Buruli and Masindi for the purpose of resettling the landless people as indicated in the General Notice contained in the Uganda Gazette of 12th October, 1990.

According to the establishing of the Ranches Restructuring Board Notice, 1990, Section 4(1) thereof, the functions of the Board were to implement the Resolution of the National Resistance Council of the 24th August 1990 in relation to Government allocation of Ranches in Ankole, Masaka, Singo, Buruli and Masindi with a view of facilitating the following:-

- (a) The revocation by the Government of leases of those ranches which have not been developed by the lessees in accordance with the prescribed terms and conditions of allocation;
- (b) The restructuring and sub-division of existing ranches into appropriate units and;
- (c) The orderly and harmonious re-settlement of squatters within the areas covered by the ranches.

On the face of the above objectives, it would be correct to say that the policy of the Government was lawful because it was an issue of public interest. However the law requires that certain procedures ought to be followed before compulsory acquisition can be lawful.

In the instant case, it was the contention of the Plaintiffs that before Government came out with the policy, Government had already allowed squatters to settle on parts of their ranches with their cattle. Government inspired the encroachers and even protected them from being evicted by the Plaintiffs. In a nutshell, Government did not follow procedure of acquisition of the suit land. Such a procedure is regulated by the **Land Acquisition Act Cap 226**.

Under **Section 3(1) of the Act** when the Minister is satisfied that any land is required by Government for a public purpose, he is required to make a declaration to that effect by statutory instrument.

Pursuant to **Section 3 (3)** the Minister should then cause a copy of the declaration served on the registered proprietor of the land specified in the declaration or the occupier or controlling authority.

Section 4 requires the land to be marked out by an assessment officer and measured and a plan of the land be made if the plan of the land has not already been made.

Section 5 requires persons having an interest in the land to be given notice. The section requires the Assessment Officer to publish the notice in the Gazette and exhibit it at convenient places on or near the land stating that the Government intends to take possession of the land and that claims to compensation for all interest in the land be made to him or her.

As per **Section 6**, the Assessment Officer upon publication of the notice then proceeds to hold an inquiry into claims and rejections made in respect of the land and then make an award specifying the true area of the land and compensation to be allowed for the land.

The Assessment Officer should then serve a copy of the award on the Minister and on those persons having an interest in the land and the Government then pays and compensate in accordance with the award (**Section 6 (4)**).

Under **Section 7** the Assessment Officer shall take possession as soon as he has made the award. However the officer may take possession at any time after the publication of the declaration if the Minister certifies that it is in the public interest for him to do so.

In the instant case, the circumstances under which the Plaintiffs' land was taken was not in conformity with the provisions of the Act and the Constitution. The instrument creating the Ranch Restructuring Board published in the Gazette in September 1990 was published after the land had already been invaded. Even the Gazette did not amount to a Statutory instrument as envisaged in **Section 3 of the Act**. The Gazette was actually dealing with the after effects of the invasion as if to legalise the otherwise illegal occupation that had already been perpetuated by government agents. In **KULDIP KRATAURA v The Law Development Centre {1978} HCB 296**, the Plaintiff in that case was a registered proprietor of land with a house therein. She let it out on rent to the Defendant, in 1974 who paid rent up to February, 1976 and thereafter failed to pay and vacate the premises. The Plaintiff brought this action for recovery of arrears of rent for mesne profits from November, 1976 till delivery of possession, and the delivery of the premises.

The Defendant admitted that the suit property were let out to them for rent but stated that the agreement for rent had come to an end when the Defendant notified compulsory acquisition of the property under the **Land Acquisition Act, 1965 by Statutory Instrument No. 2 of 1927** that for a public purpose and that the instrument was deemed to have come into effect from 1st April, 1973. **Akhun J, J.** held inter alia that under **Land Acquisition Act 1965**, there was no power given to the Minister to make a declaration that any land is required by Government for public purpose with retrospective effect. Therefore the said Statutory Instrument was ultravires of the power of the Minister and was illegal.

As properly contended by the learned Counsel for the Plaintiffs, the Statutory Instrument which was made after the invasion of the squatters was a mere mask to cloth the compulsory acquisition with legality. Otherwise what transpired between 1998 and 1990 was utter arbitrary, ruthless, violent and abusive affront to the Plaintiffs' right to property as envisaged under the Constitution.

Furthermore, the process of compensation was also not transparent as provided by the Act. The persons affected did not know what was taking place. They were not approached to air their stand and the award given for compensation was not disclosed. Generally the process was a mere junk without following the clear provisions of the Act and the Constitution.

In view of the above circumstances, I find that the taking of the Plaintiffs' land by the Defendant was unlawful although the Defendant had a noble objective to resettle the landless.

Issue No. 2: Whether or not the compensation offered by the Government pursuant to the Valuation Report of August 2005 was adequate or whether the Plaintiffs' are entitled to compensation on the basis of their own Valuation Report.

Under **Article 26 (2) (b) of the Constitution**, compulsory acquisition of property can only be made under a law which makes provision for prompt payment of fair and adequate compensation prior to the taking of possession.

Upon restricting the Ranches, Government of Uganda committed itself to compensating the affected Ranchers who had been allocated Government Ranches. The valuation exercise carried out by RESCO indicated that the basis of the valuation for compensation was the market value.

In **Buran Chandmary vs The Collector under the Indian Land Acquisition Act (1894) 1957 EACA 125** it was held that the market value of land is the basis on which compensation must be assessed and the market value of land as the basis on which compensation must be based is the price at which a willing vendor might be expected to obtain from a willing purchaser. A willing purchaser is one who although may be a speculator is not a wild or unreasonable speculator.

I have noted the factors upon which the assessment of the market value were based. However, the said assessments were made in 2005 while payments commenced in 2009. According to the Constitution compensation must be fair adequate and paid promptly. It was admitted by **Dw₂ Solomon Balinda Birungi** that the valuation which he made in 2005 did not reflect the market value of 2010. It therefore becomes clear that compensation which the Plaintiffs allegedly received in the year 2009 – 2010 did not reflect the market value of the land, hence it was neither fair, adequate nor prompt.

Furthermore, the award did not consider disturbance allowance. The Plaintiffs testified that they were settled on the Ranches where they were rearing cattle and goats. Some of them had added their developments on the Ranches. They were accordingly entitled to disturbance allowance as they moved to leave the restructured area. The Defendant contended that disturbance allowance was in built in the values awarded to the Plaintiffs and they put it at 30% in their Report. Upon perusal of the Report I fail to see what percentage was inbuilt in the awards. It should have been indicated that Amount awarded was x plus disturbance allowance of 30% to total amount XY. That was not shown and I think that was a professional oversight by the Defendant in failing to award the Plaintiffs disturbance allowance of 30%.

Another area of discontent was that the Defendant did not award the Plaintiff injurious affection. Injurious affection is defined by **Megarry's Manual of Real Property 6th Edition** as injury to other land caused by the acquisition.

The Defendant argued that they did not consider injurious affection because it only applies when the land left is too small to carry out the intended development. They contended that the land left after restructuring was adequate for ranching. A sample look at the RESCO Report shows the original area of the land, land lost to Government and land retained by the Ranchers:

(a) Ranch No. 1

| | | |
|-----------------|---|---------------|
| - Original area | - | 1406 hectares |
| - Land lost | - | 321 hectares |
| - Land retained | - | 1305 hectares |

(b) Ranch No. 7

| | | |
|-----------------|---|----------------|
| - Original area | - | 1688 hectares. |
| - Land lost | - | 912 hectares. |
| - Land retained | - | 776 hectares. |

The above clearly shows that the Ranchers/Plaintiffs retained sizeable chunks of their land which could still sustain ranching activities hence there was no need for them to be awarded injurious affection.

In conclusion, I find that the compensation award offered by Government pursuant to the Valuation Report of August 2005 was outdated and insufficient and inadequate since it was not based on the open market value and disturbance allowances were never considered.

Whether the Plaintiffs are entitled to compensation award on the basis of their own Valuation Report:

The Plaintiffs engaged a one Dr. Ojomoko **Pw₂** who carried valuation of their ranches to determine the market value of their ranches. However, the professional competency of Dr. Ojomoko was put in contempt by the Defendant who argued that the said valuation surveyor was not a registered valuation surveyor. According to Surveyors Registration Act every recognized surveyor must have a Practicing Certificate after registration under **Section 19 of the Act**. The above section provides that no person shall engage in or carry out the practice of surveying unless he or she is a holder of a valid Practicing Certificate granted to him or her.

The evidence that Dr. Ojomoko was not a registered surveyor and did not possess a Practicing Certificate was not challenged. It therefore follows that without valid Practicing Certificate Dr. Ojomoko **Pw₂** could not carry out the practice of surveying. Therefore whatever he purported to do in the form of valuation surveying of the Plaintiffs' ranches were illegal and contrary to the mandatory provisions of **Section 19** of the above Act. As rightly stated in **Makula International v Cardinal Nsubuga & Another [1982] HCB 11** Court cannot sanction what is illegal and illegality once brought to the attention of Court overrides all questions of pleading, including admissions made thereon.

In conclusion the law is that all surveyors whether working with Government or in private organizations must register and be in possession of Practicing Certificate. Since the Plaintiffs' valuation was surveyed by a person not recognized by the Board of Surveyors according to the Surveyors Registration Act, that valuation could not be a basis for the Plaintiffs' compensation.

Issue No.3: Remedies available:

(a) Market value:

In view of my conclusions on the issues above, it is just and fair that a fresh revaluation of the Plaintiffs ranches be done by an independent valuer chosen by Court (Registrar) whose work shall be confirmed by the Chief Government Valuer. The value arrived at shall be less the amount which the Defendant had deposited in the Plaintiffs' accounts. The market value should be that of 2010.

(b) General Damages:

From the facts and circumstances of this case, it must be appreciated that the action taken by government was to resettle the landless cattle keepers who were forced by circumstances to invade the Ranches and also to streamline the activities of the Ranchers according to the covenants in the tenancy. Therefore in a way, the restructuring was for the benefits of all the stakeholders and once prompt, fair and adequate compensation is paid, it would not be necessary to award general damages. The spirit in the claims of the Plaintiffs and evidence leans more on the inadequacy of the compensation award and not the injuries suffered. Once Government committed itself to paying compensation my view is that this Court should ensure that the process is reopened and harmonised to enable proper market value to be determined. It is also my view that the circumstances under which Court awarded general damages in **Rwanyarare v Attorney General, HCCS No. 95 of 2001** and **Byanyima v Attorney General HCCS No. 359 of 1996** were different. In the above cases the Plaintiffs proved that the acts of the Government agents clearly called for award of general damages because of the injuries and loss they suffered and they did not opt to be compensated.

It is therefore my conclusion that once the Defendant is made to comply with the law in regard to compulsory requisition, there would be no need for the award of damages since the Plaintiffs would be entitled to get the market value of the property they lost including disturbance allowance.

(c) Costs:

The Plaintiff is entitled to the cost of this suit and interest on the costs at Court rate until its payment is made. In conclusion, judgment is entered for the Plaintiffs with costs in the following terms:

- (a) A declaration that the Plaintiffs are entitled to a fair, timely and adequate compensation for the land alienated by Government.
- (b) Valuation Report commissioned by the Chief Government Valuer as a basis for compensation was neither fair nor adequate as a basis for compensation of the Plaintiffs.
- (c) An independent valuer appointed by Court (Registrar) be commissioned to carry out fresh valuation to determine the market value of the property as between 2009-2010. The amount determined to be less the amount paid to the Plaintiffs. The award to be confirmed by the Chief Government Valuer.
- (d) Costs of the suit and interest on it at Court rate until payment in full.
- (e) The exercise to be completed within three months from to date.

<http://www.ulii.org/ug/judgment/high-court/2013/35>

The vision of the National Land Policy 2013 is to consider land not just as property, but as a development tool which results in a prosperous country through efficiency in land use. This means that in the use of land the land owners should derive benefit and profitability that propels them into prosperity. This however is not the experience in the areas with extractives and investments of whichever kind.

The valuation approaches currently applied to compensation in the face of investment on land does not reflect the true value of the land and neither does it give a land owner continued and real benefit from the business enterprise. The principle around investments is that they should leave the people better off than worse off, of which the reverse is true in Uganda. Compensating surface owners commensurately does not have a significant impact on the companies, but rather, creates a harmonious investment environment with averted conflicts.

LGI-12(iii) Those expropriated are compensated promptly

The government of Uganda does not make prompt compensation in the case of expropriation of land. Severally, there have been cases in court over this matter. In November 2013 particularly, a public interest litigation was filed through a petition was filed in the constitutional court to get an overall interpretation of prompt compensation.

Case Study 7: Advocates for Natural Justice & 2 others Vs. The Attorney General & another Constitutional Petition no. 40 of 2013

That the Government of Uganda commissioned a project to upgrade the Hoima- Kaiso- Tonya road, Hoima District, in order to ease and facilitate the oil exploration and exploitation activities in the area. The project is being implemented by the 2nd respondent, a Government agency. The process of upgrading the road, it seems, required or necessitated acquiring more land. The government then proceeded to compulsorily acquire land from the people affected by the project under the Land Acquisition Act. The 2nd respondent is one of the people affected by the project. His main complaint is that his land situated at Kyeharo – Kabwoya was expropriated without prior prompt payment of compensation. He is not complaining in this petition about the value of the land as assessed or the quantum of the award.

The 2nd petitioner contends that the respondents' act of taking over and acquiring his land prior to payment of compensation was in contravention of his right as enshrined under **Article 26 of the Constitution**.

The 2nd and 3rd petitioners contend that the respondent purported to act under **Section 7(1) of the Land Acquisition Act** which law they argue is inconsistent with **Article 26** of the Constitution and therefore null and void. For the respondents it was contended rather half heartedly that the impugned **Section 7(1) of the Land Acquisition Act** is still good law. That it is not in any way inconsistent with **Article 26** of the Constitution. Mr. Kalembera argued that the Constitution must be looked at as a whole and that no one Article of the Constitution ought to be interpreted in isolation of the rest of the Constitution. That in this regard court ought to take into account the fact that the right to property as set out under **Article 26** of the Constitution is not absolute. That it is subject to the limitations set out in **Article 43(2) (c)** of the Constitution and therefore, he went on to argue, **Section 7(1)** is one of the limitations envisaged under **Article 43(2) (c)**. He contended that interpreting **Article 26** restrictively would hamper government projects. He also argued that land may be acquired by government in emergency situations that would render it practically impossible to strictly comply with the provisions of **Article 26** of the Constitution, to wit: - Prompt prior payment for land before it is compulsorily acquired by government.

The Judges of the Constitutional Court ruled as follows:

The Land Acquisition Act commenced on the 2nd July 1965, thirty years before the coming into force of the current Constitution. It therefore falls under the provisions of **Articles 274** of the Constitution which relates to "existing law". **Article 274** stipulates as follows;

"Subject to the provisions of this Article, the operation of the existing law after the coming into force of this Constitution shall not be affected by the coming into force of this Constitution but the existing law shall be construed with such a modification, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution"

Since the Land Acquisition Act pre-dates the 1995 Constitution, it ought in my view to be construed in conformity with the Constitution. The Land Acquisition Act as already noted came into force on 2nd July 1965. It was therefore enacted under the 1962 independence Constitution. Under that Constitution, Article 22 thereof provided as follows;

22(1) "No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied that is to say;

The taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such a manner as to promote the public benefit; and

the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

provision is made by a law applicable to that taking of possession or acquisition,

for the prompt payment of adequate compensation";

The Article goes on, but I will stop here since the rest of the provisions do no concern this petition. This Article was reproduced in 1966 interim Constitution. It was again reproduced word by word as Article 13 of the 1967 Republican Constitution. However, it was substantially changed in Article 26 of the 1995 Constitution which now provides as follows;

"26. Protection from deprivation of property.

(1) Every person has a right to own property either individually or in association with others.

No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied-

- the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and

- the compulsory taking of possession or acquisition of property is made under a law which makes provisions for-

- prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and

- a right of access to a court of law by any person who has an interest or a right over the property."

Clearly the 1995 Constitution departs from the earlier Constitutions in respect of right to property and specifically on the powers of government to acquire land compulsorily. The 1995 Constitution is very restrictive in this regard, it specifically provides for prior payment of compensation before taking possession or acquisition.

We are inclined to think that this apparent modification of the right to property in the 1995 Constitution was guided by the preamble to the Constitution itself which provides as follows;

"WE THE PEOPLE OF UGANDA:

RECALLING our history which has been characterized by political and Constitutional instability;

RECOGNIZING our struggles against the forces of tyranny, oppression and exploitation;

COMMITTED to building a better future by establishing a social economic and political order through a popular and durable national Constitution based on the principles of unity, peace , equality, democracy , freedom, social Justice and progress;"

The history of this country was characterized by compulsory acquisition of property without prior payment of compensation. Most notably compulsory acquisition by government of properties belonging to the Kabaka of Buganda and the government of Buganda in 1965 to 1966, the nationalization of foreign companies in 1969 in what came to be known as The Nakivubo Pronouncements and the expropriation of Asians (citizens and non

citizens) properties in 1972 to 1973 by the military government at the time. I am inclined to think that in **Article 26(2)**, the Constitution intended to put that history to rest and to firmly assert the people's rights to property.

The 1995 Constitution first and foremost limits the instances in which property can be compulsorily acquired by government, to the following;

- Public use
- In the interest of defense
- Public safety
- Public order
- Public morality
- Public health

In every such instance where government acquires or takes possession of any persons property such an act has to be made in a law which provides for,

"Prompt payment of fair and adequate compensation; prior to the taking of possession or acquisition of property"

In this case it is common ground that the government indeed has taken over the second respondent's property under **Statutory Instrument Number 5 of 2013, The Land Acquisition (Hoima- Kaiso -Tonya road) Instrument** issued under **Section 3 of the Land Acquisition Act Cap 226**, and dated 8th February 2013.

The issue in this petition is whether **Section 7 (1)** of the Land Acquisition Act Cap 226 is a law that is in conformity with **Article 26(2)** of the Constitution. We have already set out the provisions of **Section 7(1)** of the Land Acquisition Act above. Clearly that Section does not provide anywhere for prior payment of compensation before government takes possession or before it acquires any person's property.

To that extent therefore i find that **Section 7(1)** of Land Acquisition Act Cap 226 is inconsistent with and contravenes **Article 26 (2) (b)** of the Constitution.

We do not think however that this means that **Section 7(1)** of the Land Acquisition Act ceases to exist. In my view, the impugned Section is saved as an existing law under **Article 274** of the Constitution which i have already set out above. The requirement under that Article is that the laws that pre-date the 1995 Constitution ought to be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

The Constitution clearly envisages that existing laws would in one way or the other be inconsistent with its provisions. It is therefore not necessary that every time a law is found to be inconsistent with the Constitution, recourse is made to this court. Some of the inconsistencies such as the impugned **Section 7 (1) of the Land Acquisition Act** are too obvious and require no interpretation by this court. The purpose of **Article 274** of the Constitution was to avoid a situation where each and every provision of the old laws, those that pre-date the 1995 Constitution, found to be inconsistent with the Constitution had to end up in this court, for interpretation and for declarations to that effect.

This petition therefore succeeds. In the result we make the following declarations.

- That **Section 7(1)** of the Land Acquisition Act is hereby nullified to the extent of its inconsistency with **Article 26(2)** of the Constitution. That is to say, to the extent that it does not provide for prior payment of compensation, before government compulsorily acquires or takes possession of any person's property.
- It is hereby declared that, the acts of the 2nd respondent complained of in the petition, to wit:-taking possession of the 2ndrespondents land prior to payment of compensation contravened his right to property as enshrined in **Article 26(2)** of the 1995 Constitution.

<http://www.ulii.org/files/ADVOCATES%20FOR%20NATURAL%20RESOURCES%20&%20%20ORS%20V%20ATTORNEY%20GENERAL%20&%20ANOR.doc>

Panel discussions revealed that the promptness of compensation varies depending on the project. Road construction works are usually promptly compensated because the financing is usually 100% and supervision of the process is usually stringent. Where compensation is not feasible due to cost, options are often derived. A case in point is the construction of the Northern by-pass which was diverted to the swamps in a bid to avoid compensating land owners.

LGI-12(iv) Independent and accessible avenues for appeal against expropriation exist

There is no legal mechanism in Ugandan law for appeals against expropriation. Section 13 of the Land Acquisition Act provides for appeals to be made with regards to awards for compensation in regard to the amount awarded or that she or he should have the apportionment or be included in the apportionment the awards.

Section 14 only provides for the Attorney General to take a matter to court in relation to any land. The proposed Land Acquisition act 2013 however, seeks to amend this to provide that any person with interest in land to be acquired by government or local government can access court.

LGI-12(v) Timely decisions are made regarding complaints about expropriation.

Resettlement Action Plans cater for handling complaints about expropriation, however, the management of such complaints is highly variant given that there are national regulatory frameworks.

Administrative decisions regarding complaints about expropriation are often not prudently handled and degenerate into situations of conflict. Often times, the politicians take over the mediation of such disputes. There are no administrative procedures in place or guidelines for the mediation of such complaints.

Panel discussions revealed that there are complaints handling desks for most of the projects and it takes 14-30 days for a complaint to be handled comprehensively. This is true for major road infrastructure development projects. The challenge experienced in this process is political interference that often raises issues way out of line and derails or makes the whole process inefficient.

PANEL 5: TRANSFER OF LARGE TRACTS OF LAND TO INVESTORS

Uganda has fertile soils with 64.5% of its land area suitable for agriculture and 27% currently under cultivation. The country also has relatively abundant water resources for production and a thriving, increasingly market-oriented agricultural economy. Access to productive land and water, however, is highly variable in different regions of the country and among different population groups. Today's food and financial crises have triggered the new global scramble for land, in some cases best referred to as 'grabbing' because of the methods of acquisition. Food insecure governments that rely on imports to feed their populations are snatching up vast areas of farm land outside their own areas for food production, and yet other governments are acquiring and converting farmland to produce enormous quantities of bio-fuel. Although these may seem to be parallel agendas driving two kinds of land

grabbers, their starting points may differ but the tracks eventually converge. Food corporations and private investors hungry for profits amidst the deepening financial crisis, see investment in foreign farm land especially in less developed countries as an important new source of revenue. As a result, fertile agricultural land and gazetted community resources like forests are becoming increasingly privatized, given the power of public domain. Since March 2008, high level officials from these countries have been on a treasure hunt for land in such countries like Uganda putting into consideration issues of the available land size, land fertility and water resources.

In Uganda, the land is mainly transferred to public and private sector investors. The investors are basically Ugandan citizens that are not indigenous or Ugandan local elites who have entered into agreement with the Uganda Government and the production is mainly for export purposes. The public sector does it mainly for food security purposes while some are for energy and investment opportunity. Whereas small holder farmers utilize small pieces of land to meet their basic needs including food, shelter, health and clothing, commercial farmers utilize large acreages of land with sole aim of accumulating wealth for the individuals or corporate entities owning the investment. As a result, commercial farming initiatives always address profit maximizing opportunities irrespective of the cost to either the environment or the communities in which the initiative is implemented. However, it is argued that large scale land acquisition for agricultural purposes can be beneficial for the poor countries' economic development through job creation and food security to some extent. In this regard, International land acquisition refers to countries with insufficient land for food production look beyond their borders to find land that they can use.

The agricultural sector is the most important source of income and livelihoods for Uganda's predominantly rural population. Agriculture contributes 43 percent of Gross Domestic Product (GDP), 85 percent of export earnings, and 80 percent of employment (Republic of Uganda, 2000). Although food crop production dominates, only one-third of the food crop produced is marketed. Major crops are bananas, cereals, root crops, pulses and oil seeds. Export crops, including coffee, tea, tobacco and cotton, account for only 8 percent of cultivated area. Because of the significance of agriculture to rural livelihoods, land is the most important asset for many Ugandan households. Average land holdings are estimated at 2.2 ha per household, although there are inter- and intraregional inequalities in this distribution, and evidence suggests much of this land is not cultivated (McKinnon and Reinikka, 2000).

The Government of Uganda plays a significant role in facilitating large scale land transfers, in that government's mission to foreign countries attracts foreign investors through promising access to land and other natural resources which may perpetuate land grabbing. The land allocations are made on the highly productive lands and the foreign direct investments are not subjected to the same safeguard policies which give way for corporations to disregard social policies and communal user rights and this may in the end lead environmental degradation. The Annex at the back of the report is showing this.

The Uganda Land Commission holds and manages all land vested in or acquired by the government. It maintains records of leases on state land, and is engaged in the acquisition and allocation of public land to the private sector for investment purposes. The commission

using its mandate to acquire and allocate land to the private sector has failed to put into consideration the fact that the people displaced may be put in a worse condition than before. A case in point is when the government of Uganda through the Uganda Land Commission entered into an arrangement with Neumann Kaffee Gruppe for the establishment of a coffee plantation in Kaweeri, Mubende district measuring 2510 hectares of which 1802 hectares have been planted with Uganda Robusta coffee and 552 hectares or 22%, remain as natural, indigenous tropical rainforest. By use of the army force, the government managed to evict people that were occupying the said land and it is alleged that a total number of 2,041 people belonging to 392 families in the villages of Kitemba, Luwunga, Kijunga and Kiryamakobe were evicted. As if that was not enough, one primary school which was located in the estate was relocated and its former premises host the offices of the plantation in addition to six churches (two Anglican, two catholic, one Pentecostal and one seventh day Adventist were also relocated).

Land has been given to multinationals under very mysterious circumstances. In April 2008, during the World Islamic Economic Forum, the government of Kuwait launched a new 100 million US dollars called “Dignity Living” to be invested in food production and agri-development in Uganda. In 2006, President Museveni provided Chinese investors 10,000 acres (4,046 ha) of land in Uganda, which is being farmed by 400 Chinese farmers using imported Chinese seeds growing corn and rice. This project is overseen by Liu Jianjun, a former Chinese government official and now head of the China – Africa Business Council. The Uganda Government has leased 840,127 ha (drawn from various parts of the country) to the private sector in Egypt to grow organic beef and rice for export to Egypt (see monitor June 9th, 2009).

District Land Boards hold and allocate land that is not owned in the district, and facilitate the registration and transfer of interests in land. In urban areas, land committees play an advisory role to the District Land Boards. The district land boards can allocate such land to individuals or to the communities on application to legalize the status of those occupying it. However, if not applied for then it is owned by the district land board on behalf of the government and it's upon government to deal with it accordingly. Such a case applies to land that is claimed to have been grabbed from its inhabitants and given to investors. About 4500 people are alleged to have been displaced from the 6500 hectares of land which government leased to BIDCO. The 6500 hectares given to BIDCO was former public land on which people were living illegally. However, the target is 10,000 acres of land where 6500(ha) is the nucleus estate while 3500 is the out-grower scheme. The project was intended to improve the livelihood of the people of Uganda and Kalangala in particular, more so on the nutrition status of the poor and reduction on the national cost burden of importation of vegetable oils. This can be used as an example where it is alleged that land grabbing happens everywhere in the country yet in some instances it's the people occupying the area that are in the wrong and they end up accusing the Government for stealing their land.

Several line ministries and government agencies are responsible for certain lands, such as the Uganda Wildlife Authority and the National Forestry Authority which have jurisdiction over protected areas. For example, forests, national parks, mountains etc. Such natural

resources have many advantages to both to human beings and the environment. However, at some point the responsible government agencies have tried to give away some of these natural resources to the investors for farming. A case in point is Mabira recently, there was a proposal to give away part of the forest to the Sugar Corporation of Uganda Limited (Scoul), a sugar company owned by the Mehta Group, to increase cane production. One of the arguments the Government fronted was that Mabira had already been heavily encroached upon. The plan sparked off mass demonstrations in which three people lost their lives and luckily the forest was spared. The forest plays an important role as a water catchment area because it is located between two international lakes which are Victoria and Kyoga and two rivers, the Nile and Ssezibwa. Mabira has a diversity of plants some of which are used by the community to treat diseases and it helps in sinking waste gases from the atmosphere. The forest stores carbon that is worth \$315m per year and it contributes to the heavy rains that are experienced in the surrounding areas throughout the year. Uganda wildlife Authority has continued to gazette land as and when it is necessary and many people have ended up being displaced.

The United Nations report on Investment opportunities and conditions stated: *“In general, agriculture and agro-processing suffer from under-investment. Of the 18 million hectares of available arable land, approximately 25 per cent is being utilized, leaving fully 13 million hectares idle. Private investment is welcome in all aspects of agriculture including the production of crops, beef and dairy products”* (UNCTAD 2001:30).

This theme consists of four indicators with 19 dimensions.

13 TRANSFERS OF PUBLIC LAND TO PRIVATE USE FOLLOW CLEAR, TRANSPARENT, AND COMPETITIVE PROCESSES

The table below presents the LGAF findings on indicator 13 and its 5 dimensions.

LG1-13 Transfers of Public Land to Private Use Follow Clear, Transparent, and Competitive Processes

| | | Dimension Description | Score | | | | Score Description |
|----|-----|--|-------|---|---|---|---|
| | | | A | B | C | D | |
| 13 | i | Divestiture of public land transactions is conducted in an open transparent manner. | | | | | The share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is less than 50%. (Except for equity transfers). |
| 13 | ii | Leases of public land & real estate are in line with the market (unless justified on equity grounds) and collected | | | | | More than 90% of the total agreed payments are collected from private parties on the lease of public lands. |
| 13 | iii | Unless justified by equity objectives, public land is transacted at competitive market prices. | | | | | Public land is rarely or never divested at market prices in a transparent process |
| 13 | iv | The public captures benefits arising from changes in permitted land use | | | | | Mechanisms to allow the public to capture significant share of the gains from changing land use are not used |
| 13 | v | A policy to improve equity in access to and use of assets by the poor exists, is implemented effectively, and monitored. | | | | | Policy is in place to improve access to and productive use of assets by poor and marginalized groups but is not enforced |

LGI-13(i) Divestiture of public land transactions is conducted in an open transparent manner.

Currently, there are two primary mechanisms through which investors can acquire land for agricultural investment in Uganda: through direct negotiation with private land owners (possibly with government facilitation) or through the acquisition of government land held by various agencies, including the District Land Boards, the Uganda Land Commission, or the Uganda Investment Authority (Stickler 2012).

Investors can lease land held by various government agencies, including the District Land Boards, which are authorized to hold land on behalf of local governments, and the Uganda Land Commission (ULC), which, according to Section 49(a) of the Land Act, is authorized to “hold and manage any land in Uganda which is vested in or acquired by the government in accordance with the Constitution.” As will be discussed below, a limited number of investors have also acquired lands directly held by the Uganda Investment Authority. However, there is currently no enabling legislation that specifies the procedures for any of these agencies to allocate land to investors. There is also no legal definition of “public”, “government”, and “local government” land, which makes it difficult to determine which agency has authority or a given parcel of land (Bogere 2011).

There are also important on-going debates about the authority of the government to compulsorily acquire land for the purpose of allocating it to investors. The Constitution (Section 26(2)(a)), the Land Act of 1998 and the Land Acquisition Act Cap. 226 of 1965 prohibit the government from using compulsory acquisition to promote investment. The government has tried to overturn these provisions, including most recently through the Government can purchase or lease privately held land for the purpose of allocating it to an investor.

There are no specific criteria or procedures for identifying government land that would be suitable for a given investment. At a minimum, the ULC considers the project profile, including the size of land required and the proposed use of the land, to determine which properties might be suitable. Once a suitable property has been identified, then the agency writes a letter to the ULC requesting them to permit the investor to lease the land (UIA 2011).

If the ULC approves the agency request, the ULC would then begin the process of transferring the title to the investor as leasehold, typically for up to 49 years. As part of this process, a site visit is required to determine the current land use and identify any “squatters” (i.e. tenants) occupying the land. As described above, these tenants must either be resettled or compensated before the land can be transferred to the investor. While the investor is responsible for paying the compensation, various government agencies, including the ULC and the Chief Government Valuer, facilitate this process. However, it is not clear which Government department has ultimate authority over the resettlement or compensation. Investors also typically pay ground rent for the land.

Panel discussions revealed that Regulation 23 of the Land regulations provides for sale of land by ULC or the Land board in 3 ways Public auction, Open bidding and land allocation. This is however not mandatory. Parliament once asked the ULC why it was not transparent in land allocations but it responded that the procedures stipulated in the law are not mandatory. Because of this, ULC has decided to divest in whichever way it deems fit. There are more of private auctions. The procedure now seems to be that an interested person identifies the land and then applies for it. ULC decides whether or not to grant the application.

Furthermore, discussions showed that most of the public land recently given away comprises mainly of protected areas such as Namanve forest reserve, Butamiira forest Reserves and the former government ranches. In all these processes, no advertisements were made.

Currently, for land under the management of the National Forestry Authority, formal procedures are followed. In this case however, the purpose for which the investor acquires the land must be forestry. No land use change applications are granted. For these lands investors get lease period of up to sixty years. The first batch of licences were issued in 2005/6 while the 2nd Batch of licences were issued in 2008/9.

Land should not be auctioned for the sake of it but this should be based on the type of investments that Government is attracting. As such, the investment plan should make sense before an investor is made to express interest in a particular size of land. The pitfalls in Uganda is the lack of an investment policy and the existence of an investment code Act that is not very progressive. The existing code was for passed in 1991 and Parliament recalled it in 2012. A draft bill has been prepared to amend the existing one but this process is not a public process.

When land is not given under a public bidding process there is minimal control over what the investor is doing. Examples of investments gone bad are the Shimoni and Nakasero land where the investor changed even the company name in order to effect land use change.

LGI-13(ii) Leases of public land & real estate are in line with the market (unless justified on equity grounds) and collected.

Ground rent is often vigilantly paid because of fear to lose the properties. People are therefore, self driven to make sure that these payments are done. Property rates however face challenges in their collection. From available data, the most valuable sources of revenue from the land sector are rental income tax at Shs.6.09 billion; stamp duty at Shs.5.18 billion; land premium and ground rent at Shs.2.064 billion (exceptionally high in the FY 2004/05); and land registration activities at Shs.315 million. Of all existing local revenue sources, property rates have the highest potential in terms of yield and buoyancy. Kampala City Council realized Shs.2.979 billion out of the budgeted Shs.3.772 billion in the FY 2004/05. According to the current budget 2005/06, property rates have been projected to bring in about Shs.10.67 billion in addition to the rates arrears of about Shs.4.7 billion. Property rates revenue projected at Shs.14.7 billion is the single biggest revenue source of Kampala City Council accounting for 44.5 percent of the total projected revenue of Shs.33.3 billion for

the FY 2005/06. The recent revaluation of all properties in the city is expected to raise the annual revenue from property rates from a projected Shs.6 billion to Shs.16 billion (MWLE 2006).

Section 3(4) the Local governments Rating Act limits the ratable properties outside an urban area to commercial buildings only as it reads “notwithstanding subsection (3) the rate may be levied in any area outside the urban area in respect of a commercial building. While this section extends property taxation powers to district local governments, it at the same time limits them to taxing only commercial buildings. What about industrial properties in the districts?

Owner-occupied residential properties are now exempted from property rates following an amendment which was directed by the President just a few months after the new rating law came into force. All along owner-occupied residential properties were liable to property rates. It ought to be appreciated that the main aim of any property rating system is to raise revenue for provision of services by the local authority. Rating is defined as a method by which residents of a particular area contribute money to share the burden of the cost of providing services to themselves within their area. Equity demands that the cost of local services should be equitably shared between all classes of rate payers and fair as between rate payers within those classes¹⁴. An equitable tax should take cognizance of the benefits received by the rate payers as well as his ability to pay tax. People who decide to reside in their own houses consume the same services as those who decide to rent out their houses. This type of exemption is likely to induce evasion on the part of the discriminated property owners (GOU 2010).

Panel discussions revealed that leases are one of the largest money collectors for the country despite the failure to follow regulations to the letter. After 1995, following the constitutional changes and the removal of the role of town councils in collecting fees, there were many distortions about the leasing and collection of lease fees. Leaseholders tended to relax because ownership was guaranteed by the constitutional pronouncement. In cases where there is fear of losing the property in case of defaults in payment, leaseholders pay without coercion.

Generally, lease payments are self regulating given the consequences and the need to guarantee the state of ownership. Furthermore, in order to renew the lease, the leaseholder needs to prove that's/he has been making timely payments. There are always skimmers waiting for defaulters in order to grab the land for which leases have expired or defaulted.

LGI-13(iii) unless justified by equity objectives, public land is transacted at competitive market prices.

The “government price” so determined sometimes varies slightly from the market price. They are often much lower than the market price. On average, investors have paid \$291/acre premiums to acquire UIA agricultural properties, with a range of \$16 to \$693 per

¹⁴ Property value is an indicator of a taxpayer's net wealth or income. And most importantly the intangible housing benefits which owner occupants enjoy have to be weighed against the visible flow of rents from rented properties

acre. Annual ground rents (exclusive of value added tax) vary from \$0 to \$676 per acre, with an average of \$197.

Notably, these premiums are generally below the cost UIA paid to acquire the properties. Across all five properties for which both cost and premium data are available, the UIA lost approximately \$502,950 in the process of acquiring and allocating private agricultural lands to investors. However, if annual ground rents are paid according to the terms specified¹⁷ for the three properties for which all data are available, the total net present value to the UIA is \$4.1 million, or roughly 0.24% of net official development assistance and official aid received in 2010 (World Bank 2012b). The assumptions that were used to calculate the net present value were that for a lease term of 99 years, the discount rate applied was 14%, which is the estimated rate used in 2010 by the central bank of Uganda (CIA 2012); annual ground rent payments were summed over the total acreage for each investment; the cost of land purchased by the UIA and the premium paid by investors to UIA occurred at the beginning of the first term (Stickler 2012).

Panel discussions revealed that government usually transacts at less than market price in order to offer incentives for particular land uses. The Uganda Investment Authority often offers much lower prices than market price to offer incentives for agricultural land. The benefits to the country are calculated not based on the price of the land but the other benefits that accrue from the investment such as employment, increase in GDP, provision of social infrastructure, utility bills e.t.c.

Investors rarely search for and purchase land on their own because of the distortions in the land market in Uganda and the guarantee that the sale of land is a good sale free of fraud.

One of the panellists raised concerns over the implications of this on the East African integration process. Land is central to all trade negotiations and a solution needs to be found that works and binds the whole of East Africa.

Uganda is encouraging private investors through the use of the Public Private Partnerships approach (govt= 51% and investor=49%) for purposes of acquiring land. When this is done, investors often individualise the rest of the activities. They take advantage of the fact that the registries are not linked and thus most of such information is lacking and there is no way of knowing which investments are genuine and which are not. Lawyers are often at the centre of helping the investors beat the long arm of the law.

LGI-13(iv) The public captures benefits arising from changes in permitted land use

The vision of the National Land Policy is to consider land not just as property, but as a development tool which results in a prosperous country through efficiency in land use. This means that in the use of land the land owners should derive benefit and profitability that propels them into prosperity.

The valuation approaches currently applied to compensation in the face of investment on land do not reflect the true value of the land and neither does it give a land owner continued and real benefit from the business enterprise. The principle around investments is that they

should leave the people better off than worse off, of which the reverse is true in Uganda. Compensating surface owners commensurately does not have a significant impact on the companies, but rather, creates a harmonious investment environment with averted conflicts.

Benefits that could accrue to the public as a result of land use change could be numerous, ranging from employment to infrastructure development. These however do not accrue because there is no government policy governing minimum wage payment or even public benefits from investments.

There is no regulatory framework to support these processes.

LGI-13(v) A policy to improve equity in access to and use of assets by the poor exists, is implemented effectively, and monitored.

The National Land Policy 2013 recognizes that mechanisms to deliver the right balance between improving livelihoods, protecting vulnerable groups, and raising opportunities for investments and development are needed. Furthermore, it provides that it is crucial to determine sectors open to foreign direct investment. This is in a bid to promote equity.

14 PRIVATE INVESTMENT STRATEGY

The table below presents LGAF findings for indicator 14 on the private investment strategy.

LG1-14 Private Investment Strategy

| | | Dimension Description | Score | | | | Score Description |
|----|-----|---|-------|---|---|---|--|
| | | | A | B | C | D | |
| 14 | i | Land to be made available to investors is identified transparently & publicly, in agreement with right holders | | | | | A policy to identify land that can be made available to investors exists, based on ad hoc assessment of land potential and limited consultation with communities and is applied in more than 90% of identified cases |
| 14 | ii | Investments to go forward are selected based on expected economic, socio-cultural & environmental impacts in an open process | | | | | Process is in place but many investments go ahead that are either not according to the policy or despite unfavorable outcomes |
| 14 | iii | Public institutions transferring land to investors are clearly identified & regularly audited | | | | | Institutions to make decisions are clearly identified but lack either capacity or incentives in ensuring socially beneficial outcomes or their decisions are not always implemented |
| 14 | iv | Public bodies transferring land to investors share information and coordinate to minimize and resolve overlaps (incl sub-soil) | | | | | No policy is in place but some decisions on land use and land rights are coordinated across sectors |
| 14 | v | Investors' compliance with contractual obligations is regularly monitored & remedial action taken if needed | | | | | Monitoring of compliance is limited or only part of the results accessible to the public |
| 14 | vi | Safeguards are used routinely and effectively reduce the risk of negative effects from large scale land-related investments | | | | | Safeguards do not exist or are applied only in an ad-hoc manner |
| 14 | vii | The scope for investment leading to resettlement is clearly circumscribed & procedures exist to deal with it in line with best practice | | | | | Resettlement policy does not exist; if resettlement takes place than it is in an ad-hoc manner |

LGI-14(i) Land to be made available to investors is identified transparently & publicly, in agreement with right holders

There is an investment law, but the procedure is not streamlined due to lack of regulation. The Uganda Investment Authority is legally empowered to promote investment in Uganda, including by facilitating investor access to land. The first sub-section below briefly describes provisions of the Investment Code Act (“the Act”), Cap 92 of 1993 and other legislation relevant to the process of acquiring and allocating agricultural land for large-scale investment. At just twenty-two pages, the Act is fairly concise. The Act creates the Uganda Investment Authority.

Authority (UIA), whose functions are, inter alia:

- “to promote, facilitate, and supervise investments in Uganda;
- to receive all applications for investment licences for investors intending to establish or set up businesses enterprises in Uganda under this Code and to issue licences and certificates of incentives in accordance with this Code.
- to secure all licenses, authorizations, approvals, and permits required to enable any approval granted by the authority t[o] have full effect;
- to do all other acts as are required to be done under this Code or are necessary or conducive
- to the performance of the functions of the authority” (Part II, Section 6).

In establishing the Uganda Investment Authority, the Act specifies that “The authority shall be a body corporate...capable of acquiring and holding property” (Part II, Section 2(3)). It appears that the UIA has chosen to broadly interpret this authority, which was meant to empower the UIA to acquire land for its own use as a body corporate, to include acquiring and holding property for allocation to investors. However, the UIA was not granted the express power to acquire land and then either sell it to investors or otherwise allocate it to them.

Given that the UIA is not explicitly legally authorized to acquire land on behalf of investors, it is perhaps unsurprising that there are no rules or regulations governing the UIA’s identification or acquisition of agricultural land for private investment. Neither does the Act itself specify any rules or regulations governing the allocation of agricultural lands held by the UIA for private investment. The UIA does, however, have criteria for allocating land within its Industrial and Business Parks. In addition to meeting the minimum requirements for an investment license, investments wishing to obtain “free land” from the UIA must meet two out of three additional criteria: (i) total investment per acre must exceed US\$ 1 million; (ii) a minimum of 80 percent of the total product value must be exported as value added products; (iii) local employment must support a minimum of 30 semi-skilled or 15 skilled workers per acre (Stickler 2012).

Significantly, however, the Act does state unequivocally that “no foreign investor shall carry on the business of crop production or acquire or be granted or lease land for the purpose of crop production or animal production” (Part III, Section 10(2)). However, a company that is 49% foreign-owned could still register as domestic company and circumvent this rule. Although the Act does not explicitly provide the UIA with the authority to acquire, hold, or

allocate land to investors, it does provide the UIA with the authority to facilitate investor access to land:

The executive director shall liaise with Government Ministries and departments, local authorities, and other bodies as may be necessary in order to [sic.] assist an investment licence holder in complying with any formalities or requirements for obtaining any permissions, authorizations, licences, land and other things required for the purpose of the business enterprise (Part III, Section 15(2)).

However, there are no codified rules or regulations governing the UIA's authority to facilitate investor access to land. The Act does not specify whether the UIA is responsible for helping investors acquire land from private owners or from other government agencies that hold land, such as the ULC or the District Land Boards. Neither does the Act specify how the UIA should interface with the other government institutions that have played roles in recent land acquisitions, including the Ministry of Agriculture and the National Forestry Authority.

The Investment Code Act stipulates that the UIA should appraise the capacity of the proposed investment to contribute to "locally or regionally balanced socioeconomic development" when considering an investment application (Section 12(e)). It also explains that a license may contain provisions requiring the investor "to take necessary steps to ensure that the operations of his or her business enterprise do not cause injury to the ecology or environment" (Section 18(2)(d)). However, the Act does not specify any sanctions for non-compliance with this optional provision. Beyond these two guidelines, the Act does not stipulate any social or environmental safeguards that apply to agricultural investments in Uganda. The Act also does not cross-reference relevant environmental laws and regulations governing the project development in Uganda.

According to the UIA, the Authority can purchase land directly from individuals, communities, or cooperatives wishing to sell land that is "unencumbered (free of squatters)", properly titled, and free of conflict (Mitti 2011). Once the UIA has purchased the land, the titles are "automatically" converted to freehold. Since 1997, the UIA has purchased six rural properties from private individuals using government funds. In total, the UIA has purchased some 25,570 acres (6 parcels) of agricultural land from private land owners, of which 6,460 acres (4 parcels) were freehold; 12,800 acres (1 parcel) were leasehold; and 6,200 acres (1 parcel) were mailo land¹² before they were purchased by UIA (Stickler 2012).

The parcels range in size from just 20 acres to 12,800 acres, with an average of 4,262 acres. The prices paid by the UIA for these lands vary widely and do not reflect average market prices¹³. On average, the UIA paid private land owners \$296/acre for these properties, with a high of \$728 for land in Kasangati and a low of \$19 for Masindi farmland. According to an interview with the UIA, the price of an acre of farmland varies between roughly \$330 in Mubende and \$500 in Mukono. However, the UIA paid just \$57/acre for acquiring 6,205 acres of farmland in Mubende.

Lands acquired by the UIA are not always unencumbered of legal or illegal occupants. UIA works with the local council (local administrative authority) to identify tenants eligible to receive compensation (Mitti 2011). The Chief Government Valuer determines the value of compensation based on the values set annually by the District Land Board for crops and

other property. The compensation value paid to tenants includes the value of crops and improvements on the land (e.g. house or other structures), plus a disturbance allowance of 30% of the value of the compensation.

The total value assigned to any crops grown on the property depends on the terms of any lease agreement governing the occupant's rights. Where a lease agreement will be taken over by the new investor, the current lessee is entitled to the value of their crops for the remaining term of the lease. Where occupants do not possess a lease agreement or other form of legal documentation of their rights (e.g. title), they are entitled to crop compensation for the value of one year's harvest.

This is however not always the case. In the delivery of the judgment in the case of ***Peter B Kayiira & others Vs: Attorney General of Uganda Kaweri Coffee Plantations Ltd and anor: Civil Suit No 179 of 2002***; the Judge found that

Uganda Investment Authority did not undertake due diligence. The judge stated that The Uganda Investment Authority bought the land subject to encumbrances mentioned in Clause 6.2 of the contract but the court's finding is that those conditions were never satisfied. Effectively Messrs Nangwala and Rezida waived the condition to purchase the land with vacant possession when they failed to satisfy themselves that the conditions in the contract had been fulfilled and they went ahead and negligently completed the transaction. Hence the tenants were not compensated and the purchase was completed without vacant possession; and without obtaining any valuation reports on the land sold, evidence payment of compensation, payment of disturbance allowances and as well as allocation of alternative land.

A deed of covenant to the title should have been executed before completion that would have given such protection as is extended pursuant to six covenants namely covenant of right to convey; covenant of seisin; covenant of encumbrance, covenant of quiet enjoyment; covenant of warranty; and covenant of further assurance. *“These basic procedures in a convincing were not followed. My findings are that James Nangwala and Alex Rezida as senior partners of their firm were grossly, recklessly and deliberately negligent in failing to complete the purchase of the land contrary to the conditions in the sale agreement. They should have been more diligent because the overall quantum of the transaction including the compensation that was payable under the contract was in the region of billions of shillings; and the issue of compensation of tenants in the contract could not have been overlooked. They would have known full well the negligent implications of not concluding the terms of the sale agreement.”*

Panel discussions emphasized that the question is normally not land but the type of investment that an investor seeks to do. Land becomes one the key factors of production. An Example was given of the Vegetable oil project which is an investment in the Agricultural Sector. For this project, Government identified the land for an agricultural based project and set out the bid to investors (with the Investor having 90% share and local farmers =10%). The Land owners and other interested parties were consulted to participate in the project the palm oil project.

A second phase of the same project is being developed in Buvuma, a more populated island. Here government is negotiating with the land owners. Land is valued and consent sought for from the land owners to convert user to the oil palm growing. There have been instances where some people have rejected the deals and government has respected their wishes.

The National Land Policy provides for a Land Bank to be managed by the Uganda Land Commission and district land boards. Government should therefore buy land and store (bank) it for investors. The National Forestry Authority for example should have a land bank for forestry purposes. It is not proper for the Uganda Investment authority to hawk an Investor in the villages in search for land as the law does not give it this mandate. The biggest challenge is the lack of regulations for this.

LGI-14(ii) Investments to go forward are selected based on expected economic, socio-cultural & environmental impacts in an open process

Investors must hold a valid investment license to be eligible to acquire agricultural land from the UIA. The Act does stipulate the minimum information that an investor seeking an investment license must provide in their application. This includes, inter alia, the proposed business name and address, the legal form of the business, the nature of the proposed business activity, the proposed location, the estimated number of persons to be employed, the qualifications and experience of project management and staff, and “any other information relating to the viability of the project” (Section 11(1)Investment code Act). Before awarding an investment license, the Act requires the UIA to “carry out an appraisal of the capacity of the proposed business enterprise to contribute to” a number of objectives, including employment, advanced technology introduction, and “locally or regionally balanced socioeconomic development” (Section 12Investment Code Act).

Licensed investors are free to complete an online “Land Request Form” that specifies their investment license number, intended land use (agricultural, industrial, or other), the size of land required, the type of “terrain (e.g. highland, flat, swampy etc)”, preferred tenure status (freehold, leasehold, or mailo), offer price, preferred location, service requirements (power, water, telephone, other), and acquisition type (purchase, lease, joint venture).

Panel discussions emphasized the lack of impact studies as a major challenge to ensuring compliance with environmental standards and actual analysis and understanding of the social-economic impacts of these investments to Uganda as a country. This all hinges on the absence of overall land use planning despite the fact that government is not the land owner. No Environmental Impact assessments are done let alone environmental audits. This creates a monster called the investor who then does what he/she deems fit irrespective of its long e=term impacts on the host country.

Very few projects have had EIAs and Social Impact studies done some of these projects are

- Karuma Hydro power Project - A Norwegian company was contracted to carry out impact studies and when the report was produced, a Chinese company was contracted to redo the EIA because the standards proposed by the Norwegian firm were extremely high.

- Southern Bypass -the Chinese did their work without taking into consideration some specific requirements leveraging on cost reduction.
- Murchison falls- the road to Kayiso-toonya - Tullow proposed an underground passage in order to save the breeding grounds for the wildlife in the National Park but a Chinese firm was contracted and it went ahead and constructed the road through the breeding grounds

Consideration of economic, socio-economic and Environmental concerns are often considered expensive by the Government which often seeks cheaper alternatives and thus forfeiting environmental and social considerations for the sake of development.

LGI-14(iii) Public institutions transferring land to investors are clearly identified & regularly audited

The National Land Policy provides that, “It is the duty of government to deliver land to investors based on a transparent criterion with due process either from public land or government land without displacing public utilities”

The Investment Code Act does explicitly authorize the UIA executive director to “liaise with Government Ministries and departments, local authorities, and other bodies as may be necessary” to help investors acquire land (Section 15(2) of the Investment Code Act). However, no rules or regulations have been promulgated to govern the exercise of this authority. Interviews with both the UIA and the Uganda Land Commission provided some insights into the role of the UIA in helping investors acquire both government and private land for agricultural production.

When investor requests UIA assistance in identifying land for an agricultural investment, the UIA may liaise with other government agencies to identify land that may be suitable for the investment. Several government agencies have recently been involved in allocating agricultural land for private investment in Uganda. These include the Uganda Land Commission, the District Land Boards, the Ministry of Agriculture, the Uganda Wildlife Authority, and the National Forestry Authority (Tumushabe 2003, Tumushabe and Bainomugisha 2004, Veit et al. 2008).

As previously mentioned, the Uganda Land Commission (ULC) is authorized to “hold and manage any land in Uganda which is vested in or acquired by the Government in accordance with the Constitution” (Section 49(a) of the Land Act). Prior to the 1995 Constitution, which created the ULC (Article 238(1)), various government institutions held and managed government land. For example, the government, through the Ministry of Agriculture, previously maintained model farms of 1,000 to 2,000 acres at each of 52 District Farm Institutes. This land, along with all other land vested in or acquired by the government, is now held and managed by the ULC. As such, the UIA typically helps investors acquire government land through the Uganda Land Commission.

The ULC considers that all national parks, forest reserves, and other protected areas are also ‘government land’ that can be allocated to investors. A thorough analysis of the legal challenges inherent in allocating protected areas for crop or livestock production is beyond

the scope of this paper. However, the Constitution clearly states that the government is only empowered to hold such lands “in trust for the people...for ecological and touristic purposes for the common good of all citizens” (Article 237(2)(b) of the Constitution).

There have been recent legal challenges to the degazettement of protected reserves (e.g., Pian Upe Wildlife Reserve and Butamira Forest Reserve) to provide land for agricultural investments have confirmed that the government’s authority as trustee of such lands does not include the power to degazette them for private investment (Tumushabe 2003; Tumushabe and Bainomugisha 2004).

In response to an investor’s request for land, the UIA may write a letter of recommendation to the government agency that formerly managed lands suitable for the investment (e.g. the Ministry of Agriculture) requesting that the agency authorize the ULC to transfer the title to the investor as leasehold. The UIA recommendation is based on the information presented in the investment license (e.g. financial qualifications, technical qualifications, and experience in the sector). The ULC then consults its registry of government properties to identify properties that might meet the investor’s needs.

The procedure for determining fees regarding the value of the land is not clear neither is there clarity on the setting of ground rent and property rates. . However, transaction fees are standard fees, the highest being the stamp duty which is 1% of the value of the land.

Panellists especially from government were clear that they only undertake financial audits and rarely are performance audits carried out. Apart from the Public Accounts Committee of the Parliament and the Auditor general, no other forms of audit exist to check Government functionality.

LGI-14(iv) Public bodies transferring land to investors share information and coordinate to minimize and resolve overlaps (incl sub-soil)

The Investment Code Act and the Land Act, among other relevant laws, assign unclear and sometimes overlapping authorities to different government institutions that in practice play a role in the process of transferring land to investors. There are no established procedures governing the authorities of either the UIA or the ULC to manage government land (Bogere 2011). Nor are there any regulations to guide the interaction of different government agencies, for example in identifying government land suitable for a particular investment. Moreover, the District Land Boards also have the authority to “hold and allocate land in the district which is not owned by any person or authority”, but it is not clear how the Land Boards exercise this mandate with respect to the UIA or the ULC (Section 59(1)(a) of the Land Act).

At a minimum, the lack of legal and procedural clarity on the duties of the UIA and other government authorities in allocating government land to investors creates opportunities for inefficiencies – and perhaps even corruption (Bogere 2011). In fact, a recent audit of the Uganda Land Commission found several cases where the same parcel of government land was allocated to two or three different investors with different lease titles (Bogere 2011). Some investors apparently go directly to the President of the Republic to secure land.

There is no coordinated mechanism for sharing information within public institutions. Many times, Institutions only discover that their lands have been divested.

The National Land Policy 2013 is silent on the institutional framework for land transfer for investment. This leaves the matter grey. Panel discussions affirmed that there is no stand alone policy but could be provided for in the different sectoral policies. The practice however is that government coordination is the assignment of the office of the Prime Minister. This has however not been institutionalised. This matter needs to be thought through by Government departments concerned working together with the private sector and civil society.

LGI-14(v) Investors' compliance with contractual obligations is regularly monitored & remedial action taken if needed

Currently there is no regulatory framework to monitor investors' compliance with the contractual obligations neither are there prescribed remedial actions for investor bad behavior. Uganda operates a fully liberalized market economy and the investor determines the rules of the game.

Peter B Kayiira & others Vs: Attorney General of Uganda Kaweri Coffee Plantations Ltd and another: Civil Suit No 179 of 2002; The Judge realized that the terms of the contract were not fulfilled and that the plaintiffs were being defrauded. He ruled as follows:

On examining Plaintiffs witness evidence with the terms of the contract I became concerned as to whether the alternative land at 168 Kambuye where the tenants were to be relocated, was a reality or fiction:

Clause 2(a) the contract - US 50,000 dollars shall be paid into an escrow account to be opened in Kampala with Standard Charter Bank and to which the joint signatories shall be Mr Urban Tibamanya representing the vendor and Mr Alex Rezida representing the Purchase.. The signatories shall be joint signatories for all the transactions on the account and shall only effect a withdrawal of funds upon receipt of written instructions from their respective principals . The purpose of the payment is to enable the Vendor at his request, handle the removal of all the encumbrances specified herein below and the money so paid into the escrow account shall only be withdrawn in the following manners.

Clause 2(b)-Up to 500,000,000 shillings may only be withdrawn at any time for the purpose of purchasing alterative land for the occupants of the land now being sold Provided that the vendor furnishes proof of securing such alternative land. The sum under this Clause may only be withdrawn when the land title is kept by the purchaser's representative herein above named (that is Alex Rezida).

I therefore obtained copies of the title of Block 168 from Mityana District Registry. . My reservations were confirmed that the landlord had never acquired the said land either Mailo or leasehold in 2001, as was promised. I enclose copies of the title marked Court Exhibit C 1. The promise and assurance of alternative land at Kamabuye by the RDC's and the landlord were all lies, fibs and stories. They were deliberate lies to defraud the tenants to evict them and violate their human rights. The plaintiffs evidence was therefore credible that they had violently been evicted without any relocation or compensation. And the lawyers of both the vendor and purchaser connived to facilitate legal fraud against the tenants. These lawyers were Urban Tibamanya, James Nangwala and Alex Rezida. If they had religiously complied with terms of the sale agreement there

would have been no fraud. : The scam involved a number of people including local leaders, RDC's, some thugs hired as policeman and soldiers as well as the lawyers and the landlord. The German investors and some officers of UIA cannot be ruled out.

As per the terms of the contract no alternative land was acquired; non of the encumbrances were cleared as per page Clause 6.2a and 6.2 b of the agreement; title deed were not given to Mr Alex Rezida as there was no land acquired, principal's consent to withdraws funds from the escrow could not be there if there was no alternative land purchased . I am satisfied that this sale agreement drawn by Nangwala and Rezida and signed by Alex Rezida,, Mr Tibamanya and the Assistant director of Uganda Investment Authority was a bogus document intended to defraud the government and the tenants.

My findings are further confirmed when the cost of compensating 400 tenants is nearly 1-6million dollars and the purchase price was \$351,658 dollars. The equation does not stack up. No right minded vendor would have entered into such a transaction unless there was a hidden agenda or Plan B which the Government did no know but the Vendor might have been appraised of. Mr Rezida and Mr Nangwala who prepared the agreement for sale should have been put on notice and should have made further enquiries before they advised their client to sign a bogus contract that did not make sense.

Mr Francis Mugerwa solicitor acting for the estate of the deceased landlord informed the court that the landlord did not have the capacity to pay such compensation and that his current estate was worth 100 million shillings.

The funds in the escrow account had Mr Rezida and the Mr Tibamanya as the joint signatories The funds were provided by the UIA. These funds in escrow account could not have been applied for the purposes for which they were meant because no alternative land was purchased to relocate the tenants; and there is no evidence before this court that the monies in esc row account were reimbursed to the UIA, and hence there was misappropriation of clients monies or theft of clients monies in broad day light. It is most serious offence a solicitor can commit. This dishonesty by Mr Rezida, Mr Nangwala and Mr Tibamanya was criminal dishonesty because of theft of client money. I should mention that Mr Tibamaya had sworn a witness statement on behalf of the UIA but he did not come to the court to give evidence- he was the lawyer for the landlord and acted for him in the sale of the land to UIA who were apparently defrauded and ended up burning their fingers.

The National Land Policy 2013 provides as one of its policy statements under land for investment that *“Government shall put in place measures to mitigate the negative impacts of investment so as to deliver equitable and sustainable development.”* To achieve this, a strategy will be formulated to guide the state and its agencies in the provision of land for investment including measures to follow due process (evaluation, due diligence and approval of land use change).

Panel discussions revealed that only the National Environment Management Authority undertakes some monitoring applying the “polluter pays” principle and promoting cleaner production. Environmental audits have not been effectively implemented. The other sectors have not monitored compliance.

LGI-14(vi) Safeguards are used routinely and effectively reduce the risk of negative effects from large scale land-related investments

Section 10 (2) of the Investment Act provides that “No foreign investor shall carry on the business of crop production, animal production or acquire or be granted or lease land for the purpose of crop production or animal production.” However, the Uganda Investment Authority registry clearly indicates that it has allocated large areas of land to foreign investors for crop production – which directly contravenes Part III, Section 10(2) of the Investment Code Act. The UIA reports quarterly on the number of projects approved by

sector (e.g. agriculture, forestry, etc.) and by investor country of origin. However, beyond the UIA registry, no official data on government or private land acquired by approved domestic or foreign investors are available. Thus, it is not possible to determine how much land foreign investors have acquired for agricultural production in Uganda. However, recent research suggests that there are several foreign companies operating agricultural production investments in Uganda (Land Matrix Portal). Furthermore, by allowing companies that are up to 50% foreign-owned to register as domestic entities, the Investment Code Act leaves investors with ample room to circumvent restrictions on foreign land acquisition.

Panel discussions affirmed the above but highlighted that in Uganda, it is only environmental safeguards that are pronounced and to some extent implemented although many times with compromised quality. Examples were given of The Nile Power Project in Bujagaali where safeguards were not respected at all. In the Karuma Hydro Power project, a credible process was undertaken but the results compromised. Such political interference and pronouncements that lead to destabilization of technical processes often flaws systems and creates an atmosphere of uncertainty in the minds of technical staff.

Secondly, the cost of cleaning up after a detrimental act is often too high especially in the face of oil exploration. It is important for the state to ensure that the available legal frameworks are abided with. The Factories can mitigate their negative effects but there is laxity when no one forces them to do so. Cleaner production remains a principle on paper and not in practice. The polluters more often than not do not pay for the environmental degradation and damage caused.

LGI-14(vii) The scope for investment leading to resettlement is clearly circumscribed & procedures exist to deal with it in line with best practice

Uganda does not have a resettlement policy neither does it have an anti- eviction law. This has left citizens prone to evictions without resettlement in the face of investments.

15 POLICY IMPLEMENTATION IS EFFECTIVE, CONSISTENT AND TRANSPARENT AND INVOLVES LOCAL STAKEHOLDERS

The table below presents findings of the LGAF indicator 15 with its four dimensions.

LGI-15 Policy Implementation is Effective, Consistent and Transparent and Involves Local Stakeholders

| | Dimension Description | Score | | | | Score Description |
|----|-----------------------|--|---|---|---|---|
| | | A | B | C | D | |
| 15 | i | Investors provide sufficient information to allow rigorous evaluation of proposed investments' impacts | | | | Investors' business plans (application materials) require some evidence of technical viability, community consultation, and availability of resources but this is insufficient to effectively identify project risk ex ante |
| 15 | ii | Approval of investment plans follows clear criteria with reasonable timelines | | | | The review process for investment application related documents is not uniform and stable over time; in most cases, investors receive a response within 9 months of date submission |
| 15 | iii | Right holders or their representatives negotiate land issues freely with investors and access relevant information | | | | Those holding rights to land with potential for investment have incentives to properly negotiate but their rights are unclear or opportunities to obtain relevant information or assistance do not exist |

| | | | | | | | |
|----|----|---|--|--|--|--|--|
| 15 | iv | Contractual provisions regarding benefit sharing are publicly disclosed | | | | | The majority of contractual arrangements do not include information on benefit sharing |
|----|----|---|--|--|--|--|--|

LGI-15(i) Investors provide sufficient information to allow rigorous evaluation of proposed investments' impacts

Investor information is not made public. There is no way of knowing whether or not the information provided by the investor is sufficient to allow rigorous evaluation of the proposed investment impacts. As such, the National Land Policy 2013 has proposed the regulation of the amount of land an investor can access in consideration of the use that land will be put to. This will compel the investors to avail the requisite information necessary for the evaluation of the proposed investment impacts.

Panel discussions emphasized the lack of regulation as the main challenge to investor provision of information. Requirements such as evidence of technical viability, community consultation, and availability of resources should be mandatory yet evidence from the Amuru sugar cane project reveals that all these requirements were absent when the deal was being entered into between the government and Madvani .The communities in amurye did not feel a part of the process and this led to the institution of a court case brought by the communities protesting the taking of their land for cane growing.

Furthermore, most of the investors come with money/loans from banks and pension funds such as HSBC or IFC, part of which funds are supposed to go for the community good. This is never delivered. Focus is placed on profit at the expense of environmental and human rights considerations, leading to failure to meet expectations of a host country. If the system was clear and free of fraud and corruption, the investors would use the money for what it is intended for e.g. community consultations and compensation.

LGI-15(ii) Approval of investment plans follows clear criteria with reasonable timelines

Since it was never envisaged that there would be investors in the agriculture sector, no regulatory or framework was developed setting the criteria for approval of investment plans. However, the National Land Policy 2013 has as one of its strategies to establish a framework for auditing land based local and foreign investment proposals to ensure that they are aligned with the objectives of the National Land Policy.

Currently however, applications for agricultural land are considered on a case-by-case basis; there are no standard criteria for determining which investors can acquire UIA land. Suitable land is identified based on the specifications in the investment application, including the area and type of land required.

In addition, since 1999 the UIA has been required to seek Cabinet approval for leases to foreign agricultural investors above 50 acres for crop or animal production (US DOS 2011). This requirement stems from the government's interest in promoting skills transfer to smallholder out growers through 50-acre model farms. Although the UIA has requested that this requirement be repealed, it does not appear to have stopped foreign investors from

acquiring land for agricultural production – which is explicitly prohibited by Part III, Section 10(2) of the Investment Code Act.

The six agricultural properties owned by the UIA have all been leased to investors, some of them foreign, typically on 99 year leases. As specified in the UIA land registry, investors most often pay a premium for acquiring the land in addition to an annual ground rent for the duration of the lease. The UIA sets standard prices according to guidance from the Chief Government Valuer.

Panel discussions revealed that time required to have a plan approved is between 5-6 months. However, the Investment Code Act is not standardized on procedures. The timing therefore will depend on who the investor is. For example, the Rakai Free trade port investment plan has never been approved.

LGI-15(iii) Right holders or their representatives negotiate land issues freely with investors and access relevant information

Due to the absence of clear and transparent procedures for the UIA and other relevant government agencies to facilitate investor access to land makes it difficult to monitor this process and ensure it adheres to the letter and spirit of the law. For example, there are no criteria for assessing the technical feasibility of proposed investments or determining which investors should have preferential access to lands held by the UIA or other government agencies. The UIA apparently consults with the Ministry of Agriculture on the feasibility of agriculture projects, but details on this process were unavailable.

The lack of clear procedures for identifying and compensating legitimate claimants to either private or government lands allocated for investment is particularly problematic. The Investment Code Act does not specify how to determine who is eligible to receive compensation, the criteria for determining the value of compensation, or the actor responsible for implementing (or monitoring) this process. In practice, numerous actors are reportedly involved in the compensation process, including the investor, the UIA, the ULC, the Chief Land Valuer, and District Land Boards, and various other local authorities, including the local council. The Land Act (Section 59(1)(e)(f) authorizes the District Land Boards to “compile and maintain a list of rates of compensation payable in respect of crops, buildings of a non-permanent nature and any other thing that may be prescribed” on an annual basis.

The situation is further complicated where investors acquire government land, as the government authority with rights to use this land may also be involved in the compensation process – despite lacking the legal authority or competency to do so. In some cases, the compensation process has apparently been handled by the Office of the Prime Minister. Regardless of which actors are involved, the lack of transparency and accountability governing the identification and compensation of rights holders risks undermining the legitimate rights of owners and especially occupants.

Then National Land Policy has as one of its strategies *to protect the land rights, including rights of citizens in the face of investments with measures for, but not limited to:*

- i) *Clear procedures and standards for local consultation;*
- ii) *Mechanisms for appeal and arbitration;*
- iii) *Facilitation of access to land by vulnerable groups, smaller-scale land owners and land users in the face of large scale farming interests, and*
- iv) *Protection against degradation of natural resources and sensitive eco-systems*

LGI-15(iv) Contractual provisions regarding benefit sharing are publicly disclosed

The Constitution in Article 244 provides for benefit sharing in regard to the extractive industry only. The National Land Policy 2013 in its strategies provides that “*Government will put in place measures to promote long-term benefit sharing arrangements rather than one-off compensation for loss of land rights in respect of investment by supporting alternative operational business/production models between the locals and investors (such as contract farming schemes for small holder farmers, out growers schemes, equity sharing schemes, use of leaseholds and joint ventures)*” (GoU 2013: 29).

The overall lack of transparency that currently surrounds land acquisition for agricultural investments in Uganda complicates credible analysis of investment outcomes and increases opportunities for fraud and corruption. By making these data public, the government and investors can manage expectations about investments, and citizens can hold both investors and government authorities accountable to their responsibilities. This information can also be used to inform policy debates about the contribution of domestic and foreign investment to national policy objectives.

Non-proprietary information about all approved investments should also be made public, particularly those involving government land acquisition. The Access to Information Act requires this as a transparency measure. A recent global review of the information required to improve transparency in large-scale land acquisitions (Global Witness, et al. 2012) concluded that the information below should be made public about all approved investments:

a) The identities and responsibilities of all Parties involved in the investment

- Names and affiliations of all parties involved in the investment
- Financial intermediaries and investors, capital investments and deposits

b) Rights, responsibilities, and obligations of the implementing Party

- Land area and location and nature of rights awarded
- Business plan (excluding any proprietary information)
- Terms for local employment and other forms of benefit sharing
- Cost-benefit analysis
- Value of land, rents, and fees
- Tax liability
- Monitoring and reporting obligations and penalties for non-compliance
- Dispute resolution mechanisms and jurisdiction(s) applicable for foreign investments
- Closure plans

c) Impact assessment and mitigation plans

- Environmental impact study/assessment and management plan
- Other impact assessments (e.g., socio-economic) and mitigation plans
- Resettlement and compensation plans

16 CONTRACTS INVOLVING PUBLIC LAND ARE PUBLIC WITH AGREEMENTS MONITORED & ENFORCED

The table below presents LGAF findings on indicator 16 with its three dimensions.

LG1-16 Contracts Involving Public Land Are Public With Agreements Monitored & Enforced

| | | Dimension Description | Score | | | | Score Description |
|----|-----|---|-------|---|---|---|--|
| | | | A | B | C | D | |
| 16 | i | Information on spatial extent & duration of approved concessions is publicly available | | | | | Comprehensive and consolidated information on spatial extent and duration of concessions/leases is not readily available to government or different departments rely on different sources of information |
| 16 | ii | Compliance with safeguards on concessions is monitored & enforced effectively & consistently | | | | | There is little third-party monitoring of investors' compliance with safeguards and mechanisms to quickly and effectively ensure adherence are virtually non-existent |
| 16 | iii | Avenues to deal with non-compliance exist & allow to obtain timely and fair decisions | | | | | There is little third-party monitoring of investors' compliance with contractual provisions and mechanisms to quickly and effectively reach arbitration are virtually non-existent |

LGI-16(i) Information on spatial extent & duration of approved concessions is publicly available

Despite lacking clear legal authority to acquire land for investors, the UIA has acquired several rural properties for allocating to agricultural investors. Although the UIA does not use the term “land bank” to refer to these properties, the National Land Policy (GoU2013: 29) does envision creating such an institution. The UIA does maintain a registry of lands acquired by UIA and allocated to investors. This registry specifies the terms of the land deal, including the property name, name of investor, effective date, land area, location, period of lease, premium paid, annual ground rent, and date the ground rental payment is due annually. UIA registry data remains private except at the request of the investors.

There is lack of publically available data on the land acquisition process and its outcomes undermine effective monitoring and increase the likelihood of abuse. The UIA does not have sufficient resources to monitor even the most basic information about approved investments. With the exception of the six rural properties the UIA has directly allocated to investors, neither the UIA or the ULC collects data on the amount of land investors have acquired for agricultural production or the processes through which investors have acquired farmland.

There is no map or publically available registry of government lands allocated to investors. Nor does the UIA monitor the outcomes of these investments in terms of, for example, job creation, income generation, or rural development. In fact, since its creation in 1991, the UIA has not been able to determine whether approved projects were actually operational (Mitti 2011). This makes it impossible to determine whether approved projects have, at a minimum, met the objectives specified in the Investment Code Act, including job creation and “locally or regionally balanced socioeconomic development” (Section 12(c)(e)).

The lack of data on the land acquisition process and its outcomes also precludes effective monitoring that could inform current policy debates on the role of foreign investment in developing Uganda’s agricultural sector. It also obscures aggregate statistics on how much farmland foreign investors have acquired in contravention of the Investment Code Act.

Furthermore, the lack of publically available data on the land acquisition process increases the likelihood that such transactions will be subject to manipulation by powerful interests. Making the land acquisition process more transparent – especially for government lands, which should be used for the benefit of all Ugandans – will be particularly critical to ensure that agricultural investment leads to sustainable and equitable development in Uganda.

LGI-16(ii) Compliance with safeguards on concessions is monitored & enforced effectively & consistently

There is no clear regulatory framework for monitoring compliance. Panellists however strongly proposed that in the absence of Government processes, which take a long time to institute, NGOs should play a third party monitoring for compliance role as they have the best interests of the citizens at heart. There may exist investors within the jurisdiction of an NGOs area of operation. NGOs should take more responsibility and monitor compliance, reporting widely to ensure the investors behave.

LGI-16(iii) Avenues to deal with non-compliance exist & allow to obtain timely and fair decisions

Currently, there is no monitoring and auditing framework. It makes it difficult to assess non compliance by investors. There is need to develop a regulatory framework to ensure that avenues are availed for this exercise.

PANEL 6 - PUBLIC PROVISION OF LAND INFORMATION: REGISTRY AND CADASTRE

Land administration is a function, which entails the mobilization of institutional mechanisms and personnel for juridical, regulatory, fiscal and cadastral components development. Land rights administration involves the process of determining, registering and availing information about ownership, value and use of land and its associated resources.

Land Administration operates within two parallel systems comprising a) the traditional customary/informal systems governed by customs and norms of given communities and b) the centralized statutory/formal (state) system governed by written law. The two are not in harmony and often lead to confusion as the institutional arrangements are not clearly spelt out and the two systems are not at the same level of development (GOU-NLP 2013:32).

Land rights administration in Uganda has contributed to land rights insecurity as a result of lack of proper record keeping, inaccuracies in land registry process, fraud and forgeries in the land administration system.

This theme considers five (5) indicators with 18 dimensions.

17 MECHANISMS FOR RECOGNITION OF RIGHTS

The table below presents findings of the LGAF on rights recognition.

LG1-17 Mechanisms for Recognition of Rights

| | | Dimension Description | Score | | | | Score Description |
|----|-----|--|-------|---|---|---|---|
| | | | A | B | C | D | |
| 17 | i | Land possession by the poor can be formalized in line with local norms in an efficient & transparent process | | | | | There is a clear, practical process for the formal recognition of possession but this process is not implemented effectively, consistently or transparently |
| 17 | ii | Non-documentary evidence is effectively used to help establish rights | | | | | Non-documentary forms of evidence allow full recognition of claims to property when other forms of evidence are not available |
| 17 | iii | Long-term unchallenged possession is formally recognized | | | | | Legislation exists to formally recognize long-term, unchallenged possession but applies only to one specific type of land |
| 17 | iv | First-time registration on demand includes proper safeguards & access is not restricted by high fees | | | | | On-demand registration <i>“does not include proper safeguards to prevent abuse”</i> or costs exceed 5% of the property value |

LG1-17(i) Land possession by the poor can be formalized in line with local norms in an efficient & transparent process

Article 237 of the Constitution recognizes customary tenure and this is reinforced by the Land Act Cap 227. This means that rights under customary tenure, in which over 80% of the Ugandan population are found now vests in them as formal tenure and they acquire ownership rights as such based on the customary norms and practices of their particular communities. Apart from Acholi, Lango and Teso for whom practice directives have been developed to improve transparency and efficiency in customary land administration, the rest of the tribes of Uganda do not have codification of custom. Throughout Uganda’s history, customary law was not codified but left to evolve and develop according to changes in society. Codification has only begun in the last five years with land in northern Uganda.

Panel discussions delved into the lack of transparency and equality in the practice of customary tenure which creates inequalities. For example, rights of a widow would not be treated equitably as are the rights of a widower to land. These inconsistencies and discriminatory practices need to be dealt with if transparency is to be achieved.

LG1-17(ii) Non-documentary evidence is effectively used to help establish rights

Approximately 20% of land in Uganda is registered (MLHUD 2013). This means that rights recognition must apply informal mechanisms. Throughout Uganda, non-documentary evidence is effectively used to help establish rights. Boundaries are demarcated using natural markers such as ant hills, streams, hill tops, trees, shrubs or stones. These are respected and known. Ascertainment of ownership is often witnessed by the clan/ council of elders or the family head.

S.5 (1) of the Land Act provides that a person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land. An individual, male or female, or a family may apply to the family or clan to transfer to him/her/it, his/her/its portion of land and may cause that portion to be surveyed and transferred to the applicant and registered (Section 22(1)). The holder of a certificate of customary ownership may convert his/her holding to freehold (Section 9). A *customary Tenure Registry is non-existent*. However, the Land Act provides that non recordation of customary rights does not extinguish ownership under customary tenure.

LGI-17(iii) Long-term unchallenged possession is formally recognized

Article 237(8) of the constitution recognizes bon fide Occupants. The Land Act in Section 29(2) defines a bona fide occupant to mean a person who before the coming into force of the Constitution had occupied, utilized or developed any land unchallenged by the registered owner or agent of the registered owner for 12 years or more.

The Land Act further provides that any person who has purchased or otherwise acquired the interest of the person qualified to be a bona fide occupant shall be taken to be a bona fide occupant (Section 29(5) of the Land Act).

Panel discussions affirmed that the unchallenged occupation does not and is not permissible on all lands. For land under trusteeship either as a public trust e.g land belonging to religious bodies or tribal trust as is the case with Buganda, no alienation by long term occupancy can happen. The dwellers on these lands are licensees and can only occupy such lands as long as the bodies managing them on behalf of their constituents do not require the land for any development.

LGI-17(iv) First-time registration on demand includes proper safeguards & access is not restricted by high fees

First time registration undertakes a formal process clearly stipulated in the Land Act Cap 227, by application to the Area Land Committee who on receipt determines, verifies and marks the boundaries of the land. This process involves the participation of all neighbors to ensure that the land identified belongs to the rightful owner and there is permission for this person to individualize or for a family to register it as family land. If it is communal, a constitution must be in place to govern how the communal land will be managed and administered. The process includes the demarcation of easements and rights of way, natural resources found on the land that are of national importance of community collective use. Adjudication is undertaken in accordance with and applying the customary law of the area. The Committee sends its report to the District Land board and it is on that basis that the district Land Board will determine the registration of the Land either as freehold, leasehold or customary.

Panel discussions revealed that the high cost of registration arises from the high costs of survey. This is the main reason why Government is promoting systematic demarcation, as a way of government subsidizing the cost of registration.

18 COMPLETENESS OF THE LAND REGISTRY

The table below presents LGAF findings of the indicator on the completeness of the land registry and its seven dimensions.

LG1-18 Completeness of the land registry

| | Dimension Description | Score | | | | Score Description |
|------|--|-------|---|---|---|---|
| | | A | B | C | D | |
| 18.1 | The total cost of registering a property transfer is low | | | | | The total cost for registering a property transfer is between 1% and less than 2% of the property value |
| 18.2 | Information in registry records is linked to maps that reflect current reality | | | | | Less than 50% of records for privately held land registered in the registry are readily identifiable in maps (spatial records). |
| 18.3 | All relevant private encumbrances | | | | | Relevant private encumbrances are recorded but this is |

| | | | | | |
|------|--|--|--|--|--|
| | are recorded. | | | | not done in a consistent and reliable manner |
| 18.4 | All relevant public restrictions or charges are recorded. | | | | Relevant public restrictions or charges are recorded but this is not done in a consistent and reliable manner |
| 18.5 | There is a timely response to requests for accessing registry records. | | | | Copies or extracts of documents recording rights in property can generally be obtained within 1 week of request |
| 18.6 | The registry is searchable | | | | The records in the registry can only be searched by parcel |
| 18.7 | Land information records are easily accessed | | | | Copies or extracts of documents recording rights in property can be obtained by anyone who pays the necessary formal fee, if any |

LGI-18(i) The total cost of registering a property transfer is low

The total cost of registering customary tenure is UGX 20,000 less the 1% stamp duty which is the value of the land and the cost of surveying which is privatized. The fees payable are listed in the table below.

Table 1: Application and Registration Fees

| Transaction | Fees |
|--|-------------|
| Application for certificate of customary ownership | Shs 5,000 |
| Issuing a certificate of customary ownership | Shs 5,000 |
| Application for a certificate of occupancy | Shs 5,000 |
| Issuing a certificate of occupancy | Shs 5,000 |
| Application for conversion from Conversion of customary to freehold tenure | Shs 15,000 |
| Application to convert leasehold to freehold tenure | |
| (i) up to 100 hectares in rural areas | Shs 40,000 |
| (ii) over 100 hectares in rural areas | Shs 200,000 |
| (iii) Gazetted urban | Shs 100,000 |
| Application for grant of freehold | Shs 20,000 |
| Application for a leasehold | Shs 20,000 |
| Registration of a mortgage/lien | Shs 5,000 |
| Release of mortgage/lien | Shs 5,000 |
| Transfer of customary ownership or right of occupancy | Shs 10,000 |

Ministry Of Lands, Housing and Urban Development 2012

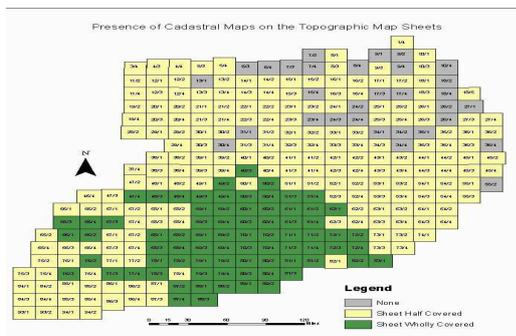
Panel discussions emphasized the need to consider the holistic picture of transacting in land. There are non-official transaction costs such as legal fees, which are often high but not factored in the transaction costs. When such costs are not included, it does not give a true picture. These costs are however unregulated and are difficult to standardise.

LGI-18(ii) Information in registry records is linked to maps that reflect current reality

There is a challenge with verifying the accuracy of land data because there is no complete record of data in the land offices both at the central government and Local Government land offices.

The Cadastral map below reveals that more than three quarters of the country has either no cadastral information or incomplete sheets. This is exacerbated further by the fact that there are no updates to these cadastral sheets. The existing data is more than 30 years old. This therefore does not reflect the current realities.

Map 3: Presence of Cadastral maps in Uganda



Data Source: Ministry of Lands, Housing and Urban Development PSCPII Baseline Evaluation Report 2007

The Computerization process whose phase one concluded in 2012 has to date captured mostly Mailo data although the verification exercise is still ongoing. The table below compares the titles entered in the data base and those sorted through the computerization exercise. By 2010, the Mailo register was largely cleaned out although the constitutionally recognized rights of tenants and spouses are still not covered, creating many gaps in the system.

Through the PSCPII project, six pilot areas were selected and the maps in these areas were scanned

Table 3

| Activity completed | Remarks by the Ministry of Lands |
|---|---|
| Scanned all the cadastral maps (11,995) for the six cadastral centers in the pilot area | Most of the cadastral maps for the pilot area have been scanned |
| Geo-referenced 4200 sheets | |
| Vectorised 4200 sheets | |
| Scanned 2891 Historical maps and 1553 Cadastral Index maps | Most Historical and cadastral index maps for the pilot area have been scanned |
| Vetted, sorted and reorganized 76,854 titles | |
| Indexed and Bar-coded 76,854 titles | |
| Rehabilitated 4957 map sheets and 6000 titles | Rehabilitated all the maps that required repair |
| Scanned 62,115 titles | |

Ministry of Lands, housing and Urban Development Computerization of the Land Registry Final report 2013

Panel discussions revealed that although it is ideal for every title to be linked to the map. There are some discrepancies in the data. Blue pages for example do not have deed plans, thus, these titles have approximately 100 acres with a solid boundary (surveyed) but subdivisions within the block cannot be clearly identified because they are not surveyed. A consultancy was commissioned to address the issues of blue pages but the results are not out yet.

It should be born in mind that only 16-20 % of the land in Uganda is surveyed. Even then, for the surveyed land, here are minimal discrepancies between the data in Entebbe office and what you find on the blue prints in lands. This is resulting from lack of regular updating of the systems. The LIS made some efforts and a lot is yet to be done.

LGI-18(iii) All relevant private encumbrances are recorded.

The common encumbrances registered are mortgages, caveats forbidding change in proprietorship and caveats under the succession Act.

The Caveats on matrimonial land and property to be lodged by spouses are rarely registered mainly because spouses have not lodged these caveats. This caveat does not lapse as long as the marriage subsists and is mandatory (Section 39 of the Land Act). But this is not enforced as such.

Rights of tenants by occupancy on registered land must be entered onto the encumbrance page of the certificate of title. These have neither been recognized in the newly developed land information system nor has a mechanism been developed for their recordation.

LGI-18(iv) All relevant public restrictions or charges are recorded.

Not all relevant public restrictions are recorded such as easements, restrictive covenants and Profits à prendre are recorded. This is due to the absence of maps and land use information, making enforcement of these restrictions difficult.

Panel discussions revealed that rights of way although the most common restriction included in every certificate of title, it is only the districts of Mukono and Wakiso implementing it. This shows that there is a challenge with enforcement and compliance.

LGI-18(v) There is a timely response to requests for accessing registry records.

As a result of the Computerization program, the time taken to complete a search (Accessing registry records) has reduced from more than 15 days to between 1 day and 5 working days (MLHUD 2013:4)

LGI-18(vi) The registry is searchable.

Following the Conclusion of Phase one of the Land Information System (LIS) project in 2013, the registry is searchable and information is availed in the shortest possible time. A public display of the LIS was made for one week from the 25 – 29th November 2013 in which searches were carried out for the general public at no cost.

Panel discussions revealed that currently for a search you only need Block and plot number. This is a special serialization that enables the identification of a particular parcel. This system poses a challenge for documentation of customary rights to land, which tenure has no unique identifier. The LIS is designed to use either the name or the parcel. However, staff are used to searching using the parcel identifier number.

LGI-18(vii) Land information records are easily accessed.

The ongoing project to develop a Land Information system for Uganda aims at making land records more accessible and thus reducing transaction costs.

The Kampala Mailo Registry operations were reorganized to improve the workflow in the Registry to be more responsive to Clients' needs. This improved Registry workflow management and made Registrars more accessible to the Clients when necessary.

The land information records at the other offices still have challenges and are work in progress.

19 RELIABILITY: REGISTRY INFORMATION IS UP TO DATED & AND SUFFICIENT FOR INFERENCE ON OWNERSHIP

The table below presents the LGAF findings on indicator 19 and its two dimensions.

LG1-19 Reliability: registry information is updated and sufficient to make meaningful inferences on ownership

| | Dimension Description | Score | | | | Score Description |
|----|-----------------------|-------|---|---|---|---|
| | | A | B | C | D | |
| 19 | i | | | | | Few or none of the relevant links exist |
| 19 | ii | | | | | Less than 50% of the ownership information in the registry/cadaster is up-to-date and reflects ground reality |

19.1 Information in public registries is synchronized to ensure integrity of rights & reduce transaction cost

Information in Public registries is not synchronized. The critical registries are the birth and deaths registry, Marriage registry, and the Land Registry. These three registries need to be synchronized to reduce fraudulent dealings on land and delays in land transactions. This would also drastically reduce the transaction costs.

19.2 Registry information is up-to-date and reflects ground reality

Only the information in pilot districts through the zonal Offices are up to date. In the Ministry of Lands, Housing and Urban Development report 2013, the following achievements are registered.

- Updating of Titles and correction of problem Titles was completed for Jinja, Mukono, Masaka, Mbarara, Wakiso and Kampala
- Leasehold and Freehold Titles were transferred from Kampala headquarters to Jinja, Mukono, Masaka, Mbarara, Wakiso and Kampala MZOs
- All the Maps from the 6 MZOs were taken to Surveys and Mapping Department – Entebbe, to ease the updating and digital reconciliation of Cadastral Map Data.
- Digital Title and Cadastral Data was uploaded for the Jinja, Mukono, Mbarara, Masaka, Wakiso and Kampala Ministry Zonal offices.
- Digital Title and Cadastral Data was uploaded for the MLHUD Headquarters – which will for the time being handle titling for the rest of the country, except for Mailo titles which are being handled in Mityana, Fort-Portal, Bukalasa; Native Freeholds in Fort-Portal and Adjudicated Freeholds in Kabale and Rukungiri (MLHUD 2013:16).

20 LAND ADMINISTRATION SERVICES ARE PROVIDED IN COST-EFFECTIVE WAYS THAT ARE SUSTAINABLE IN THE LONG TERM

The table below presents the LGAF findings of indicator 20 and its two dimensions.

LG1-20 Cost-effectiveness & sustainability

| | | Dimension Description | Score | | | | Score Description |
|----|----|---|-------|---|---|---|--|
| | | | A | B | C | D | |
| 20 | i | The registry is financially sustainable through fee collection to finance its operations | | | | | The total fees collected by the registry exceed the total registry operating costs |
| 20 | ii | Investment in registries & cadastre is sufficient to respond to future demand for high quality services | | | | | Human and physical capital investment allows to maintain a medium in human and physical is sufficient to maintain high service standards but does not allow to proactively adapt to new developments |

LGI-20(i) The registry is financially sustainable through fee collection to finance its operations

Fees for Land Services are charged to the consolidated fund and not re-invested in land services delivery. This means that the Ministry of Lands, Housing and Urban development depends on budget allocations from the central Government through the Ministry of Finance, Planning and Economic Development to fund its budget. This is risky as the central government has never in its history prioritized financing of the land sector activities. This makes the registry not financially sustainable.

LGI-20(ii) Investment in registries & cadastre is sufficient to respond to future demand for high quality services

All the developments in the registry and cadastre have been supported through project funding by the World Bank. Should this funding cease, it will be impossible for the ministry to support the delivery of high quality land services.

21 FEES ARE DETERMINED TRANSPARENTLY TO COVER THE COST OF SERVICE PROVISION

The table below presents findings of the LGAF indicator 21 and its 3 dimensions.

LG1-21 Fees determined transparently to cover cost of service provision

| | | Dimension Description | Score | | | | Score Description |
|----|-----|---|-------|---|---|---|---|
| | | | A | B | C | D | |
| 21 | i | Fees have a clear rationale, their schedule is public, and all payments are accounted for | | | | | A clear rationale and schedule of fees for different services is publicly accessible and receipts are issued for all transactions |
| 21 | ii | Informal payments are discouraged. | | | | | Mechanisms to detect and deal with illegal staff behavior exist in all registry offices but cases are not systematically or promptly dealt with |
| 21 | iii | Service standards are published and regularly monitored. | | | | | Service standards have been established, but have not been published and there is little attempt to monitor performance against the standards |

LGI-21(i) Fees have a clear rationale, their schedule is public, and all payments are accounted for

All fees are payable into the bank and a receipt given to the client. They are made public and are published in the Uganda Gazette, on the Ministry of Lands, Housing and Urban Development Website, and on the notice boards of the Registry.

LGI-21(ii) Informal payments are discouraged.

The Land Sector has been marred by corruption, in which the informal fees are much higher than the official fees. The Ministry of Lands, Housing and Urban Development has developed a client's charter and published the official fees in a bid to curb corruption. The Ministry of Lands, Housing and Urban Development has further undertaken a public campaign to sensitize the public on the official fees payable. Furthermore, the Whistleblowers Protection Act and the Anti-Corruption Act have been used to prosecute corrupt officials in the Ministry.

Panel discussions revealed that despite the existence of all the above administrative mechanisms, there is a tendency of group dynamics to override the intentions of the law. Staff protect each other from the long arm of the law and this has perpetuated corruption as the aspect of informal payments may be difficult to trace.

As a mitigation measure, the Ministry of Lands, Housing and Urban development has put systems in place for 6 zonal offices that clearly restrict public physical access of the registers by creating public areas and restricted zones. The public is not supposed to directly interact with the Registrar. The system automatically assigns registrars to the different transactions. This system is only functional in Mbarara, Masaka, Mukono, Kampala, Luweero and Jinja.

LGI-21(iii) Service standards are published and regularly monitored.

Service standards were published in 2012 on the Ministry of Lands, Housing and Urban development. This website is currently under construction and not available. It is doubtful that any changes have been made since then.

Panellists underscored the importance of having monitoring for compliance guidelines instituted to improve effectiveness and efficiency.

PANEL 7: LAND VALUATION AND TAXATION

The fees and taxes relating to land services are charged with regard to various pieces of legislation as outlined in the text that follows.

Article 191 of the constitution empowers the local governments to levy, charge, collect and appropriate fees and taxes in accordance with any law enacted by Parliament. **The Local Government Act (1997) Cap 243** in line with the Constitutional provision and mandate in its section 80 empowers local governments to levy, charge and collect fees and taxes including rates, rents, stamp duties, registration and licensing fees, and taxes included in the fifth schedule of the Act. Under regulation 11 in the fifth schedule, a district council and an urban council shall impose under the provisions of the Local Government (Rating) Act, rates on property that is within its area of jurisdiction. A district or urban authority may enact laws imposing rates on persons owning, occupying or in possession of land or buildings in any area to which the Local Government (Rating) Act (2005) does not apply. Under

Regulation 13 (c) of the Fifth schedule, local government revenue shall consist of rents from lease of property owned by the Local Council.

The power to set land fees and other related charges under the Local Government Act is vested with the Minister responsible for lands under the section 93(2) (b) and (c) which provides that the Minister may, by statutory instruments, make regulations to fix fees to be charged for the preparation of any documents for or in connection with any disposition or dealing in land and to fix charges to be made by a board or commission in respect of agreements or other documents for the occupation of land.

This theme analyses two indicators and six dimensions.

22 VALUATIONS ARE BASED ON CLEAR PRINCIPLES, APPLIED UNIFORMLY, UPDATED REGULARLY, AND PUBLICLY ACCESSIBLE

The table below presents findings of indicator 22 and its two dimensions.

LG1-22 Valuations are based on clear principles, applied uniformly, updated regularly, and publicly accessible

| | Dimension Description | Score | | | | Score Description |
|----|-----------------------|-------|---|---|---|--|
| | | A | B | C | D | |
| 22 | i | | | | | The assessment of land/property for tax or compensation purposes reflects market prices, but there are significant differences between recorded values and market prices across different uses and types of users; valuation rolls are updated regularly |
| 22 | ii | | | | | There is a policy that valuation rolls be publicly accessible and this policy is effective for most of the properties that are considered for taxation |

LG1-22(i) There is a clear process of property valuation.

The process of property valuation in Ugandan law is clear. When appraising real estate, the valuer considers two separate entities: land, which is the non-wasting portion of the real estate; and improvements, which are the wasting portion subject to various forms of depreciation. Land and improvements are frequently valued separately so that the trends and factors affecting each can be studied. However, the final analysis for an improved property must be as a unit.

The first step in this kind of land valuation is identifying the property. The valuer must know the size and location of the subject parcel. Once the land has been properly identified and described, an analysis of the subject can be made. The analysis should include the collection of site-specific data, a study of trends and factors influencing the value, and the physical measurement of the site. The term site means more than just “land”. A site is a parcel of land that has been made ready to use for some intended purpose.

Once the subject is analyzed, the assessor must classify the land. Land may be classified as residential, commercial, industrial or agricultural depending on its primary use. Zoning can be important in determining land classification because zoning ordinances often prescribe exactly what uses are permitted for the property.

Land, in a general sense, can be unimproved (raw) or improved (ready for development). Land that is undeveloped, or in agricultural use, is considered unimproved. Land that has been developed to the extent that it is ready to be built upon is considered a site. A site analysis requires the collection and analysis of information about trends and factors affecting value. However, environmental values are currently not taken into account in the course of valuation. Furthermore, there is no clear procedure for considering the rights of secondary and derived users of land. The system seems to be based on individualized primary rights holders only.

The appropriate unit of comparison is typically determined by the marketplace as sites are bought and sold. There are six acceptable methods of establishing unit land values.

1. Sales Comparison Method
2. Allocation Method
3. Abstraction Method (Also known as extraction or land residual technique.)
4. Capitalization of Ground Rent
5. Land Residual Capitalization
6. Land Build-up Method

Panellists affirmed that the valuation methods used today tend to leave most of the people worse off than they were before. Examples were given of the compensations that happened in Buliisa District over the oil exploration in 2013. Most people were still camping at the Sub-county Head quarters by January 2014 because the value they got as compensation could not enable them easily acquire land anywhere else.

The principle in valuation today is to leave those being compensated in the condition that they were found but not necessarily to make them better off. Another project, the oil palm project in Buvuma Island was considered where the government valuers were used and the appropriate values are estimated. People who were compensated were able to purchase land from the mainland. Furthermore, in Kalangala district, a road is under construction and this has affected some farmer crops. Information on the expected returns from Palm oil was provided to the chief Valuers office to facilitate the process. Proper rates were determined and the compensation was successful. In Amuru however, valuation rates were very low as compared to Hoima whose valuation rates were very high. The difference existed because of the advocacy campaign against compensation rates that happened in Hoima. This means that there is no hard and fast rule about valuation in Uganda.

It was however noted that new products and services are not captured immediately in valuation for example carbon sequestration in the Forestry Sector.

The challenge identified with regard to this was that in Uganda, when information is given about a proposed development, speculators rush to acquire land in those areas in order to be compensated. This flaws the whole process.

LGI-22(ii) Valuation rolls are publicly accessible.

Valuation rolls in Uganda are outdated throughout the country and are not publicly accessible. Property rating dates back to 1948 when the first valuation roll was produced for Kampala. In the early 1990s, Uganda adopted a “valuation-pushed” strategy updating and expanding the valuation roll in Kampala. Due to the lack of in-house valuation expertise, local private sector valuers were hired through the World Bank First Urban Project 1993 (Roy Kelly 2000: 8).

Beginning in 1994, the new valuation rolls were brought into use, creating a more complete, up-to-date property tax base. Most of the new valuation rolls were compiled for the unplanned peri-urban areas of Kampala. The reform also trained valuers within Kampala to maintain the valuation rolls. The total technical assistance package was several million US dollars over the 3-5 year period.

The new valuation rolls increased the revenue potential but property rates collections actually declined from Ush2.9 billion in 1994/95 to Ush 1.9 billion in 1997/98, a decline of over 30 percent. Thus, despite an investment of millions of dollars for new property valuations, property revenues actually fell substantially, forcing a re-evaluation of the reform strategy (Roy Kelly et. al 2000: 8).

In 1999, Kampala adopted a “collection-led” implementation strategy, expanding its focus to overall administrative improvements on revenue collection, enforcement, taxpayer service, and fiscal cadastre construction. Since August 1999 a pilot project has been testing simplified field data collection procedures for updating the existing property tax information and possibly introducing a simple mass valuation system. These innovations will provide the basis for generating increased property tax revenue (Kelly and Montes 1999) and (Okellokello and Nsama-Gayiiya 1996).

There is urgent need to develop a comprehensive and complete cadastre-comprising a physical cadastre (cadastral surveying information and mapping), a legal cadastre (ownership information) and a fiscal cadastre (for taxation purposes). The Cadastral map below reveals that more than three quarters of the country has either no cadastral information or incomplete sheets. This is exacerbated further by the fact that there are no updates to these cadastral sheets. The existing data is more than 30 years old.

Valuation rolls exist in almost all municipalities and towns in Uganda but the inclusiveness of these cannot be determined as there is no complete cadastre on which these should be based. There is also a very unclear framework upon which the valuation rolls are based.

The window of opportunity is the Land Information System (LIS) which is being developed. The Computerization process whose phase one concluded in 2012 has to date captured mostly Mailo data although the verification exercise is still ongoing.

Panel discussions revealed that all districts have valuation rolls for urban lands but that there are no rolls for rural lands because valuation rolls do not apply to rural land. Valuation rolls are meant for taxation and rural land is often not taxed. Valuation rolls are updated regularly (*only for urban areas*) given that taxes are the main sources of revenue.

For cases where valuation rolls are missing, it is not by accident that they are missing. A lot of influence peddling goes on in the taxation sector. It is not surprising that some properties are paying values that were estimated 10 yrs ago irrespective of the land use change.

23 LAND&PROPERTY TAXES ARE COLLECTED AND THE YIELD FROM DOING SO EXCEEDS COLLECTION COST

The table below presents findings of the LGAF on indicator 23 with its four dimensions.

LG1-23 Land & property taxes are collected and the yield from doing so exceeds collection cost

| | Dimension Description | Score | | | | Score Description |
|----|-----------------------|-------|---|---|---|---|
| | | A | B | C | D | |
| 23 | i | | | | | The exemptions to the payment of land/property taxes are not always clearly based on equity or efficiency grounds and are not always applied in a transparent and consistent manner |
| 23 | ii | | | | | Less than 50% of property holders liable for land/property tax are listed on the tax roll |
| 23 | iii | | | | | Less than 50% of assessed land/property taxes are collected |
| 23 | iv | | | | | The amount of property taxes collected is less than the cost of staff in charge of collection |

LG1-23(i) Exemptions from property taxes payment are justified and transparent.

The Exemptions provided for in the law narrow the tax base and increase the tax burden on the poor and small businesses. This is therefore not justified.

According to the Government of Uganda Study on the Legal Framework for Land Administration – focusing on the Local governments Rating Act, “Property” means immovable property and includes a building (industrial or non-industrial) or structure of any kind, but does not include a vacant site. So, vacant sites are exempt¹⁵

Section 3(5) provides that “for avoidance of doubts, no rate shall be levied in respect of a residential building in a place not being in an urban area. This implies that all residential buildings outside the city council, municipal council or town council are exempt even when they are rented. This makes neither political sense nor economic sense. The implications are that in Seeta (which is not an urban area by the definition of the law) owners of rented residential properties do not pay property rates while those who own commercial properties pay! Where is the equity principle?

Section 3(4) limits the ratable properties outside an urban area to commercial buildings only as it reads “notwithstanding subsection (3) the rate may be levied in any area outside the urban area in respect of a commercial building. While this section extends property taxation powers to district local governments, it at the same time limits them to taxing only commercial buildings. What about industrial properties in the districts?

Owner-occupied residential properties are now exempted from property rates following an amendment which was directed by the President just a few months after the new rating law

¹⁵ In many jurisdictions, vacant sites in urban areas are taxed for revenue purposes, as well as to prevent land speculation. Vacant and underutilized land in urban areas should be taxed so that keeping land for speculative profits should be avoided.

came into force. All along owner-occupied residential properties were liable to property rates. It ought to be appreciated that the main aim of any property rating system is to raise revenue for provision of services by the local authority. Rating is defined as a method by which residents of a particular area contribute money to share the burden of the cost of providing services to themselves within their area. Equity demands that the cost of local services should be equitably shared between all classes of rate payers and fair as between rate payers within those classes¹⁶. An equitable tax should take cognisance of the benefits received by the rate payers as well as his ability to pay tax. People who decide to reside in their own houses consume the same services as those who decide to rent out their houses. This type of exemption is likely to induce evasion on the part of the discriminated property owners (GOU 2010).

It ought to be appreciated that exemptions and favorable treatment for particular types of property can remove significant contributors from the property tax base. If owner occupied property merits favorable tax treatment, then the tax rate could be made lower than the rate on equivalent renter-occupied property.

Panel discussions revealed that the practice of tax exemptions although done by Ministry of Finance is not transparent process. There is no clear procedure or guidelines made public to guide tax exemption. However, the budget speech 2013/14 suspended tax exemptions.

LGI-23(ii) Property holders liable to pay property tax are listed on the tax roll.

Section 20 of the Local Government (Rating) Act provides that “A valuation list shall come into force with effect from the commencement of the financial year next after the one in which the chairperson of the valuation court certifies it.”

The amendment to the new law, i.e. The Local Governments (Rating) (Amendment) Act, 2006 requires that the Chairperson of the valuation court shall certify and sign the draft valuation list with the approval of the Minister.

Panellists underscored the high level of undervaluation of properties in Uganda causing financial loss. The lack of mechanisms to check this has perpetuated the practice and it has become the norm. Very few properties are actually paying the designated tax. Because of lack of records, the information is difficult to verify.

LGI-23(iii) Assessed property taxes are collected.

The Ministry of Lands Study on Revenue generation in 2006 revealed from the scanty information available, there is a large under realization of the revenue sources potential. It was observed that through all the years and for most forms of revenue the realized/actual revenues are at big variance with the projected/budgeted revenues. The performance is estimated to be at less than 50 percent. The collection rates are extremely low and enforcement against non-compliance is virtually nonexistent. Fiscal cadastre information is incomplete and out of date. There is an over-reliance on individual parcel valuation—with no use of simpler mass valuation techniques. Each country struggles with low property tax administrative capacity and a lack of political will for property tax enforcement. The result is

¹⁶ Property value is an indicator of a taxpayer's net wealth or income. And most importantly the intangible housing benefits which owner occupants enjoy have to be weighed against the visible flow of rents from rented properties

low revenue yields, vertical and horizontal inequities and economic inefficiencies (GOU 2010).

Across the Districts various reasons were advanced with the most common being that naturally people hate taxes, biting poverty exists among the population, difficulties encountered in tax collection and political interference in revenue administration. Stamp duty is collected and paid only in Kampala with no other outlet. Furthermore, the lessees are reluctant to pay ground rent. On the contrary, there were other taxes that seemed easy to collect with the common ones being premium fees, application fees, building plan fees, Construction fees and application fees. The most and usual reasons cited were that its mandatory for fees to be paid before one can build (MWLE 2006).

For Jinja and Kampala due to lack of capacity to collect rates from the existing large numbers of property rate-payers, particularly in the case of Kampala where the number is estimated to be around 40,000 Led to the contracting out the tax collection service. Jinja, Kampala, Mbarara and a few major towns in Uganda have more and more properties springing up in the peri-urban areas, often in unplanned neighborhoods, making it more difficult to collect property rates. The new approach of contracting out collection of this tax might reduce the burden on the administration of these urban authorities. In addition, the complexity of property ownership, including the legal existence of customary tenure within urban centres (as noted earlier) is one of the factors that make it difficult to collect property tax (MWLE 2006).

BOX 1: DEFICIENT PROPERTY TAX ADMINISTRATION IN KAMPALA

The seriously deficient administration of the property tax in Uganda exemplifies the difficulties this tax has in providing substantial revenues to local governments in Africa. Although any local authority has the legal right to levy property taxes, in practice they are levied only by municipalities and town councils.

Undeveloped land is not taxed, which inhibits the efficient use thereof. The property tax is based on seriously outdated valuations, which are very low, although the law requires that valuations be carried out every five years. Many valuable properties are not taxed at all, and many newly refurbished buildings have not been re-valued. Systems of recording and valuing properties are seriously deficient. This is partly because the skilled technical staff needed to organize and supervise valuation work is in short supply.

The city of Kampala also shows a phenomenon that is taking place in many other metropolitan areas in Africa. Its urbanized area has expanded beyond its municipal boundaries, but neighboring districts are either not allowed to levy property tax on residential properties, or abstain from doing so because they still have to provide the basic urban services to these areas. Low revenue is also attributable to poor collections, huge delays in payments, or simply to non-payments. Non-payments also derive from the high mobility of persons, frequent property sales/exchanges, and the inadequate registration of titles.

(Odd-Helge Fjeldstad and Kari Heggstad 2012:15)

The panellists identified lack of transparency and corruption as the reason people do not willingly pay taxes. People do not see what their taxes do and this is a deterrent to compliance.

LGI-23(iv) Receipts from property taxes exceed the cost of collection

There is hardly any data on land revenue sources and revenue collection performance in the local governments and this is one of the biggest problems as it makes revenue monitoring and planning difficult. The local government budgets normally tend to group the revenues from land under the code for miscellaneous sources of local revenue. This makes it difficult to isolate land revenues from other revenues hence hampering the assessment of revenue performance and projection (MLHUD 2006).

PANEL 8: DISPUTE RESOLUTION

Land related disputes are among the most prevalent types of disputes occurring with and among communities in Uganda both in the rural and urban areas. These disputes are fuelled by a number of factors, which include: population pressures, unfair land tenure regimes, changes in land laws, lack of clearly demarcated boundaries, backward and discriminatory customary laws and practices, inheritance practices, outdated statutory laws, underdeveloped land markets, lack of a modern land information system as well as inaccessibility to available land information.

Land disputes do not only stifle investment on land, they also divert scarce resources (labour, time and money) to solve them, thus impacting negatively on productivity and household income generation, resulting into heightened poverty levels. Quite often land disputes result into destruction of property and, in extreme cases, even loss of lives. Very often, the disputed land becomes a 'no-go' area and is not available for use while the dispute lasts, which results in the withdrawal of a critical factor for wealth-generation from productivity. Thus, there is obvious need to find effective ways of resolving and/or mitigating land disputes particularly for poor households. Inadequacy and in many cases, lack of information and knowledge about land rights is a cause of fraudulent land dealings due to ignorance and at times lack of concrete information about a given land parcel and the attendant land rights, especially within communities. Lack of information about land seriously impacts on poverty levels in that communities do not have the basis on which to effectively protect their land rights and to plan for the development of their land at optimal productivity levels (Obaikol 2007).

Land tenure on its own is relatively insignificant as a determinant of investment (relative to credit supply, market access, etc.), but in conjunction with other economic, social and political factors can influence investment levels. At the household level, insecurity of tenure or the structure of tenure rights do impact on certain types of investment, for example the construction of permanent structures or the planting of permanent income-generating trees. A high prevalence of land disputes in the absence of an effective and equitable mechanism for their resolution also leads to economic losses through delayed or deferred production and investment. Even among groups whose tenure is believed to be relatively insecure (e.g. customary landowners) the prevalence of land related disputes is clear evidence of insecurity.

Lack of transparency and accountability which is perpetuated by inequitable systems and processes in the Land Sector institutions contributes to the inequality of land distribution and land insecurity due to lack of the appropriate mechanisms to resolve land problems. On titled land, and in particular in urban and peri-urban areas, tenure security is undermined by the inaccuracy or incomplete nature of land records as a result of poor record keeping, out-dated systems, processes and records which result in the proliferation of land disputes. The situation is compounded by the fact that the Land Register has got divorced from the real and current situation on the ground, which situation has been exploited by fraudsters who impersonate landowners, declare living persons dead or vice versa, forge certificates and illegally sell land to unsuspecting buyers etc.

A robust property system will always generate a fair measure of land disputes. For land held under customary tenure, disputes are often part and parcel of social reconstruction in specific community

settings. The Land Act, 1998 under decentralization, established an elaborate structure of land tribunals (implemented under a circuiting model) and appointment of adhoc mediators, initially under Ministry of Lands, later transferred to Ministry of Justice. It is also common for dispute mediation to be undertaken by the offices of Resident District Commissioners, Local Councils and traditional organs (chiefs and clans) (MLHUD 2009).

Therefore under the Land Act, new devolved machinery for land dispute resolution was established, consisting of dedicated Land Tribunals at district level. The role of Land Tribunals in land dispute resolution in Uganda is stipulated in the LSSP as being: “to provide for easier accessibility to justice by landowners and users, by moving away from the formal court structure whose ambience is intimidating, complicated and alienating”. The processes of the law courts system were seen as being too expensive and time consuming to the very often poor ordinary landowner and user, and are characterized by a high rate of case backlog and delays in the conclusion of land cases. Access to justice and dispute resolution in regard to the land sector was identified as having a direct connection with good governance and contributes to poverty eradication, and was therefore highlighted as a priority area for LSSP. The provision for Land Tribunals at district level was intended to combine easy accessibility with enhanced fairness of the system, as well as affordability and expeditiousness to the land owners, land users and the Government alike, in land dispute resolution, within the specific provisions of the Land Act.

Accessible and fair land dispute resolution is critical to tenure security especially for poor and vulnerable groups. Under LSSP the dispute resolution system will be based on local courts at the lower level, strengthened to improve the transparency and fairness of their decisions, with an upper tier of impartial appointed Tribunals to consider higher value cases and appeals.

This theme considers two indicators with their seven dimensions.

24 RESPONSIBILITY FOR CONFLICT RESOLUTION IS ASSIGNED TO COMPETENT BODIES AND DECISIONS CAN BE APPEALED AGAINST

The table below presents the LGAF findings of indicator 24 with its four dimensions

LG1-24 Responsibility for conflict resolution is assigned to competent bodies and decisions can be appealed against

| | Dimension Description | Score | | | | Score Description |
|----|-----------------------|-------|---|---|---|---|
| | | A | B | C | D | |
| 24 | i | | | | | There are parallel avenues for dispute resolution and cases can be pursued in parallel through different channels and there is no sharing of information |
| 24 | ii | | | | | Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities but where these are not available informal institutions perform this function in a way that is locally recognized |
| 24 | iii | | | | | There is a local, informal dispute resolution system that makes decisions that are not always equitable but this system is recognized in the formal judicial or administrative dispute resolution system |
| 24 | iv | | | | | A process exists to appeal rulings on land cases at high cost and the process takes a long time/ the costs are low but the process takes a long time |

LGI-24(i) There is clear assignment of responsibility for conflict resolution.

According to a study carried out by Makerere Institute for social Research in 2003, over the last 20 years, it has become apparent that multiple law regimes and dispute resolution mechanisms are a precursor to land disputes. Apart from the multiple law regimes, which create a different set of problems, the number of options available to decide the disputes complicates matters. There are currently 5 different land disputes resolution mechanisms, 3 of which are basically quasi judicial organs set up under the 1998 land Act in an effort to bring land services closer and more acceptable to the users. These are 1) The traditional institutions (clan leaders and elders), 2) Local Council courts, 3). Magistrates courts, 4) Mediators and 5) Land Tribunals.

Multiple dispute resolution mechanisms impede quick disposal of disputes, as the number of the options available to decide any given dispute complicates matters by leading to a tendency on the part of the litigants to resort to try all the available avenues, sometimes at once, a phenomenon known as 'forum shopping'. The study referred to Mijumbi's (2002) pertinent questions with regard to forum shopping as:

- Nature of dispute;
- The first level of contact for arbitration;
- The reasons for the choice;
- Whether or nor the dispute was resolved to the satisfaction of the affected parties;
- Cost, duration in solving the dispute;
- Impact of the dispute to the households involved.

The study therefore concluded that the availability of options through which land disputes can be resolved has dual effects on the operations of the dispute resolution mechanisms and to the litigants, which are:

- the options provide choice to the litigants but,
- they are also used to create stalemates by staying execution of judgment, confuse and stifle the resolution of processes resulting in backlogs of unresolved cases.

Article 243 of the 1995 constitution of Uganda provides for establishment of a law which is the Land Act (as amended),

"to provide for tenure, ownership and management of land; to amend and consolidate the law relating to tenure, ownership and management of land; and to provide for other matters related or incidental matters"

This is contained in the preamble of the Land Act, 1988.

Whereas the Land Act consolidated, the law relating to tenure, ownership and management of land, the then existing laws like Registration of Titles Act, Succession Laws, Local Council (Judicial Powers statute the Local Councils Act No.12/2006 seem to have alienated them instead. The inconsistencies eventually led to operational problems especially dispute resolution. The same has been worsened when new legislation is made without due care to Land Act that provided fundamental changes following the 1995 Constitution of Uganda.

Whereas the Land Act (S.76A) provided for Parish/ward LC.II) as Courts of first instance in land matters with appeals to sub-county (LC.III); District Land Tribunals and High Court, S.32 of the Local Council Courts Act, No.12/2006 provides for LC.I (village) as court of first instance with jurisdiction to try land matters [S.10 (1) e]. Appeals lie here from to LC.II, III and Chief Magistrates and High Court. This inconsistency leaves out tribunals in the appellate structure of land matters. There is every need to harmonize these laws especially in appellate jurisdiction.

Whereas, S.29 of the Land Act provided for lawful and bonafide occupant, it does not give comprehensive definitions for each and more often than not, it confuses most people affected later alone lawyers alike. A precise and clear legal definition should be sought to provide simplified remedies to those affected in the two categories as distinct by removing the ambiguity.

The controversial S.39 in the Land Act should actually be provided for under the domestic relations law (bill) instead of hereof where it has proved impotent. Whereas the law is in place, unless it is a court matter, spouses and other beneficiaries. Consent is omitted in land dealings with the major reason being that it is hard to find, unless in a village setting, land where both sustenance and residence are obtaining. The principles of tenancy in common and joint tenancy should be left at will than legislation.

Common interests of communal land users; association is also not feasible as cost effective. An amendment to the effect of compulsory, government systematic demarcation as was done in Kenya would be a better option to clear this problem once and for all than selected areas accessible to the land fund under S41 (Land Act).

Special powers of rectification of certificates of title or instrument, cancellation are so arbitrary that in many occasions have occasioned miscarriage of justice especially that they cannot be challenged in courts. An amendment should be targeted to having the District Land Courts (Tribunals) reserve these powers of not only adjudicating but also orders of matters of titled land that they will have heard and determined.

This will reduce on not only delayed justice but also backlog of cases at High Court where each judge has over 400 cases per annum Chad Registry records. The Judicature Act (Ss.3 – 18) provided for the structure of courts of Judicature and had for under stable reasons as to them having been under Ministry responsible for Lands and also for nomenclature of “Tribunals”. Article 262 of the Constitution considers Tribunals whatsoever named as courts under subordinate category.

In *Masalu Musene & others vs. Attorney General*; constitutional case No.5 of 2004 land tribunals were excluded from judicial officers not taxable with a reason that they were quasi judicial for operating under Ministry responsible for Lands. However, upon transfer to the Judiciary, only change of nomenclature from “tribunal” to “court” should be done and Article 237 providing for land tribunals separately will be rendered redundant if not call for a separate statute than Land Act to serve Land Tribunals as special Land Courts within the Judiciary.

It is also common for dispute resolution to be undertaken by the President’s Officer (Director for Land Affairs), and the offices of Resident District Commissioners. This situation has left the justice-seeking public confused, delays in settlement of disputes and creates a backlog as

disputes escalate. It should be noted that the multiplicity can only be positive if it is creating variety rather than confusion amongst users to the extent that they are viewed as complimentary (both formal and informal). However the duplicity in roles, hierarchy and jurisdiction needs systematization, while recognizing the values and incorporating the roles of traditional institutions in defining the functions of statutory institutions (Rugadya 2009:21).

The Land Sector Strategic Plan (2001 – 11) sought to simplify the land dispute resolution framework by modifying the version of the structure as provided in LA98. LC2 and LC3 Courts will handle the bulk of cases at parish level and below. Appeals will be to District Land Tribunals which will operate on a circuit basis. Higher level cases will be handled through the High Court and Court of Appeal as normal.

The sector supported land administration by strengthening the Land Police Protection Unit, the High Court Land Division, and rolling out land courts in magisterial areas. The sector in addition fast tracked the Registration of Titles Act together with the Ministry of Lands. This has led to decongestion of registries through the creation of sub- regional offices (JLOS 2013: 14)

Furthermore, Land courts have been rolled out by the Judiciary to reduce backlog and streamline the land justice delivery system (JLOS 2013:44)

Mediators

Mediators are provided for under the laws Land Act (S.89) procedure [Rule 6(6)] on adhoc basis as a mandatory form of ADR before full scale hearing commences.

The legal position that is in line with the normal Civil Procedure Rules, scheduling conference procedure (0.10) is well intended and a very acceptably short form of adjudication.

However, the remuneration of mediators is not forthcoming as funds have never been provided save difficulty in maintenance of same mediators, being adhoc and to each case not area. There is an apparent need to streamline this area and put ADR – (mediation) to performance. Probably the two members could handle the mediation and later a full scale hearing proceed at a quorum of 3 including chairpersons upon failure to succeed in the mediation.

The Judicature (Mediation) Rules No 10 of, 2013 provide for mediation of all civil actions filed in or referred to the High Court and any subordinate to the High Court. The court shall refer every civil action for mediation before proceeding for trial. Where a civil action has a question of law which may dispose of the civil action the registrar or authorized court officer shall refer the civil action to a Judge or Magistrate, whichever applies, or determination.

Mediation under these rules may only be conducted by—

- (a) a Judge;
- (b) a registrar;
- (c) a magistrate;
- (d) a person accredited as a mediator by the court;
- (e) a person certified as a mediator by CADER; or

(f) a person with the relevant qualifications and experience in mediation and chosen by the parties.

LGI-24(ii) Conflict resolution mechanisms are accessible to the public.

The Legal Aid Baseline Survey and Needs Assessment (2006) found that there are specific factors that impact on access to justice for the people of Uganda, especially the poor and the factors include the high cost of litigation, lack of awareness of rights, technicalities in using the formal justice system, attitudes and orientation of personnel in the justice system, lack of co-ordination among legal and service providers, gaps in the monitoring the quality of services provided, breakdown in the justice system in war affected areas, and aspects of social difference as a basis of marginalization (age, health status and gender).

According to the 2004 National Service Delivery Survey Report (NSDS), 80% of the households are located more than 19 km from the High Court; 66% are located more than 10 km from the District Land Tribunal and 48.8% from the Magistrate's Court.

Regarding the quality of and satisfaction with legal services, NSDS inquired about the time it took to resolve the issue/case as a proxy for effectiveness. Overall, 66 percent of the cases took less than one month however, with significant variations depending on the institution contacted. The District Land Tribunal, the High court and the Magistrate's Court were reported to have taken long to resolve cases. For all cases presented to the District Land Tribunals 73 percent had taken more than six months; 46 percent of cases for the Magistrate court an 59 percent for the High Court had taken more than six months to be resolved. The District Land Tribunals had nearly 53 percent of cases pending while the customary courts had the lowest percentage of pending cases 4.6%.

Regarding costs, 52.3% of the respondents in the survey reported that they had made payment to District Land Tribunals (official and unofficial payments for the services they received). The households that made payment before their issue/case was resolve were asked the purpose of payment. Of concern is the payment of unofficial charges which is an impediment to access and utilization of services. Bribery was highest (33.0%) in the central police; 16% in the High Court; 16% in the Magistrate's Court; 11% in the District Land Tribunals; 7.3% in the LC1 Courts. Bribery was least common in the customary courts where only 2.7% of the households paid a bribe.

Panel discussions revealed that the institutions are available but not empowered. The dispute resolution structures are available by law but on ground they seem not to exist. This is mainly due to lack of supervision and financing of these structures. The institutions that are uniformly found across the country are the clan systems although their functionality varies across communities.

The challenge with the lower local dispute resolution institutions such as the LC courts is their lack of ability to actually document processes that they go through. The second challenge lies in conflict of interest where the LC council may be comprised of relatives in a given village. In the Land Act (amendment) of 2004 powers were shifted from LC1 to LC2 to minimise conflict of interest. In practice however, LC2 is not very functional and in many communities the structures are not existence. LC 1 and 3 are more vibrant. LC 2 courts are supposed to be trained in dispute resolution, but the extent to which they do their work is

very questionable. Furthermore, the decisions reached by LC 2 courts should be executed. This is proving impossible in practice with the absence of a formal registry. Most of the decisions end up with no written records.

LGI-24(iii) Mutually accepted agreements reached through informal dispute resolution systems are encouraged.

Alternative Dispute Resolution is encouraged through the use of mediators or the traditional leaders. The courts of law now apply ADR for most cases before going into formal hearing. According to the JLOS baseline survey 2012, public confidence in the enforcement of existing laws stands at 29%, use of ADR generally is at 80% but only 26% of the cases in courts and tribunals are resolved through ADR. The Services of legal aid are recognized by government as crucial to resolving land disputes.

The Justice, Law and Order Sector is working to ensure that there is a functional legal aid system that integrates the state brief; standards for legal aid provision and complements the pro-bono scheme; and low cost models of legal aid. A legal aid policy was finalized and approved by the JLOS Leadership Committee and only awaits Cabinet approval. In anticipation of the approval work commenced on the proposed draft Legal Aid Bill to implement the policy

At the Uganda Law society, provision of legal aid services through the Legal Aid Project and pro bono services continued following the opening of 3 new Legal Aid Clinics in the districts of Mbarara, Arua and Soroti. In the reporting period, a total of 8,359 clients were handled through the legal aid clinic. Of these, 4,691 were new clients representing 56.1%. The male were 5,510 while the female were 2,849. In the reporting period 506 cases were concluded in Court while 774 cases were concluded through mediation. Also 804 cases are pending mediation in ULS while 3,503 cases are pending in Court. In total 1,378 clients received legal advice, 337 were referred to pro bono scheme while 57 cases were closed for lack of merit (JLOS 2013:57).

Justice Centres Uganda, a pilot for state provision of legal aid reached out to 16004 people, 5067 of whom were women. Community awareness outreaches is one of the major activities of Justice Centres Uganda, mainly to respond to call in and walk in issues raised to Justice Centres as well as to serve as an avenue for community mobilization and awareness on human rights and how to pursue such rights. During the reporting period, 157 community outreaches were conducted in different centres focusing on specific issues notably on how to resolve land conflicts, family disputes especially related with custody and child maintenance as well as criminal law.

Justice Centres Uganda continued to resolve disputes through Alternative Dispute Resolution. This Period, 689 cases (329 female, 360 male) were processed through ADR/ mediation with 321 (151 male and 170 female) cases successfully resolved through ADR. 294 cases are in the final stages of conclusion, while 74 cases failed because the parties failed to reach a compromise and as such they were filed in court.

Most successful cases during the period have been family and land related matters. However, even though most family matters have been addressed and a memorandum of understanding signed during ADR, there is need for continuous monitoring to ensure that the memorandum of understanding is being implemented (JLOS 2013:58).

Sections 16 and 17 of the Judicature (Mediation) Rules No 10 of 2013 provide that where the parties resolve some or all the issues that are the subject of mediation, the parties shall enter

an agreement setting out the issues on which they agree. The agreement shall be in writing and signed by the parties. The agreement shall be filed with the registrar, magistrate or authorized court officer responsible for mediation in the court. The agreement filed with the registrar, magistrate or authorized court officer responsible for mediation shall be endorsed by the court as a consent judgment. Where there is no agreement on all the issues subject to mediation, the mediator shall refer the matter to the court. There shall be no appeal to any order granted under these Rules except as part of a general appeal at the conclusion of the civil action in respect of that mediation.

Alternative Dispute Resolution is encouraged through the use of mediators or the traditional leaders. The courts of law now apply ADR for most cases before going into formal hearing. According to the JLOS baseline survey 2012, public confidence in the enforcement of existing laws stands at 29%, use of ADR generally is at 80% but only 26% of the cases in courts and tribunals are resolved through ADR. The Services of legal aid are recognized by government as crucial to resolving land disputes.

The Justice, Law and Order Sector is working to ensure that there is a functional legal aid system that integrates the state brief; standards for legal aid provision and complements the pro-bono scheme; and low cost models of legal aid. A legal aid policy was finalized and approved by the JLOS Leadership Committee and only awaits Cabinet approval. In anticipation of the approval work commenced on the proposed draft Legal Aid Bill to implement the policy

At the Uganda Law society, provision of legal aid services through the Legal Aid Project and pro bono services continued following the opening of 3 new Legal Aid Clinics in the districts of Mbarara, Arua and Soroti. In the reporting period, a total of 8,359 clients were handled through the legal aid clinic. Of these, 4,691 were new clients representing 56.1%. The male were 5,510 while the female were 2,849. In the reporting period 506 cases were concluded in Court while 774 cases were concluded through mediation. Also 804 cases are pending mediation in ULS while 3,503 cases are pending in Court. In total 1,378 clients received legal advice, 337 were referred to pro bono scheme while 57 cases were closed for lack of merit (JLOS 2013:57).

Justice Centres Uganda, a pilot for state provision of legal aid reached out to 16004 people, 5067 of whom were women. Community awareness outreaches is one of the major activities of Justice Centres Uganda, mainly to respond to call in and walk in issues raised to Justice Centres as well as to serve as an avenue for community mobilization and awareness on human rights and how to pursue such rights. During the reporting period, 157 community outreaches were conducted in different centres focusing on specific issues notably on how to resolve land conflicts, family disputes especially related with custody and child maintenance as well as criminal law.

Justice Centres Uganda continued to resolve disputes through Alternative Dispute Resolution. This Period, 689 cases (329 female, 360 male) were processed through ADR/ mediation with 321 (151 male and 170 female) cases successfully resolved through ADR. 294 cases are in the final stages of conclusion, while 74 cases failed because the parties failed to reach a compromise and as such they were filed in court.

Most successful cases during the period have been family and land related matters. However, even though most family matters have been addressed and a memorandum of understanding signed during ADR, there is need for continuous monitoring to ensure that the memorandum of understanding is being implemented (JLOS 2013:58).

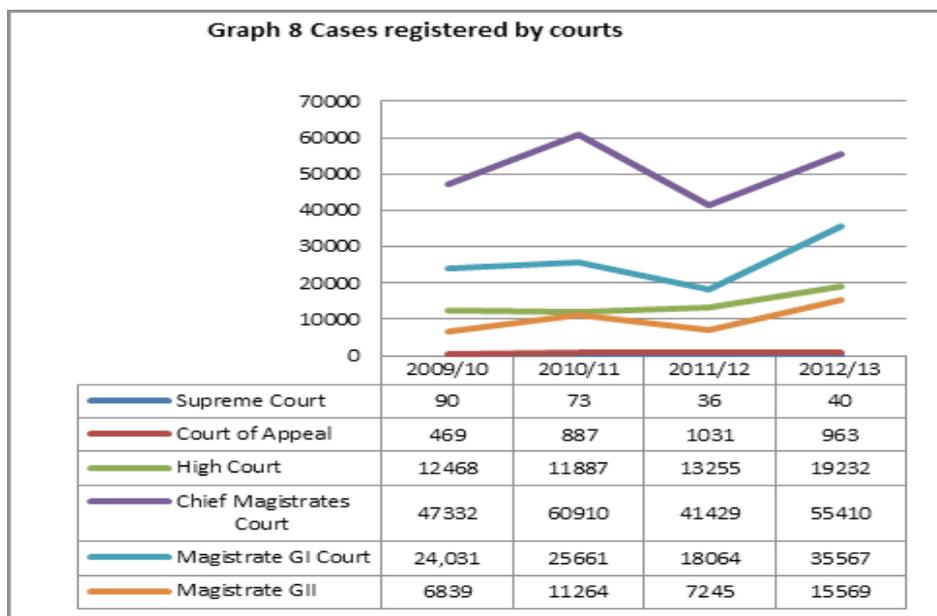
Sections 16 and 17 of the Judicature (Mediation) Rules No 10 of 2013 provide that where the parties resolve some or all the issues that are the subject of mediation, the parties shall enter an agreement setting out the issues on which they agree. The agreement shall be in writing and signed by the parties. The agreement shall be filed with the registrar, magistrate or authorized court officer responsible for mediation in the court. The agreement filed with the registrar, magistrate or authorized court officer responsible for mediation shall be endorsed by the court as a consent judgment. Where there is no agreement on all the issues subject to mediation, the mediator shall refer the matter to the court. There shall be no appeal to any order granted under these Rules except as part of a general appeal at the conclusion of the civil action in respect of that mediation.

Panel discussions affirmed that there are local mechanisms for dispute resolution that are respected by society but difficult to adopt because they are not clear and accepted by all, for example, they may seem alien to the youth. For these systems to gain legitimacy, they need to be documented, and they themselves need to document the dispute resolution processes undertaken, making them more transparent and known to everybody. These mechanisms work well in customary communities with elders who are often respected and have legitimacy to mediate and resolve disputes in a particular community. In Mailo land settings and other registered land, this is not often the case. An institutionalized ADR system must be established to resolve disputes over registered land.

LGI-24(iv) There is an accessible, affordable and timely process for appealing disputed rulings.

Appeals are required to be filed within 14 days of passing of judgment. In the Supreme Court, of the 40 cases filed, only 12 cases were disposed of. This was attributed to lack of Coram. In the Court of Appeal, of the 963 cases filed, only 205 Appeals were disposed of due to lack of Coram, bias on hearing constitutional petitions and failure to hold sessions outside Kampala, a practice that had previously proved very successful (JLOS 2013: 17).

It is however, not possible to determine from the data available whether these courts are accessible and affordable. It is evident though that they are not efficient in disposing of land matters.



JLOS Annual Performance report 2012/2013.

25 THE SHARE OF LAND AFFECTED BY PENDING CONFLICTS IS LOW AND DECREASING

The table below represents the LGAF findings on indicator 25 with its three dimensions.

LG1-25 The share of land affected by pending conflicts is low and decreasing

| | Dimension Description | Score | | | | Score Description | |
|----|-----------------------|---|---|---|---|-------------------|---|
| | | A | B | C | D | | |
| 25 | i | Land disputes constitute a small proportion of cases in the formal legal system | | | | D | Land disputes in the formal court system are more than 50% of the total court cases |
| 25 | ii | Conflicts in the formal system are resolved in a timely manner. | A | | | | A decision in a land-related conflict is reached in the first instance court within 6 months for more than 90% of cases |
| 25 | iii | There are few long-standing land conflicts (greater than 5 years). | | | | D | The share of long-standing land conflicts is greater than 20% of the total pending land dispute court cases |

LG1-25(i) Land disputes constitute a small proportion of cases in the formal legal system.

In 1996 when the Land Tribunals were stopped from operating, there were 6000 cases registered. Today there are 20,000 cases pending (JLOS2013:31). This means that land disputes are on the increase.

Table 1: Disposal of cases by focus area

| Row Labels | B/F | REGISTERED | COMPLETED | DISPOSAL RATE OF REGISTERED CASES | PENDING |
|----------------------|--------|------------|-----------|-----------------------------------|---------|
| Anti-corruption | 264 | 376 | 360 | 96% | 280 |
| Commercial | 1,585 | 2,273 | 1,705 | 75% | 2,153 |
| Criminal | 60,558 | 80,352 | 75,934 | 95% | 64,976 |
| Civil | 51,146 | 24,882 | 20,374 | 82% | 55,654 |
| Executions | 1,985 | 2,474 | 1,359 | 55% | 3,100 |
| Family | 15,503 | 12,790 | 10,847 | 85% | 17,446 |
| Land | 18,719 | 7,446 | 5,788 | 78% | 20,377 |
| International crimes | 6 | - | - | | 6 |

| | | | | | |
|--------------------|----------------|----------------|----------------|--|----------------|
| Grand Total | 149,766 | 130,593 | 116,367 | | 163,992 |
|--------------------|----------------|----------------|----------------|--|----------------|

JLOS Annual Performance report 2012/2013.

LGI-25(ii) Conflicts in the formal system are resolved in a timely manner.

The Ministry of Justice and Constitutional Affairs' Integrated Study on Land and Family Justice in 2008 found that Land disputes constitute the largest portion of disputes in the formal courts. Many times they will be disguised in the criminal courts as trespass or arson, while in the family court they emanate as succession and inheritance disputes. A baseline survey carried out in 2002 by K2 Consult (U) and commissioned by the Justice Law and Order Sector (JLOS) under the Ministry of Justice and Constitutional Affairs, shows that land and property disputes rank second highest (15%) among the cases received in 1998 in the table below.

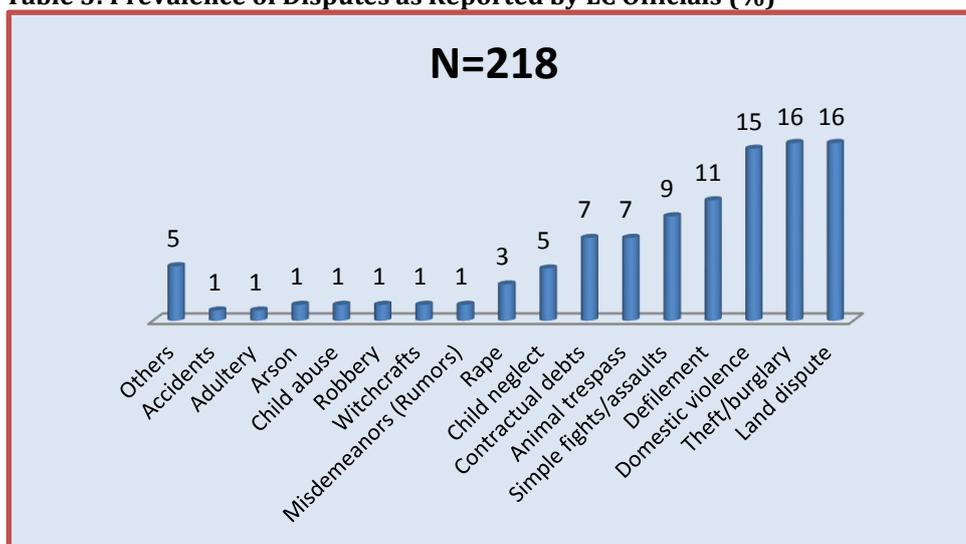
Table 2: Distribution of Cases Received (1998)

| Category of Cases | % |
|---|--------------|
| Land dispute and property dispute | 14.8 |
| Administration of estates | 8.2 |
| Labour claims/unlawful dismissals & small debts claim | 9.0 |
| Child maintenance & custody | 28.1 |
| Domestic / marital problems | 7.4 |
| Defilement & child abuse | 1.9 |
| Divorce & separation | 1.7 |
| Legal advice | 3.6 |
| Criminal cases | 3.8 |
| Accident claims & compensation | 2.5 |
| Human rights/illegal arrest & detention | 1.9 |
| Court representation | 2.3 |
| Breach of agreement | 1.5 |
| Property rights | 0.3 |
| Wrongful eviction | 0.8 |
| Other civil cases | 0.8 |
| Assault & battery | 1.6 |
| Counseling | 1.2 |
| Succession matters | 1.7 |
| Theft | 0.1 |
| Others | 6.9 |
| Total % | 100.0 |
| Number of Cases | 3,382 |

Source: MOJ Criminal Justice Baseline Survey, 2002

The findings from the Joint Survey on Local Council Courts and Legal Aid Services in Uganda found out that land disputes ranked also highest (16%) of the disputes reported at the LC level and this finding closely matches with findings from Criminal Justice Baseline Survey, 2002 (Table 4 below). According to the survey, land disputes were mainly related to boundary markings, encroachment (particularly in Kibale district), eviction of 'bibanja' holders, sale without spouse's consent, demand for access-ways, double selling, arising upon separation and divorce and inheritance matters. The LC Courts have been found to be the most utilized dispute resolution for a particularly in the rural communities where the majority of Uganda's population reside (LCC/Legal Aid Baseline Survey, 2006). The LCC can therefore easily deal with some types of land ownership especially the customary because these require natives of the village to identify land boundaries

Table 3: Prevalence of Disputes as Reported by LC Officials (%)



Source: MOJ LCC/Legal Aid Baseline Survey, 2006

LGI-25(iii) There are few long-standing land conflicts (greater than 5 years).

There is no readily available literature synthesizing the long standing disputes. However, in a study by Godfrey Kaweesa (2012), the finding was that a civil case does not take less than eight (8) years to move from the High Court, through the Court of Appeal to the Supreme Court. This does not take into account cases that may have emanated from Magistrates Courts to the Higher Courts. Litigating respondents were not only fatigued about the process of litigation, but also decried the high costs involved.

PANEL 9: INSTITUTIONAL ARRANGEMENTS & POLICIES

The Ugandan constitution was adopted on October 8, 1995 by the interim, 284-member Constituent Assembly, charged with debating the draft constitution that had been proposed in May 1993. Uganda's legal system since 1995 has been based on English common law and African customary law (customary law is in effect only when it does not conflict with statutory law). It is in this constitution that land tenure and land rights are enshrined. The Ugandan judiciary operates as an independent branch of government and consists of magistrate's courts, high courts, courts of appeal, and the Supreme Court. Judges for the High

Court are appointed by the president; Judges for the Court of Appeal are appointed by the president and approved by the legislature. The decisions of the courts form the body of law in Uganda by setting precedents.

Uganda embraced a decentralized system of governance based on the District as a Unit under which there are lower Local Governments and Administrative Unit Councils. Elected Local Government Councils which are accountable to the people are made up of persons directly elected to represent electoral areas, persons with disabilities, the youth and women councilors forming one third of the council. The Local Government Council is the highest political authority in its area of jurisdiction. The councils are corporate bodies having both legislative and executive powers. They have powers to make local laws and enforce implementation. On the other hand Administrative Unit Councils serve as political units to advise on planning and implementation of services. They assist in the resolution of disputes, monitor the delivery of services and assist in the maintenance of law, order and security.

The Local Governments in a District rural area are:

- The District
- The Sub-county

The Local Governments in a city are:

- The City Council
- The City Division Council

The Local Governments in a Municipality are:

- The Municipal Council
- The Municipal Division Council

The Town Council is also Local Government

The Administrative Units in the rural areas are:

- County
- Parish
- Village

The Administrative Units in the urban areas are:

- Parish or Ward
- Village

The Local Government Act, 1997 gives effect to the devolution of functions, powers, and services to all levels of Local Government to enhance good governance and democratic participation in and control of decision-making by the people. The law also provides revenue, political and administrative set up of Local Governments as well as election of Local Councils.

The powers which are assigned to the Local Governments include powers of making local policy and regulating the delivery of services; formulation of development plans based on locally determined priorities; receive, raise, manage and allocate revenue through approval

and execution of own budgets; alter or create new boundaries; appoint statutory commissions, boards and committees for personnel, land, procurement and accountability; as well as establish or abolish offices in Public Service of a District or Urban Council.

The central Government is responsible for national affairs and services; formulation of national policies and national standards and monitoring the implementation of national policies and services to ensure compliance with standards and regulations. Line ministries carry out technical supervision, technical advice, mentoring of Local Governments and liaison with international agencies.

Land administration is an important factor in the maintenance of community identity, i.e. sovereignty. The State has a residual duty to ensure that its land resources are not used in such a manner as to sabotage the public welfare. This more often than not is expressed in legislation to regulate land use and defend public interest. The quality of land rights is often enhanced and not eroded when account is taken of the overall goals and aspirations of the judicial principles, which create and protect them. Thus, Land rights are only as secure as the political and social context in which they are required, enjoyed and transacted. Land Administration is an important factor in the constitution and enjoyment of property rights as it converts tenure regimes into resource management, challenges and strategies.

The principle of good governance as applied to the stewardship of land resources has led to the growth of participatory stakeholder designed and driven structures and infrastructure operating on the basis of transparency and cost effectiveness. Land Administration function is thus not merely the means through which State interest in private property is expressed; it is also an incident of responsible stewardship of land resources.

Land administration is a function, which entails the mobilization of institutional mechanisms and personnel for juridical, regulatory, fiscal and cadastral components development. The review below highlights the significant achievements of law and policy toward land administration in Uganda.

In Objective X, the Constitution of the Republic of Uganda, 1995 imposes a duty upon the state to take all necessary steps to involve the people in the formulation and implementation of development plans and programs which affect them. In pursuit of this objective, Article 32 recognizes the significant role women play in society and imposes a duty on the state to take affirmative action in favour of marginalized groups on the basis of gender for purposes of redressing imbalances, which exist against them.

The Constitution decentralizes the land administration function. The lead ministry for the delivery of land services is the Ministry of Water, Lands and Environment, through the Directorate of Lands. A number of branch offices around the country had been established to provide local land services (surveying, mapping, valuation and registration). However, they largely operated as a “post box” service for the headquarters since the center handles most of the services. In light of the Constitution, The ministry remains with the functions of quality assurance, policy formulation and offering of technical assistance.

The Constitution under Article 238 – 240 establishes the land management institutions, thus the Uganda Land Commission and the District Land Boards. It also prescribes the functions for each of these institutions. While the Constitution prescribes the membership, procedure and terms of service of the Uganda Land Commission, it gives Parliament power to enact legislation prescribing the same for the District Land Boards.

This theme considers two indicators with their 13 dimensions.

26 INSTITUTIONAL MANDATES IN LAND ADMINISTRATION ARE DEFINED, DUPLICATION AVOIDED, AND INFORMATION SHARED AS NEEDED

The table below presents LGAF findings for indicator 26 with its six dimensions

LG1-26 Clarity of mandates and practice

| | Dimension Description | Score | | | | Score Description |
|----|-----------------------|-------|---|---|---|---|
| | | A | B | C | D | |
| 26 | i | | | | | In situations that can entail conflicts of interest or are sensitive to abuse (e.g. transfers of land rights) there is some separation in the roles of policy formulation, implementation and arbitration |
| 26 | ii | | | | | The mandated responsibilities exercised by the authorities dealing with land governance are non-overlapping with those of other land sector agencies |
| 26 | iii | | | | | Division of land-related responsibilities between the different levels of administration and government is clear with minor overlaps |
| 26 | iv | | | | | Information related to rights in land is available to interested institutions and although this information is available at reasonable cost, it is not readily accessible as the information is not maintained in a uniform way |
| 26 | v | | | | | The Legal framework and procedures for land-related matters (incl. renewable and subsoil resources) deal with land-related matters very differently but have functioning mechanisms for redressing overlap in place |
| 26 | vi | | | | | Different public institutions deal with land-related matters very differently and effective mechanisms for coordination are not in place |

LG1-26(i) Land policy formulation, implementation & arbitration are separated to avoid conflict of interest

The Functions of Policy formulation, implementation and arbitration are clearly distinct and separate these are the Land Sector Reform Coordination Unit and; the Land Management Institutional Framework that supports the day to day delivery of land services at various levels. The mandates of each unit are clearly defined below. Arbitration is two pronged. There is the administrative disputes resolution which falls under the Ministry of Lands directly under the directorate of land management and then the Judicial dispute resolution which falls under the Mandate of the Ministry of Justice and constitutional Affairs and the ministry of Local governments.

Land Policy Formulation: Policy formulation is a function of the Executive. The Minister responsible for lands holds this mandate. For operational purposes, the Minister is supported by the Land Sector Reform Coordination Unit. It is responsible for facilitation of policy, legal

and regulatory framework development and the promotion of good governance in the land sector. It is responsible for strategic planning and visioning for the land sector through the development of the Land Sector Strategic Plan.

Implementation: The Land Management Institutional Framework that supports the day to day delivery of land services at various levels. It is also responsible for policy, legal and regulatory framework implementation, administrative land dispute resolution (with emphasis on alternative dispute resolution), provision of public information on land rights, Geomatics and land information, promotion of good governance, effective and efficient delivery of land services, and planning for implementation of land sector reforms

Arbitration: A distinction is made between judicial land dispute resolution and administrative land dispute resolution. The former comprises disputes arising out of civil or criminal wrongs that have a cause of action with remedies granted by a court or informal dispute resolution system. This mandate falls with the Ministry of Justice and constitutional Affairs for matters that go to formal courts of law and Ministry of Local government for matters at the local level through the Local council courts. The later (administrative dispute resolution) comprises of disputes arising out of the work and functioning of land rights administration and these disputes require administrative remedies. This is the mandate of the land management.

Under dispute resolution, there is often conflict between the Ministry of Local Governments and Ministry of Justice over who has the supervisory mandate over the Local council Courts.

Furthermore, the Ministry of Lands, Housing and Urban Development understood Alternative dispute Resolution as squarely falling under its mandate. The Ministry of Justice considers this its mandate as well. This creates challenges in streamlining the land justice delivery structure.

LGI-26(ii) Responsibilities of the ministries and agencies dealing with land do not overlap

There is a clear definition of roles governing the functioning of the Ministry and other agencies dealing with Land. All land agencies are statutory creations. The Ministry gives policy direction to the following autonomous and semi-autonomous institutions.

Uganda Land Commission (ULC): The Uganda land commission (ULC) was established by the 1995 Constitution of the Republic of Uganda. The constitution provides for the setting up of Uganda Land Commission as an autonomous body; and at the commencement of the financial year 2006/2007, Ministry of Finance Planning & Economic Development created a vote for Uganda Land Commission.

The Vision of the Uganda Land commission is, “all Government land and property thereon, secured, effectively managed and historical land injustices resolved”.

Mission Statement: The mission of Uganda Land Commission is, “to effectively hold and manage all Government Land and property thereon and resolve all historical land injustices”.

Objectives

To ensure the effective and efficient management of all Government land & property thereon.

To develop & maintain an updated inventory and data base for all Government land and property.

To ensure that all Government land is titled and secured

To ensure proper use and accountability of the land fund

To enable bona fide and lawful occupants acquire registerable interest.

National Housing and Construction Company: This is a Ugandan public enterprise that was established by the National Housing Corporation Act of 1964. The act was later repealed by the 1974 Decree to form National Housing and Construction Corporation.

The functions of the corporation were:—

- develop, build and manage housing estates and to sell houses upon such terms of payment as the Board would prescribe or to let houses at economic rents;
- build, or permit or assist the building, on any land owned, leased or controlled by the corporation of any premises which were considered by the corporation to contribute to the improvement or development of a housing estate;
- Undertake contracts of building and civil engineering works on behalf of the Government or any person.
- Provide or assist in providing housing accommodation for citizens of Uganda at an economical cost.
- The corporation had powers to: —
- to enter into contracts for the building of houses for the corporation on any estates developed or to be developed or managed by the corporation and to let or sell upon deferred terms of payment or otherwise any house so built;
- to enter into agreement with any person to form a company or a partnership with the object of providing loans to persons resident in Uganda for building purposes or for purchasing dwelling or partly dwelling houses;
- to lend or advance money to, or acquire any interest in, or otherwise assist in the subscription of capital in, any undertaking engaged in or proposing to establish any business for the building
- or acquisition of houses, as may be approved by the Minister in consultation with the Minister responsible for finance;
- to delegate, subject to the written approval of the Minister, the management of a housing estate which has been developed or built by the corporation to any local authority or person willing to undertake such management; and

In July 2002, the Corporation became a public limited liability company known as National Housing and construction Company Limited.

The Company's mandate is to increase the housing stock in the country, rehabilitate the housing industry and encourage Ugandans to own homes in an organized environment. It's vision is *"To transform people's lives and communities by providing affordable and well-built housing."*

On the 10th December 2009 National Housing and Construction Company rebranded changing its image with a major objective of promising Ugandans Value for money as it seeks

to increase the housing stock in the country, rehabilitate the housing industry and encourage Ugandans to own homes in an organized environment.

The company aims at creating the reality of home ownership in well-planned and permanent built environments.

Housing Finance Bank Ltd: Incorporated as a private company under the Companies Act in December 1967, the Bank has become a household name and has grown in leaps and bounds with a good track record among the pioneers of a mortgage lending. National Housing & Construction Corporation, a parastatal involved in real estate business has 0.82%, National Social Security Fund (50%) and the government of Uganda (49.18%). It exclusively undertook the mortgage business and for a long time enjoyed monopoly in the market. Later on went on to acquire a commercial bank license on 9th November, 2007 and finally became a fully fledged Commercial Bank on the 2nd of January, 2008.

The bank provides affordable financing options for home development and acquisition, and promotes a culture of saving amongst Ugandans.

The National Physical Planning Board: Is created by Section 4 of the National Physical Planning Act No 8 of 2010. The Board is responsible for ensuring orderly, progressive and sustainable urban and rural development through appropriate physical planning.

The functions of the Board are:—

- (a) advise government on all matters relating to physical planning;
- (b) hear and determine appeals lodged by persons or local governments aggrieved by the decision of any physical planning committees;
- (c) determine and resolve physical planning matters referred to it by physical planning committees;
- (d) advise the government on broad physical planning policies, planning standards and the viability of any proposed subdivision of urban or agricultural land;
- (e) study and give guidance and recommendations on issues relating to physical planning which transcend more than one local government for purposes of co-ordination and integration of physical development;
- (f) approve regional, urban or district physical development plans and recommend to the Minister national plans for approval;
- (g) advise the Minister responsible for local governments on the declaration of town councils, town boards or upgrading of urban authorities;
- (h) advise the Minister on the declaration of special planning areas;
- (i) cause physical development plans to be prepared at national, regional, district, urban and sub county levels;
- (j) monitor and evaluate the implementation of physical development plans;
- (k) formulate draft planning policies, standards, guidelines and manuals for consideration by the Minister;
- (l) ensure the integration of physical planning with social and economic planning at the national and local levels;
- (m) exercise general supervisory powers over all lower planning committees such that they can seek guidance, set standards and take control; and
- (n) foster co-ordination of physical planning related or interdisciplinary activities in the country in order to promote orderly and sustainable development of human settlements in rural and urban areas.

In the absence of the Board, the Minister may perform its duties on the advice of the head of the national physical planning department.

The Act sets up planning committees at the district, urban and local levels. At the district level, section 9 of the Act establishes the District Physical Planning Committee with the following functions: to cause to be prepared local physical development plans through its officers, agents, or any qualified planners; to recommend to the Board development applications for change of land use; to recommend to district council subdivision of land which may have a significant impact on the contiguous land or be in breach of any condition registered against a title deed in respect of such land; to approve development applications relating to housing estates, industrial location, schools, petrol stations, dumping sites or sewerage treatment, which may have injurious impact on the environment as well as applications in respect of land adjoining or within a reasonable vicinity of safeguard areas; to hear appeals by those aggrieved by decisions made by the district physical planner and lower local physical planning committees; to ensure the integration of physical planning into the three year integrated development plan of the district; and to exercise supervisory powers over all lower planning committees and to ensure integration of social, economic and environmental plans into the physical development plans.

At the urban planning level, section 11 of the Act establishes the Urban Physical Planning Committees which are mandated with the following functions: to cause to be prepared urban or local physical development plans and detailed plans; to recommend development applications to the Board for change of land use; to recommend to the urban council, subdivision of land which may have significant impact on contiguous land or in breach of any condition registered against a title deed in respect of such land; and to determine development applications relating to industrial location, dumping sites or sewerage treatment which may have injurious impact on the environment as well as applications in respect of land adjoining or within a reasonable vicinity of safe guarding areas and to hear and determine appeals made against decisions of the urban physical planner or subordinate local authorities.

At the local level, the Act recognizes that the sub-county councils shall constitute local physical planning committees with the following functions: initiate the preparation of local physical development plans; recommend to the district physical planning committees the approval of local physical development plans; implement structure plans in close consultation with the district physical planner and implement in close consultation with the district physical planner, detailed plans and area actions plans which shall address the matters such as the treatment of a particular planning aspect like residential, transportation, water supply, sewerage, in part or as part of a long term plan; advisory or subdivision plans, indicating permitted subdivision, use and density development; and the

assessment of immediate land requirements to accommodate specific population needs and detailed allocation of the land requirements to land uses taking into account compatibility of adjoining land uses and conforming to the existing physical development plan proposals for the area.

The Architects Registration Board: The Architects Registration Board was established by an Act of Parliament in 1996 to regulate the architects' profession in Uganda. It is an independent, public interest body and our work in regulating architects ensures that good standards within the profession are consistently maintained for the benefit of the public and architects alike.

Section 4 of the Architects Registration Act Caps 269 enumerates the functions of the Board as:

- To regulate and maintain the standard of architecture in the country;
- To register architects;
- To make byelaws for better carrying into effect the provisions of this Act;
- To prescribe or regulate the conduct of architects in Uganda;
- To promote training in architectural sciences.

Its work is overseen by a Board of 6 members. By law, two of the members are appointed by the Minister of Lands, Housing and Urban Development while the other four members are selected by the Uganda Society of Architects.

The Board is responsible for regulating and maintaining the standard of architecture in the country through registering Architects, making Bye- laws for the better carrying into effect the provisions of the Statute, regulating the conduct of Architects and promoting training in Architectural Science.

The Surveyors Registration Board: The Surveyors Registration Board is created by Section 2 of the Surveyors Registration Act Cap 275 of 1974 to regulate and control the profession of surveyors and the activities of registered surveyors within Uganda, and to advise the Government in relation to those functions. The board may do all such things as are calculated to facilitate or are incidental or conducive to better carrying out its functions.

The Board is responsible for regulating the surveying profession in the country. The Board regulates surveyors through registration of surveyors, disciplining of surveyors and giving practical licenses to surveyors.

The Act permits to Board to acquire hold and in any way dispose of any property movable or immovable.

Because the agencies are statutory creations under the same Ministry, the role of the Ministry is maintained as regulator and overseer of the functioning of these agencies through the Minister responsible for Lands.

LGI-26(iii) Administrative (vertical) overlap is avoided.

The Land Sector is premised on two frameworks that are complementary. The Land Sector Reform Coordination Unit and; the Land Management Institutional Framework that supports the day to day delivery of land services at various levels. The mandates of each unit are clearly defined below.

Land Sector Reform Coordination Unit

Land Sector Reform Coordination Unit (*LSRCU*) is responsible for reform of the land sub-sector by implementing the Land Sector Strategic Plan II (LSSP II) which provides for the operational, institutional and financial framework for the implementation of sector wide reforms including the implementation of the Land Act. It is responsible for facilitation of policy, legal and regulatory framework development, promotion of good governance in delivery of land services, and planning for implementation of land sector reforms. The following projects are currently in implementation.

Land Tenure Reform Project

The project aims at reforming the land sub-sector by implementing the Land Sector Strategic Plan (LSSP), which provides the operational, institutional and financial framework for the implementation of sector wide reforms including the implementation of the Land Act. The specific objectives are:-

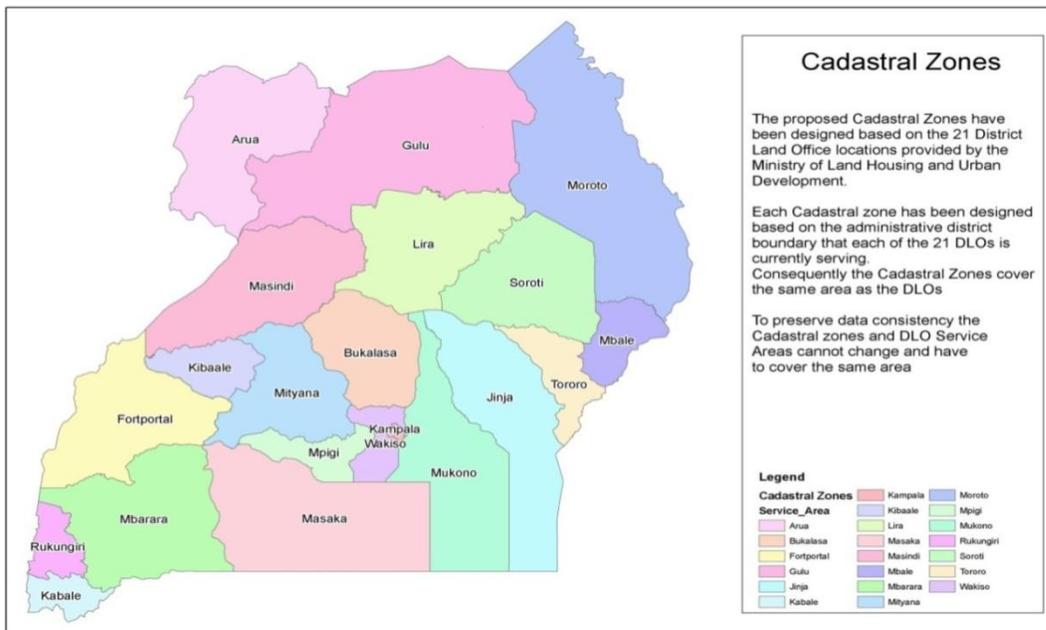
- Creating an inclusive and pro poor policy and legal framework for the land sector;
- Putting land resources to sustainable productive use;
- Improvement of livelihoods of poor people through equitable distribution of land access and ownership, and greater tenure security for vulnerable groups;
- Increasing availability and use of land information;
- Establishing and maintaining transparent, accessible institutions and systems for decentralized delivery of land services;
- Mobilizing and utilizing public and private resources effectively for the development of the land sub- sector.

Digital Mapping Project

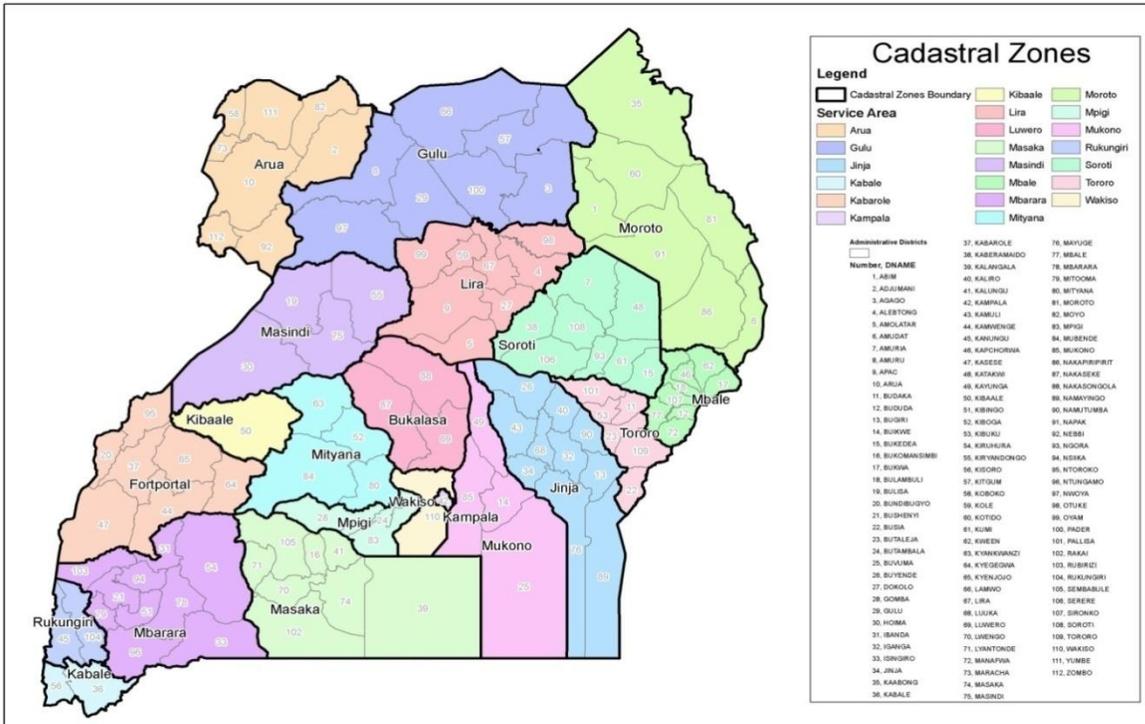
Digital Mapping Project is responsible for providing topographic database as a source data for use by Natural Resource Departments at district level. The data is used by district planners in their day-to-day work during planning for economic and developmental activities within the district. The Project has covered almost the entire country with exception of the North and North East areas of the country.

Ministry of Lands, Housing and Urban Development Zonal Offices

MLHUD is establishing 21 Zonal Offices (MZOs) in every cadastral zone of Uganda. All land title records are being transferred from Kampala to the respective MZO where all land transactions are to be registered, and new certificates of titles issued. The MZOs are to provide the services of physical planning, land administration, land valuation, surveys and mapping, land registration and housing at every cadastral zone. A cadastral zone represents a service area within which customers will conduct business with a larger district land office to facilitate service provision and minimize the costs of establishing District Land Offices with all the required technical officers in each district. Consolidation of services brings economies of scale whilst maintaining a decentralized land administration structure in the country. The proposed cadastral zones will be used for the implementation of Land Information System (LIS) servers (each zone will host a LIS server) which will generate unique transaction and property codes on the basis of the named cadastral zone.



The 21 Cadastral Zones which are to host the 21 MZOs.



Cadastral Zones and corresponding administrative districts

The creation of the 21 cadastral zones will enable MLHUD to maintain rigid unchanging unique identifiers can be allocated to properties for ease of management of information about the location of each piece of land and its attributes. Unstable property identifies tend to create uncertainties in the description of land which may make the information about land to be unreliable and prone to errors, misdescriptions and duplications of certificates of title. It should be noted that the use of cadastral zones does not prevent the creation of new districts (currently 112); if new districts are established they will be allocated to one of the 21 cadastral zones listed in the table above.

New purpose-built MZO offices are being constructed throughout the country in order to improve on the efficiency and effectiveness of service delivery. A Land Information System (LIS) has been established in Uganda which is to be linked to every MZO. MZOs will be the nodes of the LIS in each cadastral zone into which all information about land in each district within the cadastral zone will be collected, processed and validated before the information is to be transferred to a National Land Information Centre (NLIC), which is centrally located in Kampala. With the establishment of MZOs, the role of DLOs is to capture field data for processing and quality assurance by MZOs before the said information can be transferred to NLIC for use by land registry customers.

MZOs are intended to have the following benefits

- Efficient and effective land administration service delivery nearer to the people at each cadastral zone, including issuing of certificates of title and registration of land transactions
- Reduction of land transaction costs
- Organized and well coordinated land registration processes
- Provision of a customer focused and healthy working environment
- Provision of reliable, easily accessible and up-to-date land information to support land market activities

National Land Information Centre

The National Land Information Centre (NLIC) functions as the nerve centre for all computerized information about land in Uganda and provides methodological support to the MZOs in land registration and cadastral activities and serves as the main provider of land information, assures land information data exchange with other agencies.

Land Sector Working Groups

In order to ensure smooth implementation of the Land Sector Strategic Plan (LSSP), all key aspects of the LSSP objectives have Working Groups/Focus Groups that have an official from the LSSP Implementation Division specifically assigned and charged with the functioning and delivery of outputs. These are multi stakeholder groups of experts representing the Private Sector, Academia, Professional bodies and Civil Society Organizations. This was an attempt to ensure that

- a) The sensitization focus group, for provision of information of land rights, materials developments and mainstreaming the concerns throughout LSSP activities;
- b) The Rules and regulations Focus Group, responsible for the development of appropriate regulations under the Land Act and shall also be charged with other rules and regulations that may arise in the process of reviewing other land related laws. This shall be complemented by the presence of a law review working group that is responsible for reviewing and revising different laws;
- c) The Systematic Demarcation working group that shall spearhead systematic demarcation activities under LSSP, an activity that will ensure security of tenure and availability of information on land parcels. It is responsible for the development of regulations pertaining to Systematic Demarcation;
- d) The Land Fund Focus Group, responsible for the development of a management plan and regulations for the operationalisation of the Land Fund. It is also responsible for Government Land, which is a line activity for Uganda Land Commission;

- e) Access to Justice/Dispute resolutions focus group. This will be established to strengthen and complement the initial Land Tribunals Focus Group that had been charged with establishing operations of Land tribunals. This working group will be also responsible for Local Council Courts;
- f) A central/local government planning forum charged with determining and coordinating project support to local government and the land administration institutions that have a major stake in these project activities. Workshops are arranged biannually for these stakeholders to determine priorities and to agree on issues relating to accountability and programming;
- g) Other Working groups would be composed as the need arises. Some of these are:
 - i. The National Land Policy Working Group
 - ii. The National Land Use Policy Working Group
 - iii. Law Review Working Group

The Land Management Institutional Framework

Central Government Institutions

Land Administration and Management

The Vote Function of (Land Administration and Management) falls under the Directorate of Land Management. The general functions of Land administration and management include: land management, registration, mapping, surveying and valuation of properties, coordination and supervision.

It is also responsible for policy, legal and regulatory framework development, administrative land dispute resolution (with emphasis on alternative dispute resolution), provision of public information on land rights, Geomatics and land information, promotion of good governance, effective and efficient delivery of land services, and planning for implementation of land sector reforms.

The Directorate is headed by the Director, Land Management who is in-charge of the overall sector management, coordination and supervision. The Directorate is made up of the Office of Director, Department of Land Registration, Department of Land Administration, Department of Surveys and Mapping, and a Land Sector Reform Coordination Unit.

Office of Director, Land Management

The Office of Director, Land Management is responsible for budgeting, resource allocation and monitoring of the Lands Sector. It also gives policy direction on matters concerning land management in the country.

Department Of Surveys and Mapping

The department of Survey and Mapping is responsible for the establishment of survey and geodetic controls, quality checks of cadastral jobs, survey of government land and international boundaries, production and printing of topographical maps. The Department is also responsible for producing a National Atlas.

Department of Land Registration

The Department is responsible for issuance of certificates of titles, general conveyance, keeping custody of the national land register, coordination, inspection, monitoring and back-up technical support relating to land registration and acquisition processes to local governments.

Department of Land Administration

The Department of Land Administration is responsible for supervision of land administration institutions and valuation of land and other properties.

Physical Planning and Urban Development

Directorate of Physical Planning and Urban Development

The Vote Function of Physical Planning and Urban Development falls under the Directorate of Physical Planning and Urban Development, comprised of the office of Director, Physical Planning and Urban Development; the Department of Physical Planning; the Department of Urban Development and the Department of Land Use Regulations and Compliance.

The Vote Function is responsible for budgeting, resource allocation and monitoring of the Physical Planning and Urban Development Sector. It is also responsible for coordination of policy, legal and regulatory framework development in the sub-sector. The major aim of this vote function is to attain an orderly, progressive and sustainable urban and rural development as a framework for industrialization, provision of social and physical infrastructure, agricultural modernization and poverty eradication.

Office of Director, Physical Planning and Urban Development

The office of Director, Physical Planning and Urban Development is responsible for ensuring that there is orderly, progressive and sustainable urban and rural development in the country. The office is also responsible for budgeting, resource allocation and monitoring of the Physical Planning and Urban Development Sector.

Department of Physical Planning

The Department of Physical Planning is responsible for policy making, standard setting, national planning, regulation, coordination, inspection, monitoring and back-up technical support relating to urban and regional planning.

Department of Urban Development

The Department of Urban Development is responsible for formulation of urban policies, regulations, development and review of relevant laws, standard setting to enhance orderly urban development.

Department of Land Use Regulation and Compliance

The Department of Land Use Regulation and Compliance is responsible for ensuring compliance land use related policies, plans & regulations; providing technical support and guidance to LGs in the field of land use regulation, monitoring & evaluation; and systematization of the land use compliance monitoring function and practice

Housing

Office Of Director, Housing

The Office of Director, Housing is responsible for budgeting, resource allocation and monitoring of the Housing sector. The office also coordinates the functions of Housing and Human Settlement in the country.

Department of Human Settlement

The Department of Human Settlement is responsible for formulating policies, legislation, procedures, setting housing standards, monitoring and evaluation of implementation of housing policies and providing technical back up support in order to increase the stock of affordable and decent housing that enhances the quality of life and safety of population as well as to guarantee the security of tenure for all especially the vulnerable in society.

Department of Housing Development and Estates Management

The Department of Housing Development and Estates Management is responsible for formulating policies, legislation, procedures on Estates, supervising housing development and estates development. This Department was created under the Ministry of Lands, Housing and Urban Development after the transfer of a number of staff from the former Department of Building that used to be under the former Ministry of Works, Housing & Communications during FY 2007/08.

Support to Earthquake Disaster Victims Project

The project is mandated to enhance Earthquake Disaster Management through sensitization to build capacity of the population and demonstration to enhance construction techniques in earthquake prone areas.

The specific objectives of the project include:

- To develop guidelines for construction in earthquake prone areas
- To increase awareness of the public about seismic safety in order to mitigate the effects of earthquake b. disaster using both print and electronic media;
- To train personnel in earthquake resistant construction techniques; and
- To enhance formulation of self sustaining Disaster Management Systems at all levels of leadership, which d. would not only coordinate dissemination of information, relief and evacuation in the event that disaster strikes but also continue sensitizing their communities on Disaster Management.

Department Of Finance and Administration (F&A)

The Department is headed by an Under Secretary and made up of seven organizational units namely; Administration, Accounts, Personnel, Policy Analysis Unit, resource/Information Centre, Internal Audit Procurement Unit. A Principal Officer heads each of these Units. The operations of the office of the Ministers and Permanent Secretary are funded through this department.

The Department has overall responsibility for the following functions in the Ministry, namely: Financial Management, Accounting, Administrative services, Personnel services, Supplies, Procurement matters, Policy analysis, Internal Audit and provision of information on the Ministry services among others.

The department has specialized units whose mandates are highlighted below:-

- a) Policy Analysis Unit (PAU). The Unit provides strategic policy advice, coordinates policy development, monitoring and evaluation of policies in line with overall national development strategy, regional and international priorities.
- b) Resource Centre (RC). The Resource Centre is responsible for collecting, processing, storing and disseminating information in the Ministry and the general public. It is also responsible for operationalising and reporting on the implementation of access to information initiative in the Ministry.
- c) Procurement and Disposal Unit (PDU). The Unit is responsible for coordinating and managing all procurement and disposal activities in the Ministry. It also monitors all contracts awarded to ensure that they perform according to the set out terms and conditions in the contracts.
- d) Internal Audit Unit. The unit is responsible for carrying out the audit function in the Ministry.

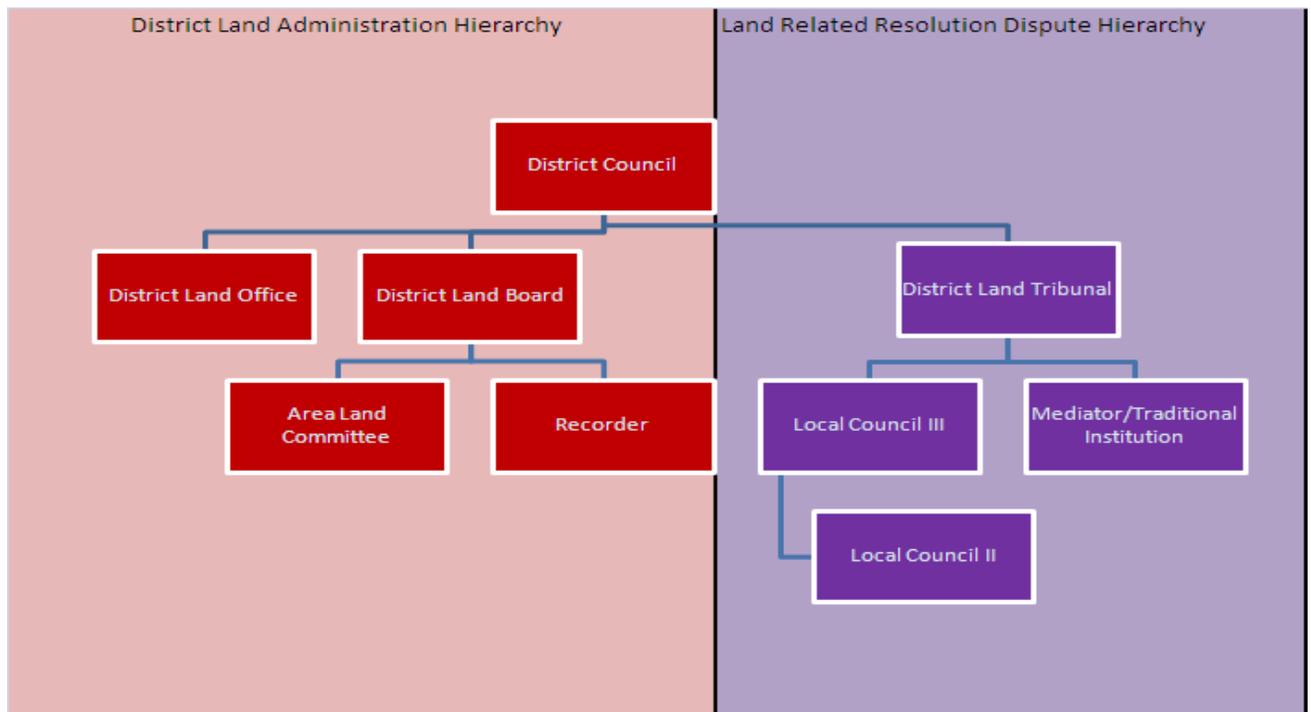
Planning and Quality Assurance Department (PQAD)

This department is responsible for strategic planning, monitoring and evaluation of projects and programmes, quality standards assurance, and coordinating the training function in the Ministry. The department is headed by Commissioner, Planning and Quality Assurance.

Decentralisation of Land administration Services

For purposes of land administration local governments are responsible for

- District Land Boards
- District Land Offices
- Area Land Committees
- Recorders



Decentralized Land Management Structure

District Land Boards

Under the Land act (Cap. 227) the District Land Board (DLB) performs the following functions, to

- a) hold and allocate land in the district which is not owned by any person or authority;
- b) facilitate the registration and transfer of interests in land;

- c) take over the role and exercise the powers of the lessor in the case of a lease granted by a former controlling authority;
- d) cause surveys, plans, maps, drawings and estimates to be made by or through its officers or agents;
- e) compile and maintain a list of rates of compensation payable in respect of crops, buildings of a non-permanent nature and any other thing that may be prescribed;
- f) review every year the list of rates of compensation payable in respect of crops, buildings of a non-permanent nature and any other thing that may be prescribed;
- g) deal with any other matter related to the above matters.

Under the National Forests and Tree Planting Act a DLB is required to maintain a register in which all rights and interests of any nature in respect of private forests shall be kept, including:

- The nature of the right or interest ;
- The manner in which it came into existence;
- The name of the holder or beneficiary of the right or interest, and
- Any other information as may be prescribed.

District Land Offices

The District land Offices (DLO) provide technical services to the District Administration and District Land Board in terms of facilitating the registration and transfer of interests in land, to coordinate surveys and map/plan generation and to assess and collect revenue.

Every DLO is required to have the following technical officers:

1. a District Land Officer,
2. a District Physical Planner,
3. a District Staff Surveyor,
4. a District Registrar, and
5. a District Valuer.

With the establishment of MZOs, the role of DLOs is to capture field data for processing and quality assurance by MZOs before the said information can be inputted into the LIS which is linked to the NLIC.

Area Land Committees

Area Land Committees (ALC) are established at sub-county or division level. Their role is to adjudicate upon and demarcate land. During land adjudication an ALC may be required to resolve land disputes over boundaries or conflicting claims over land. In hearing and determining any claim, ALC is required to use its best endeavours to mediate between and reconcile parties having conflicting claims to land.

Recorders

The Recorder at the sub-county level is the sub-county Chief or assistant Town Clerk at the division level. The role of the Recorder is to issue certificates of customary ownership and certificates of occupancy and to register subsequent land transactions on the basis of the said certificates.

LGI-26(iv) Land right & use information is shared by public bodies; key parts are regularly reported on & publicly accessible

In its study in 2008, the Ministry found that there is no sharing of information within the various land sector institutions. It prioritized *Developing a Sector Wide Approach to Planning (SWAP) and Establishment of Project Monitoring & Evaluation Framework* as an approach that would harness close collaboration and information sharing. For this to work however, resources will be needed to facilitate the development of management plans, monitoring tools, and other instruments that guide the programs being implemented and private actors in the sector. The development of a SWAP for MLHUD Sector will provide an opportunity for further rationalization of the roles that various actors can play in long-term strategic planning. The specific focus will be on:

- Monitoring and evaluating the project with major emphasis on value for money
- Ensuring accountability to our partners and all stakeholders

LGI-26(v) Overlaps of rights (based on tenure typology) are minimal and do not cause friction or dispute

Overlaps on Mailo land have historically created friction and tension. Despite being the most legislated tenure in Uganda's history, concerns around tenant – land lord relations are escalating requiring a once for all solution. Then Land Fund has been applied to pay off the land owners and settle the tenants but this was unsustainable as there was not enough money in the fund to complete the exercise. The impasse created through the multiple of rights on the same piece of land has taken on a political face, making this a potent area for conflict. It is the tenure where large scale eviction of tenants is experienced.

Customary tenure is currently the tenure most susceptible to abuse and violation of human rights. There are mass evictions without compensation for lack of proof of ownership. The constitutional provision for the option to convert customary tenure to freehold undermines the resilience and existence of customary tenure as equal to freehold. The provision for conversion has led to the elite and land speculators especially in the oil and mineral rich parts of Uganda to acquire large chunks of land in the pretext that it is free land that they can obtain free titles over. The option to convert has further exacerbated conflicts over land as the elite and speculative purchasers of land especially in the mineral and oil rich areas have acquired huge pieces of land without the consent of the community.

The law is silent on the definition of family head and this undermines equality as defined in Article 31(2) of the constitution. It means that the definition of household head as understood by customs and traditions will be upheld.

LGI-26(vi) Ambiguity in institutional mandates (based on institutional map) does not cause problems

Below is presented the institutional map.

| NO | INSTITUTIONS (CENTRALIZED AND DECENTRALIZED AUTHORITIES) | TYPE OF LAND/RESOURCES | RESPONSIBILITY/MANDATE | SEPARATION OF POLICIES AND FUNCTIONS | OVERLAPS OCCUR WITH WHICH OTHER INSTITUTION |
|-----|--|------------------------------------|--|---|--|
| 1.0 | Ministry of Lands, housing and Urban Development | All types of land for all purposes | <ul style="list-style-type: none"> • Develop national policies, produce guidelines and regulations for service deliverers at lower levels of government (district and below). • Provide support to ensure proper implementation, i.e., to provide a <i>development framework</i> within which everyone in the country can participate. • Map existing infrastructure and using the land use and population distribution information arising from surveying and demarcation (especially important in systematic demarcation) for technical staff and political leaders to make decisions on what types of infrastructure and service delivery are needed (now and estimate in the future) and where to place infrastructure and services for the most effective use. | Separation of policies and function exists. | <ul style="list-style-type: none"> • Ministry of Justice and Constitutional Affairs over management of Land Tribunals and the execution of the mediation function. • Ministry of Agriculture, Animal industries and Fisheries over Physical planning and agricultural zoning. • Ministry of Water and Environment over governance of land and tree tenure. • Uganda Investment Authority over regulation of land for investment. • Ministry of Local government over support to the decentralization of the land administration function. |
| 1.1 | Land Information Centre | Registered land | <ul style="list-style-type: none"> • Functions as the nerve centre for all computerized information about land in Uganda. • Provide methodological support to the MZOs in land registration and cadastral activities. • Serve as the main provider of land information. • Assure land information data exchange with other agencies. | Separation of function exists. | <ul style="list-style-type: none"> • Department of surveys and Mapping over land information capture and management. |
| 1.2 | Ministry of Lands, housing and Urban Development Zonal Offices | All types of land for all purposes | <ul style="list-style-type: none"> • Provide services of physical planning, land administration, land valuation, surveys and mapping, land registration and housing at every cadastral zone. • Implement the Land Information System (LIS) servers (each zone will host a LIS server) which will generate unique transaction and property codes on the basis of the named cadastral zone. • Enable MLHUD maintain rigid unchanging unique identifiers which can be allocated to properties for ease of management of information about the location of each piece of land and its attributes. | Separation of function exists. | |

| NO | INSTITUTIONS (CENTRALIZED AND DECENTRALIZED AUTHORITIES) | TYPE OF LAND/RESOURCES | RESPONSIBILITY/MANDATE | SEPARATION OF POLICIES AND FUNCTIONS | OVERLAPS OCCUR WITH WHICH OTHER INSTITUTION |
|-----|--|---|--|---|---|
| 1.3 | Uganda Land Commission | <ul style="list-style-type: none"> • Central Government Land, • Land owned by Uganda in other countries (Diplomatic Missions) • Natural Resources vested in the central Government | <ul style="list-style-type: none"> • Hold and manage land in Uganda which is vested in or acquired by the Government. • Acquisition of land for development by the state. • Hold and Manage land acquired by the government in other countries. • Administration of the land fund. • Procure certificates of title for any land vested in or acquired by the government. • Catalogue, map, and determine the value of all government lands (along with the existing infrastructure and assets found on the land). • Maintain an inventory of government lands in trust for the public. • Transfer government land titles to corporate bodies, such as the districts or sub-counties. | Separation of policies and function exists. | All Government departments over management and updating of the register of government lands in the possession of the various departments. |
| 2.0 | Local Governments | <ul style="list-style-type: none"> • All rural and urban land vested in a district/local government • Natural Resources vested in a district . | <ul style="list-style-type: none"> • Hold in trust for the people and the common good of the citizens of Uganda environmentally sensitive areas within their jurisdiction. • Grant concessions, licences or permits in respect of natural resources within its jurisdiction. • Administer and operationalize the District Land Offices and the remuneration of staff therein. • Appoint the District Land Boards and Area Land Committees • Finance the land administration function in the District. | Separation of policies and function exists. | |

| NO | INSTITUTIONS (CENTRALIZED AND DECENTRALIZED AUTHORITIES) | TYPE OF LAND/RESOURCES | RESPONSIBILITY/MANDATE | SEPARATION OF POLICIES AND FUNCTIONS | OVERLAPS OCCUR WITH WHICH OTHER INSTITUTION |
|-----|--|--|--|---|---|
| 2.1 | District Land Boards | <ul style="list-style-type: none"> • Local Government Land, • Land in a District not owned by anybody, • Natural Resources vested in a local Government. • Leases issued out of former public land | <ul style="list-style-type: none"> • Hold and allocate land in the district which is not owned by any person or authority. • Facilitate the registration and transfer of interests in land. • Take over the role and exercise the powers of the lessor in the case of a lease granted by a former controlling authority. • Cause surveys, plans, maps, drawings and estimates to be made by or through its officers or agents. • Compile and maintain a list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other thing that may be prescribed. • Review every year the list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other thing that may be prescribed. • Maintain a register in which all rights and interests of any nature in respect of private forests shall be kept, including: <ul style="list-style-type: none"> • the nature of the right or interest ; • the manner in which it came into existence; • the name of the holder or beneficiary of the right or interest, and • any other information as may be prescribed. | Separation of function exists. | |
| 2.2 | District Offices | All land in the district whether urban or rural, for all purposes. | <ul style="list-style-type: none"> • Take over the responsibility for title registration and management within the districts. • Co-ordinate and oversee technical support to land sector activities (cartography, surveying, physical planning, and so on) coming from the regional offices and/or central government ministries. • Capture field data for processing and quality assurance by the zonal offices before the said information can be inputted into the LIS which is linked to the National Land Information Centre (NLIC). | Separation of function exists. | |
| 2.3 | Area Committees | Land found in a lower Local Government (Sub county, Town council, Division in a city). | <ul style="list-style-type: none"> • Adjudicate upon and demarcate land. • In the course of land adjudication, an ALC may be required to resolve land disputes over boundaries or conflicting claims over land. • In hearing and determining any claim, ALC is required to use its best endeavors to mediate between and reconcile parties having conflicting claims to land. | Separation of function exists. | Traditional institutions/informal institutions over the administration of customary tenure. |

| NO | INSTITUTIONS (CENTRALIZED AND DECENTRALIZED AUTHORITIES) | TYPE OF LAND/RESOURCES | RESPONSIBILITY/MANDATE | SEPARATION OF POLICIES AND FUNCTIONS | OVERLAPS OCCUR WITH WHICH OTHER INSTITUTION |
|-----|--|--|---|---|---|
| 2.4 | Sub county/Recorder's Office | Land found in a lower Local Government (Sub county, Town council, Division in a city). | <ul style="list-style-type: none"> Issue certificates of customary ownership and certificates of occupancy. Register subsequent land transactions on the basis of the said certificates. | Separation of policies and function exists. | |
| 3.0 | Ministry of Justice and Constitutional Affairs | All types of land for all purposes | <ul style="list-style-type: none"> Administration of land justice. Interpretation of the State mandates in relation to land. Preparation of Bills for parliament and other legal instruments through the First Parliamentary council and the Law Reform Commission. Prepare amendments to land laws. Represent Government in case of land disputes against the state. Prepare compensations in case of compulsory land acquisitions. Oversee Government Contracting processes especially in light of large scale land investments. | Separation of policies and function exists. | <ul style="list-style-type: none"> Ministry of Lands, Housing and Urban Development over <ul style="list-style-type: none"> review of land related laws as it impacts delivery of justice. Development of investment contracts that include alienation of land. Preparation of compensations for land compulsorily acquired by government or where damages are awarded to individuals as a result of government action on their land |
| 3.1 | The Justice, Law and Order Sector (JLOS) | All types of land for all purposes | <ul style="list-style-type: none"> Oversee the funding and functionality of the delivery of justice. Develop and harmonize policies and the Sector investment plan. Oversee financial mobilization for the functionality of the Sector. Oversee the performance of the Sector. | Separation of policies and function exists. | <ul style="list-style-type: none"> Ministry of Lands, Housing and Urban Development over <ul style="list-style-type: none"> harmonization of the birth, marriage and death registries with the Land Registry Management of Land Tribunals and alternative Dispute Resolution Ministry of Local Government over the administration of the decentralized land justice function. |
| 3.2 | The Administrator General's Department | All types of land for deceased persons. | <ul style="list-style-type: none"> Administers estates of deceased persons. Issues Letters of administration in case of intestacy and grant of probate in case of testate succession. Mediates disputes over estates of deceased persons. | Separation of policies and function exists. | Ministry of Lands, housing and Urban Development over availability of accurate and up to date land records of deceased persons estates. |
| 3.3 | The Judiciary | All types of land for all purposes | <ul style="list-style-type: none"> Interpretation of constitutional and legal provisions that are in contradiction. Sets precedents through case law. | Separation of policies and function | Ministry of Lands, Housing and Urban Development over <ul style="list-style-type: none"> Execution of court orders and decisions |

| NO | INSTITUTIONS (CENTRALIZED AND DECENTRALIZED AUTHORITIES) | TYPE OF LAND/RESOURCES | RESPONSIBILITY/MANDATE | SEPARATION OF POLICIES AND FUNCTIONS | OVERLAPS OCCUR WITH WHICH OTHER INSTITUTION |
|-------|--|--|--|--|---|
| | | | <ul style="list-style-type: none"> Resolve conflicts over land | exists. | <ul style="list-style-type: none"> Appearance to court of technical officers especially Registrars of title as expert witnesses. State House over creation of extra-judicial structures that undermine the rule of law and delivery of Justice. |
| 3.4 | Decentralized Conflict Resolution | All types of land within a magisterial area. | <ul style="list-style-type: none"> Administer land justice in a magisterial area. (A Magisterial area is not confined by district boundaries, but rather is set under the Magistrates courts Act giving the Chief Magistrate oversight over subordinate courts within that geographical area). | Separation of policies and function exists | Traditional Authorities over division of roles and responsibilities in dispute resolution. |
| 3.4.1 | District Land Tribunals | All types of land within a district | <ul style="list-style-type: none"> Determine disputes as a court of first instance in all land matters where the subject matter does not exceed two thousand five hundred Currency points. (A currency point represents Twenty Thousand Uganda Shillings). 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. Determine any dispute relating to the amount of compensation to be paid under compulsory acquisition by government. Make consequential orders relating to cancellation of entries on certificates of title or cancellation of title and vesting title in cases handled by lower courts. Determine any other dispute relating to land. | Separation of function exists. | Justice Centres which are a creation of the Justice Law and Order Sector with similar mandates. |
| 3.4.2 | Local council III courts | | <ul style="list-style-type: none"> Hear appeals from the decisions of the LCII courts. | Separation of function exists. | |
| 3.4.3 | Local Council II Courts | | <ul style="list-style-type: none"> LCII courts which are the courts of first instance in respect of land disputes. | Separation of function exists | |
| 3.4.4 | Mediators/ Traditional Authorities | | <ul style="list-style-type: none"> Determine disputes arising out of customary tenure | Separation of function exists | Courts of law which have jurisdiction to determine all land disputes. |
| 3.0 | Ministry of Agriculture, Animal Industries | Agricultural Land | <ul style="list-style-type: none"> Formulate, review and implement national policies, plans, strategies, regulations and standards and enforce laws, regulations and standards along the value chain of crops, livestock and fisheries; | Separation of policies and function exists | <ul style="list-style-type: none"> Ministry of Lands, Housing and Urban Development over <ul style="list-style-type: none"> regulation of land for agricultural investment |

| NO | INSTITUTIONS (CENTRALIZED AND DECENTRALIZED AUTHORITIES) | TYPE OF LAND/RESOURCES | RESPONSIBILITY/MANDATE | SEPARATION OF POLICIES AND FUNCTIONS | OVERLAPS OCCUR WITH WHICH OTHER INSTITUTION |
|-----|--|------------------------|--|--|---|
| | and Fisheries | | <ul style="list-style-type: none"> • Control and manage epidemics and disasters, and support the control of sporadic and endemic diseases, pests and vectors; • Regulate the use of agricultural chemicals, veterinary drugs, biological, planting and stocking materials as well as other inputs; • Support the development of infrastructure and use of water for agricultural production along livestock, crop and fisheries value chains; • Establish sustainable systems to collect, process, maintain and disseminate agricultural statistics and information; • Support provision of planting and stocking materials and other inputs to increase production and commercialization of agriculture for food security and household income; • Develop public infrastructure to support production, quality / safety assurance and value-addition along the livestock, crop and fisheries commodity chains; • Monitor, inspect, evaluate and harmonize activities in the agricultural sector including local governments; • Strengthen human and institutional capacity and mobilize financial and technical resources for delivery of agricultural services; • Develop and promote collaborative mechanisms nationally, regionally and internationally on issues pertaining to the sector; | | <ul style="list-style-type: none"> ○ Agricultural Zoning and sustainable land management • Ministry of Water and Environment over water for Production. |
| 3.1 | Sustainable Land Management Unit | Rangelands | <ul style="list-style-type: none"> • Created as a coordination unit of the various Ministries to ensure that sustainable land management forms part and parcel of Government Department functions. • Development of the National Rangelands Management Policy. • Development of the Pastoralism Management Policy. | Separation of policies and function exists | <ul style="list-style-type: none"> • Ministry of Lands, Housing and Urban Development – Physical planning and Zoning • Ministry of Water and Environment – Water for production • Ministry of Energy & Mining – Extractives • Ministry of Local governments – Administration of decentralized services • Ministry of Gender, Labour and social Development – Mainstreaming of Gender in land use management. |

| NO | INSTITUTIONS (CENTRALIZED AND DECENTRALIZED AUTHORITIES) | TYPE OF LAND/RESOURCES | RESPONSIBILITY/MANDATE | SEPARATION OF POLICIES AND FUNCTIONS | OVERLAPS OCCUR WITH WHICH OTHER INSTITUTION |
|-----|--|--|------------------------|--|---|
| 3.2 | Plan for Modernization of Agriculture (PMA) | Agricultural land | | | • |
| 3.3 | National Agriculture Advisory Services (NAADS) | Agricultural land | | | • |
| 4.0 | Ministry of Water and Environment | Land reserved for Natural Resources | | Separation of policies and function exists | Ministry of Lands, housing and Urban Development, Ministry of Agriculture, Animal Industry and fisheries, ministry of Tourism and antiquities - The responsibility for managing and conserving forests is currently scattered amongst a variety of government institutions, often with overlapping mandates and competing interests. Although there is a lead ministry responsible for forestry, a number of other ministries have a direct interest in the forest sector. The lack of co- ordination between these interests in the past has led to inefficiency and a waste of public resources. |

| NO | INSTITUTIONS (CENTRALIZED AND DECENTRALIZED AUTHORITIES) | TYPE OF LAND/RESOURCES | RESPONSIBILITY/MANDATE | SEPARATION OF POLICIES AND FUNCTIONS | OVERLAPS OCCUR WITH WHICH OTHER INSTITUTION |
|-----|--|---|---|---|--|
| 4.1 | National Forestry Authority (NFA) | <ul style="list-style-type: none"> • National Forest reserves • Local Forest Reserves • Community Forests • Private Forests | <ul style="list-style-type: none"> • Develop and manage all central forest reserves. • Identify and recommend to the Minister, areas for declaration as central forest reserves, and the amendment of those declarations. • Promote innovative approaches for local community participation in the management of central forest reserves. • Prepare and implement management plans for central forest reserves and to prepare reports on the state of central forest reserves and such other reports as the Minister may require. • Establish procedures for the sustainable utilization of Uganda's forest resources by and for the benefit of the people of Uganda. • Co-operate and co-ordinate with the National Environment Management Authority and other lead agencies in the management of Uganda's forest resources. • In conjunction with other regulatory authorities, to control and monitor industrial and mining developments in central forest reserves. • In consultation with other lead agencies, to develop, or control the development of tourist facilities in central forest reserves. • Enter into an agreement or other arrangement with any person, for the provision of forestry services, subject to such charges as may be agreed upon. • Carry out or commission research for the purposes of conservation, development and utilisation of forests, and for the conservation of biological diversity and genetic resources. • Ensure the training of forestry officers and other public officers in the development, and sustainable management of forests. | Separation of Separation of policies and function exists policies and function exists | <ul style="list-style-type: none"> • Ministry of Lands, housing and Urban Development – clarifying land and tree tenure ownership in view of the removal of public land by the Constitution; and between different systems of land tenure, which is comprised of overlays of various forms of customary law with modern land and forest laws. • National Environment Management Authority and the Uganda Wildlife authority - The division of responsibilities and artificial sectoral boundaries have created a number of potential and actual conflicts. • Ministry of Agriculture, animal Industries and fisheries - between different land use policies, for agricultural expansion and for the conservation of forest resources. |
| 4.2 | National Environment Management Authority (NEMA) | <ul style="list-style-type: none"> • Wetlands • Hill tops • Riverbanks and lake shores • World Heritage Sites under the RAMSAR convention | <ul style="list-style-type: none"> • Coordinate the implementation of government policy and the decision of the Policy Committee on Environment. • Ensure the integration of environmental concerns in overall national planning through coordination with the relevant ministries, departments, and agencies of government. • Liaise with the private sector, inter-governmental organizations, non-governmental agencies, government agencies of other states in issues relating to the environment. • Propose environmental policies and strategies to the Policy | Separation of policies and function exists | <ul style="list-style-type: none"> • Ministry of Water, Lands and Environment over <ul style="list-style-type: none"> • administration of wetlands which have certificates of title issued over them • administration of environmentally sensitive areas. • Ministry of Agriculture, animal Industry and fisheries over |

| NO | INSTITUTIONS (CENTRALIZED AND DECENTRALIZED AUTHORITIES) | TYPE OF LAND/RESOURCES | RESPONSIBILITY/MANDATE | SEPARATION OF POLICIES AND FUNCTIONS | OVERLAPS OCCUR WITH WHICH OTHER INSTITUTION |
|-----|--|--|--|--------------------------------------|--|
| | | | <p>Committee on Environment.</p> <ul style="list-style-type: none"> • Initiate legislative proposals, standards and guidelines on the environment in accordance with the Act. • Review and approve environmental impact assessments and environmental impact statements submitted in accordance with the NEA cap 153 or other law. • Promote public awareness through formal, non-formal and informal education about environmental issues. • Undertake such studies and submit such reports and recommendations with respect to the environment as the government or the policy committee may consider necessary. • Ensure observance of proper safeguards in the planning and execution of all development projects, including those already in existence that have or are likely to have significant impact on the environment. • Undertake research, and disseminate information about the environment. • Prepare and disseminate a state of the environment report once in every two years. • Mobilise, expedite and monitor resources for environmental management. • Perform such other functions as the government may assign to the Authority or as are incidental or conducive to the exercise by the Authority of any all of the functions provided for under the NEA Cap.153. | | <ul style="list-style-type: none"> • the use of wetlands for agriculture, • Large scale deforestation for agriculture. • Uganda Investment Authority and Ministry of energy over compliance with environmental standards. |
| 5.0 | Ministry of wildlife and Antiquities | <ul style="list-style-type: none"> • National wildlife Reserves • Conservation Areas • Community wildlife Areas | <ul style="list-style-type: none"> • Initiate the formulation, Monitoring and Evaluation of implementation of policies, national plans, legislation, guidelines, and strategies on Conservation and development of Wildlife resources, and provide appropriate and timely advice to Government. • Collect, compile, analyze, corroborate and disseminate strategic data and information on Conservation and development of Wildlife resources, to guide national decision making on the sector at all levels. • Initiate and coordinate development of service standards, and enforcement of these for quality assurance on Conservation and development of Wildlife resources. • Identify areas of intervention, coordinate and oversee | | |

| NO | INSTITUTIONS (CENTRALIZED AND DECENTRALIZED AUTHORITIES) | TYPE OF LAND/RESOURCES | RESPONSIBILITY/MANDATE | SEPARATION OF POLICIES AND FUNCTIONS | OVERLAPS OCCUR WITH WHICH OTHER INSTITUTION |
|-----|--|--|--|---|--|
| | | | <p>mainstreaming of issues of Conservation and development of Wildlife resources into Local Governments' Plans, Programs and Activities in support of poverty reduction and national development goals.</p> <ul style="list-style-type: none"> • Identify areas of intervention, coordinate and oversee mainstreaming of issues of Conservation and Development of Wildlife resources into Plans, Programs and Activities of other sectors of Government. • Identify, coordinate, promote and support private sector led economic activity programs on Conservation and development of Wildlife resources; with linkages that directly contribute to poverty eradication and overall national development. • Identify factors critical to the sector performance, initiate and coordinate strategic interventions to sustain the current performance and the associated positive social economic and environmental impacts. • Coordinate and prepare technical sector draft position papers for development of sector national strategies and/or programs on species, ecosystems and habitats of conservation concern. • Coordinate and ensure formulation and enforcement of regulations on international Conventions, Treaties and Agreements under the Wildlife Conservation sector. • Inspect and oversee operations of the statutory and affiliated bodies (Trust Organizations) under the Conservation and development of wildlife resources Sector. | | |
| 5.1 | Uganda Wildlife Authority (UWA) | <ul style="list-style-type: none"> • National wildlife Reserves • Conservation Areas • Community wildlife Areas | <ul style="list-style-type: none"> • Ensure the sustainable management of wildlife conservation areas. • Develop and recommend policies on wildlife management to the Government. • Coordinate the implementation of Government policies in the field of wildlife management. • Identify and recommend areas for declaration as wildlife conservation areas and for the revocation of such declaration. • Develop, implement and monitor collaborative arrangements for the management of wildlife. • Establish management plans for wildlife conservation areas and for wildlife populations outside wildlife conservation areas. | Separation of policies and function exists. | <p>Local governments over development of communal wildlife areas and revenue sharing.</p> <p>Ministry of Lands, Housing and Urban Development over ascertainment of land rights and tenure security over wildlife areas.</p> <p>National Forestry Authority over security of tree tenure found in wildlife reserves.</p> |

| NO | INSTITUTIONS (CENTRALIZED AND DECENTRALIZED AUTHORITIES) | TYPE OF LAND/RESOURCES | RESPONSIBILITY/MANDATE | SEPARATION OF POLICIES AND FUNCTIONS | OVERLAPS OCCUR WITH WHICH OTHER INSTITUTION |
|-----------------------|--|---------------------------|--|---|--|
| | | | <ul style="list-style-type: none"> • Establish policies and procedures for the sustainable utilization of wildlife by and for the benefit of the communities living in proximity to wildlife. • Control and monitor industrial and mining developments in wildlife protected areas. • Monitor and control problem animals and provide technical advice on the control of vermin. • Control internal and external trade in specimens of wildlife. • In consultation with other lead agencies, to control, develop or license the development of tourist facilities in wildlife protected areas. • Consider reports from district wildlife committees and make necessary comments and decisions. • Promote the conservation of biological diversity ex situ and to contribute to the establishment of standards and regulations for that purpose. • Promote scientific research and knowledge of wildlife and wildlife conservation areas. • Disseminate information and promote public education and awareness of wildlife conservation and management; • Prepare an annual report on the state of wildlife and such other reports as may be prescribed. • Encourage training in wildlife management. • Charge fees for such services as it provides and for the licences, rights and other permission that it may grant. | | |
| PRIVATE SECTOR | | | | | |
| 6. | Surveyors | | <ul style="list-style-type: none"> • Opening of boundaries and ascertainment of boundaries • Production of sketch maps • Production of cadastral maps | Separation of policies and function exists | |
| 7. | Valuers | | <ul style="list-style-type: none"> • Estimation of land and property values to calculate the premium and stamp duty on title transactions and leases (flat rates are charged for customary certificates and related services). • Setting ground rents. • Maintain lists of the rates of compensation to be paid for standing crops and buildings on land acquired for public works. | Separation function exists. | |

| NO | INSTITUTIONS (CENTRALIZED AND DECENTRALIZED AUTHORITIES) | TYPE OF LAND/RESOURCES | RESPONSIBILITY/MANDATE | SEPARATION OF POLICIES AND FUNCTIONS | OVERLAPS OCCUR WITH WHICH OTHER INSTITUTION |
|-----|--|--|--|---|---|
| | | | <ul style="list-style-type: none"> Valuation of land for compulsory acquisition. Rating assessments for town councils. | | |
| 9. | Physical planners | All land | <ul style="list-style-type: none"> Supporting the planning of areas declared as such. Land Use planning in urban and rural areas. Land use management/zoning. | Separation of policies and function exists. | |
| 10. | Advocates | Registered land in rural and urban areas | <ul style="list-style-type: none"> Conveyancing. Supporting land registration. Contracts negotiation and management. Supporting the administration of deceased persons estates. Litigation and arbitration. | Separation of function exists | |
| 11. | Real Estates Agencies | Urban land | Real Estate Development | There is no policy regulating their function. | |

Under Land Justice, the ambiguity is found in the land justice delivery mechanisms. Ministry of Justice and Constitutional Affairs have a conflicting mandate with the Ministry of Lands, Housing and Urban Development over management of Land Tribunals and the execution of the mediation function. This resulted in the non- funding of the Land Tribunals and their being rendered redundant.

Furthermore, the Judiciary is challenged by the Ministry of Lands, Housing and Urban Development's response to

- Execution of court orders and decisions
- Appearance to court of technical officers especially Registrars of title as expert witnesses.

In this, the Judiciary finds the Ministry of Lands non-responsive and therefore obstructing justice.

27 POLICIES ARE FORMULATED IN A BROAD PUBLIC PROCESS, ADDRESS EQUITY, AND IMPLEMENTATION IS MEANINGFULLY MONITORED

The table below presents the LGAF findings on indicator 27 with its seven dimensions.

LG1-27 Equity and non-discrimination in the decision-making process

| | Dimension Description | Score | | | | Score Description | |
|----|-----------------------|---|---|---|---|-------------------|--|
| | | A | B | C | D | | |
| 27 | i | Land policies & regulations are developed and adjusted to new circumstances in a participatory manner involving all stakeholders | | | | | A comprehensive land policy exists or can be inferred by the existing legislation, and those affected by decisions were consulted beforehand and their feedback on the resulting policy is incorporated |
| 27 | ii | Land policies address equity & poverty reduction goals; progress towards these is publicly monitored | | | | | Land policies incorporate clearly formulated equity and poverty objectives that are regularly and meaningfully monitored but their impact on equity and poverty issues is not compared to that of other policy instruments |
| 27 | iii | Land policies address ecological & environmental goals; progress towards these is publicly monitored | | | | | Land policies incorporate clearly formulated ecology and environmental sustainability objectives that are regularly and meaningfully monitored but their impact is not compared to that of other policy instruments |
| 27 | iv | Implementation of land policy is costed, matched with benefits and adequately resourced | | | | | The implementation of land policy is not fully costed and/or to implement the policy there are serious inadequacies in at least one area of budget, resources or institutional capacity |
| 27 | v | There is regular and public reporting indicating progress in land policy implementation | | | | | Formal land institutions report on policy implementation only in exceptional circumstances or not at all |
| 27 | vi | Policies are in place to help to improve land access & use by low-income groups and those who suffered from injustice in the past | | | | | Policy is in place to improve access to and productive use of assets by poor and marginalized groups, is applied in practice, but is not effective |
| 27 | vii | Land policies proactively and effectively reduce future disaster risk | | | | | Policy is in place to prevent settlement in high risks areas but which is not enforced |

LG1-27(i) Land policies & regulations are developed and adjusted to new circumstances in a participatory manner involving all stakeholders .

The Land Sector makes effort to ensure that consultative processes are applied to land policy and regulation development. Over the past ten years, the Land Sector has engaged in the development of the following:

- The National Land Use Policy 2008
- The National Land Policy 2013
- The National Urban Policy (in the making)
- The Land Act
- Mortgage Act
- Physical Planning Act.

There are sixteen (16) land related laws under review.

In order to ensure participation and representative views, Focus Groups with an official from the LSSP Implementation Division specifically assigned and charged with the functioning and delivery of outputs are created for each process. These are multi

stakeholder groups of experts representing the Private Sector, Academia, Professional bodies and Civil Society Organizations. Other Working groups are composed as the need arises. Some of these are:

- The National Land Policy Working Group
- The National Land Use Policy Working Group
- Law Review Working Group

The approach adopted is that an issues paper is developed by the Consultant. This group is mandated to analyze the papers, collect more information and input from their constituents to enrich the process. After the initial drafts are produced, these groups undertake a national consultative process, taking into account the different interests groups and stakeholders. This group also receives submissions from special interest groups and individuals. The findings are fed back to the consultant in writing for incorporations. The final draft is subjected to a national conference with a representation of the key interest groups and

Whereas policies have been developed, regulatory frameworks are slow in getting amended to match the changes in the policies.

LGI-27(ii) Land policies address equity & poverty reduction goals; progress towards this is publicly monitored

The key issues addressed by the national land policy include historical injustices, border disputes, and the ineffective dispute resolution mechanisms, disparities in ownership, access and control over land by vulnerable groups, displacement, land grabbing and landlessness. The policy further addresses the underutilization of land due to poor planning and land fragmentation, environmental degradation and climate change, poor management of the ecological systems due to their transboundary nature and unsustainable exploitation of natural resources arising out of conflicting land uses and inadequate enforcement mechanisms. It tackles issues of ineffective and inefficient land administration and management systems.

Although developed, monitoring mechanisms for these policies have not yet been developed. Therefore indicators for reporting progress have not yet been developed and there is no mechanism in place for public accountability.

Currently, the Land Sector Strategic Plan II is being developed and it is only then that government priorities will be confirmed for the next ten years. It is also against the LSSPII that a monitoring framework will be developed.

LGI-27(iii) Land policies address ecological & environmental goals; progress towards these is publicly monitored

The Land Policies have been keen on taking into account ecological and environmental goals both in terms of land use planning and land tenure. The Land Policy in particular has

taken a stand to re-introduce the doctrine of public trust over natural resources in a bid to prevent the potential abuse by the Government.

Furthermore, the land policy recognizes common property resources and the need to harness and protect these. Under chapter 6, the National Land Policy provides for the management of natural resources and the environment, climate change. In chapter 7, it provides for the management of transboundary resources

As stated above, Chapter 8 of the National Land Policy provides for the development of appropriate indicators for the monitoring of land sector performance and for periodic reporting. This however has not yet been implemented as the National Land Policy was only made public in August 2008.

LGI-27(iv) Implementation of land policy is costed, matched with benefits and adequately resourced.

Although Chapter 8 of the National Land Policy recognized the importance of costing to ensure implementation, financing will depend on political will to see this policy implemented. The Land sector does not appear as one of the priority sectors. This means that it will keep getting marginalized even when it is land that holds up the Ugandan economy. It is therefore likely that the costing will not be matched with the resourcing posing serious challenges in policy implementation.

LGI-27(v) There is regular and public reporting indicating progress in land policy implementation

There is no reporting framework in place

LGI-27(vi) Policies are in place to help to improve land access & use by low-income groups and those who suffered from injustice in the past

The National Land Policy seeks to address historical injustices and the rights of the poor, marginalized and vulnerable. Specifically

- The Kibaale Land Question through the application of the Land Fund to compensate the absentee land lords and give the land back to the Banyoro.
- Rights of ethnic minorities (such as the Batwa, the Benet and Ik who are forest peoples) to their natural habitats by recognizing their tenure rights to their ancestral lands and documenting their *de facto* rights to prevent evictions or displacements.
- Rights of pastoral communities to their lands to be protected as common properties and protect these lands from appropriation.
- Land rights of women and children through regulating customary law and enactment of matrimonial property laws that guarantee equality and equity.

Furthermore by ensuring that women are fully integrated in all decision –making structures and processes in access to ad use of land.

- Rights of dwellers in informal settlements and slums through the supply of affordable land in urban areas and providing a framework for regularizing land tenure for dwellers in informal settlements and slums
- Land rights of other vulnerable groups such as displaced persons, refugees and people living with HIV and AIDS

LGI-27(vii) Land policies proactively and effectively reduce future disaster risk

Chapter 5 and 6 of the National Land Policy provide for land regulation and management. This is in a bid to promote sustainable use and exploitation of resources without degrading the resource. In particular recognizing climate change and proposing adaptation and mitigation measures will reduce further desertification in Uganda and mitigate the effects of climate change.

PANEL 10 - FORESTRY

FG1-1 Commitments to Sustainability and Climate Change Mitigation

| FG1-Dim | Dimension Description | Score | | | | Score Description |
|---------|-----------------------|-------|---|---|---|---|
| | | A | B | C | D | |
| 1 | i | | | | | The country has committed to follow most or all of these treaties, and its implementation is fairly good. It is following most of them |
| 1 | ii | | | | | A few incentive mechanisms are available, including for PES and REDD+. Funding is often not available and the programs are not considered cost effective. |

International Conventions

Uganda has signed and ratified several conventions that commit to sustainability and climate change mitigation, including CBD, CITES, UNFCCC, Ramsar Convention and the Cartagena protocol on Biosafety. And for each of the conventions, there is an office in charge. For example, a climate change unit was established in the Ministry of Water and Environment with the objective strengthen Uganda’s implementation of the UNFCCC and its Kyoto Protocol. A climate change policy was approved in December 2013, but there is need to develop action plans to operationalise the policy. With regards to CITES although

the country is fairing relatively well in the implementation, there are still some gaps as evidenced by the reports on exporting animal products as reported by the Immigration department. There are several media reports have often indicated cases of illegal trade in animal products especially ivory and snakes. However, it has often been claimed that Uganda is more of a transit country than a source for these animal products especially ivory. In relation to the Ramsar convention, several Ramsar sites have been gazetted and there is evidence of implementing the action plans. However, other Ramsar sites are highly abused. Further, in line with the CBD, implementation is fairly good, but there are resources heavily threatened such as forestry resources.

During the panel discussions, there was a clear argument as to whether the choice would be Options B or C. Option C lacked the aspect of *“it is following most of them”*. It was reported that implementation is skewed given that for some commitments the country is performing relatively well while it has no clear implementation plans for other. Two facets of implementation were discussed including (a) rules and regulations in place (b) evidence of activities on ground. Further, the role of the state as a regulator and an enforcer, and the role of citizens and CSOs was emphasised. Further, citizens should play their role and cease from expecting all actions from government. It was also noted that some of the actions do contradict the expectations of the international conventions. Some of the actions cited included reclaiming of wetlands and leasing of natural forests for commercial/plantation forestry. These arguments made the choice between Options B or C difficult. However, the reason for option B and not C was clearly about the fact that the Country is following almost all the commitments. That is, the all treaties have been domesticated with action plans developed but the main challenge has been translating the actions plans into transformational activities on ground.

Use of incentives for promoting climate change mitigation

It is important to note that given that the country ratified several climate-change related conventions such as the UNFCCC and its Kyoto protocol, it is mandated to promote climate change mitigation activities, and thus should provide the required incentives. However, the use of incentives such as PES and REDD+ are still in their infant stage in the country. There are some interventions mainly implemented by NGOs such as Ecotrust. For example, for PES-Carbon, Ecotrust is working with smaller holder farmers under the Tress for Global Benefit project, where farmers are able to access carbon funds following tree planting targets. Further, the National Environment Management Authority in collaboration with CSWCT, WWF and other stakeholders, is implementing a PES-Biodiversity project with to enhance biodiversity conservation in the Albertine rift. In this intervention, private forest land owners are incentivised to sustainably manage their forested lands in order to improve habitats for mainly the chimpanzees. In addition, NEMA has undertaken a forest resource valuation in Budongo to ascertain the ecosystem services, and thus facilitate the planning for PES schemes in this area. Therefore, the positive and negative experiences

from such interventions are expected to provide learning points and motivation for government involvement in initiating and implementing PES schemes.

On the government side, a climate change unit was set up in the Ministry of Water and Environment and this serves as the Secretariat for the Designated National Authority (DNA) for the purpose of facilitating Uganda's participation in Clean Development Mechanisms. With regards to REDD+, Uganda is in the early stages of developing a National REDD+ strategy for readiness activities provided by the World Bank's Forest Carbon Partnership Facility. A REDD+ Secretariat, headed by the REDD+ focal person has recently been set up and it is expected to guide the government on national strategies or action plans, policies and measures, and capacity-building for REDD+ and carbon markets.

During the panel discussions, it was noted that the implementation of REDD+ is constrained by delayed disbursement of funds from the World Bank FCPF. However, some non-government interventions/pilots are in place. The panel agreed that although option C was the most appropriate, the last part of the statement was questionable. That is, the aspect of "not considered cost-effective" was not considered appropriate given that no substantial research has been done to validate this statement. Further, the opportunity costs of implementing incentive schemes were anticipated to be high and there is need for funding from development partners in order to put more value on the Forestry resources. Further, the panel revealed that for the cases where PES pilots have been set out, the main concerns by participating communities/individuals include low payment levels, limitation in scope/project areas, short time-frame and limited/lack of alternative livelihood options.

FG1-2 Recognition of Public Goods Aspects and Promoting Sustainable Use

| FG1 - Dim | Dimension Description | Score | | | | Score Description |
|-----------------|---|-------|---|---|---|--|
| | | A | B | C | D | |
| 2 i | Public good aspects of forests recognized by law and protected | | | | | The law recognizes and strongly promotes the sustainability of and offers protection for a wide variety of public goods and services |
| 2 ii | Forest management plans and budgets address the main drivers of deforestation and degradation | | | | | Addressing the drivers of deforestation and degradation appears to be low on the list of priorities in forest development plans and budgets. |

Public Goods

Objective XIII of the Constitution of Uganda requires the state to protect important natural resources, including land, water, wetlands, minerals, oils, fauna, and flora on behalf of the

people of Uganda. Further, almost all the laws in the environment and natural resource sector state that resources are managed for the benefit of all citizens.

That is, the legal provisions for the public trust aspect are clearly articulated. Even the Physical planning Act provides for a natural resource officer as a member of the district planning committee in order to protect the natural resources during the alienation and privatization of land, as well as any other developmental activities.

The panel discussion emphasized that although the dimension was only considering the recognition of public good aspects by law and thus a score of A, it is important to note that the implementation of the legal provisions is highly limited. That is, protection of the natural resources in order to benefit the public adheres to several challenges.

Forest Management Plans

The National Forestry Authority (NFA) is supposed to take care of the national forest reserves, other forest reserves are under the mandate of the district forest service. Each of these forests is expected to have a forest management plan which serves a road map to managing the resource. However, the current stand in the development of forest management plans is low. For instance, by 2011 out of 506 reserves under NFA only 22 had management plans approved. This implies that there is minimal commitment in addressing the drivers of deforestation and forest degradation. Further, with regards to budgetary allocations to address the drivers of deforestation and forest degradation, there is generally minimal commitment. It is important to note that although the forestry department in many districts contributes a lot to the district annual funds, the amounts ploughed back in the sector are often minimal.

The panel discussion revealed that the R-PP is the only document that the country can rely on to clearly refer to the drivers of deforestation and forest degradation. Further, for the forests with management plans, most of the objectives and strategies are focusing on how to enhance stock with minimal emphasis/attention on directly addressing the drivers of deforestation and forest degradation. For example, if a part of the forest is heavily encroached by cultivators, one of the key objectives for a 5 year management plan should be a strategy to manage/evict the encroachers. Further, NFA has several reserves in the charcoal corridor which have continued to serve as charcoal hubs. There is a big question on how much has been committed to addressing these challenges. The panel also noted that there are some NGOs and CSOs undertaking interventions that aim at addressing the drivers of DD. However, given that the dimension considered forest management plans, that causes the country score to a C.

FG1-3 Supporting Private Sector to Invest Sustainably in Forest Activities

| FG1-Dim | Dimension Description | Score | | | | Score Description |
|---------|-----------------------|-------|---|---|---|---|
| | | A | B | C | D | |
| 3 | i | | | | | The government does not require certification but supports and encourages it and chain-of-custody systems; the area under certification in the country is growing but only slowly |
| 3 | ii | | | | | There is support, but the government could do much better |

Country's Commitment to Forest Certification

Uganda is a signatory to the United Nations Non-legally Binding Instrument on all types of Forests (2008). This Instrument encourages the private sector, civil society organizations and forest owners to develop, promote and implement instruments, such as voluntary certification systems or other appropriate mechanisms, to develop and promote forest products from sustainably managed forests.

With the current increase in plantation development for timber due to the support from Sawlog Production Grant Scheme (SPGS), certification of timber is necessary to give a good premium to tree growers who are practicing sustainable forest management. Charcoal is the main source of energy in urban areas yet the processes of production are inefficient and may in the long run cause degradation of existing forests and woodlands. Certification of charcoal would regulate the industry to ensure sustainability. Non-timber forest products such as rattans are used in the furniture industry but there are no standards for harvesting them in terms of volume that is available. They are still treated as low value forest products and this may result into unsustainable harvesting.

Under the draft forest regulations, there is an attempt to support certification although certification in itself is still a voluntary act. WWF and the Standard development Group, with a secretariat at Environment Alert are working towards developing a framework.

The panel noted that a score of B was the most appropriate given that although government does not require certification, the area under certification is slowly growing. This was attributed to the several commercial tree growers in the country who are targeting international markets and therefore may require certification.

Country's commitment to SMEs

Although the area of SMEs in the forest sector is private-sector led, there is government support under Uganda Investment Authority for SMEs. Further, government legal frameworks to support SMEs in the forest sector are available e.g. guidelines to set up ecotourism and access and NTFPs. It is however important to note that although legal frameworks are available, the current taxation regimes may stifle the development of cottage industries. The government should therefore work towards improving access to low interest loans, market opportunities and training e.g. enterprise Uganda. Further, tax holidays similar to what is provided for in Agriculture should be encouraged in the cottage industries. For example, if you are importing agricultural equipment, some taxes are exempted. One challenging aspect is the lack of clear documentation of the quantity and quality of the forest produce to support SMEs, that is, valuations of such resources is given low priority.

The panellists noted that NFA does not have clear guidelines on accessing NTFPs, as they are still considered minor forest products, and thus low value attached to SMEs in this sector. Further, there was a concern on what is hindering the people in investing in SMEs in the forestry sector. The discussion revealed that there are no specific incentives or initiatives from government to promote SMEs. Most of the initiatives are by NGOs or CSOs. Further, some of the panellists noted that although existence of a good legal framework is a necessary condition, it is not sufficient to the development of SMEs in the forestry sector. One of the panellists was concerned by the fact that there is often a tendency of waiting for the government to do everything. A question was posed “To what extent do the people appreciate the forests and thus be able to turn them into economic opportunities?” It was agreed that other stakeholders must play their role in order to realise the country’s commitment to the development of SMEs. With regards to favourable taxation regimes, a specific sector/unit within the Ministry has to push for it. An example was given about the environmental levy that was advocated for by NEMA. Therefore NFA should come up with a strategy in order to achieve this and identify the right stakeholders. Further, it was noted that the government/relevant unit has not identified the roles and responsibilities of the different stakeholders, and for this matter, the second phrase of option B is very appropriate “the government could do much better”

FG1-4 Livelihood Aspects of Local, Traditional and Indigenous Forest-Dependent Communities

| FG1-Dim | Dimension Description | Score | | | | Score Description | |
|---------|-----------------------|--|---|---|---|-------------------|---|
| | | A | B | C | D | | |
| 4 | i | Recognition of traditional and indigenous rights to forest | | | | | The law often recognizes traditional and indigenous rights and guarantees security of access to forest-dependent communities. |

| | | | | | |
|---|----|---|--|--|---|
| | | resources by law | | | |
| 4 | ii | Sharing of benefits or income from public forests with local communities by law and implemented | | | The law addresses benefit sharing but the rules are unclear and unenforceable |

Recognition of Traditional rights

The supreme law of the Country which is the 1995 constitution does not recognise indigenous rights. And as such, the Forestry and Tree Planting Act is quite silent on this. However, the land policy which was gazetted in August 2013 explicitly provides for the forest people. Therefore, the aspect of indigenous/traditional rights could be representative for forest-dwelling communities. Therefore, the area of focus for this dimension in the Ugandan context was forest-dependent communities.

The National Forestry and tree planting Act, 2003 states that forests shall be developed and managed so as to promote fair distribution of their economic, social, health and environmental benefits. Hence, subject to the management plan, a member of a local community may, in a forest reserve or community forest, cut and take free of any fee or charge, for personal domestic use in reasonable quantities any dry wood or bamboo. However, it is clearly stipulated that no materials however may be collected in the strict nature reserves or from sites of special scientific interest. The wildlife Act to some extent provides for enclave communities that derive their livelihood from the forest. Further, the Act provides for wildlife use rights such as extractive utilization, where access is subject to conditions usually stipulated by the management authority.

The panel discussion revealed that Uganda is not a signatory of the Convention on indigenous people and thus the Uganda government does not legally recognise indigenous rights. Therefore the area of emphasis was “guarantee security of access to forest-dependent communities”. In Uganda, forestry resources are linked to the different land tenure regimes. However, there is no legislation which states that “irrespective of forest regime, the access rights for neighbouring communities are guaranteed”. Under the existing legal provisions, access rights are often stipulated by the management authority. The law provides for security of access but the practice is supposed to be regulated (conditional) by the management authority. For example, the Batwa (who are one of the forest-dwelling communities) are allowed access to the forest in a regulated manner but are not practised because the restrictions are too stringent. The Batwa claim that their rights are

indigenous/traditional and therefore such rules are not easily implemented. Further, the Wildlife Act Section 29(1f) clearly stipulates the wild life use rights, and the National Forestry and Tree Planting provides for Collaborative Forest Management (CFM) in order to guarantee access for forest-neighbouring communities.

Sharing of benefits from public forests

The wildlife Act provides for benefit sharing for forests under the Uganda wildlife Authority. The Wildlife Act mandates UWA to pay 20% of the park entry fees collected from a wildlife protected area to the local government of the surrounding area (s) for economic development. In some cases communities have realized their share. In addition to the cash benefits, UWA signs Resource Use Agreements (RUAs) with some neighboring communities to participate in the management of the park. The agreements differ in scope, flexibility, and in the roles and responsibilities of the agreeing parties. It is however important to note that only gate collections are shared with community members and yet the bulk of the funds are collected from permits which are never shared with surrounding communities.

The National Forestry and Tree Planting Act that that forests shall be developed and managed so as to promote fair distribution of their economic, social, health and environmental benefits, the law does not provide for benefit-sharing mechanisms for the communities participating in forest management activities. That is, for the higher ranked resources like poles and timber; without clear benefit guidelines, NFA cannot provide proportionate returns to the communities from the different concessions. Up till now, NFA is using a case by case unstructured method to provide returns to participating communities. However, forest regulations have been gazetted highlighting the need for clear guidelines about benefit-sharing, and the guidelines are under development.

The panel discussion revealed that it is important to emphasize that benefits are beyond cash generated and shared from entry fees and concessionaires. Aspects such as improved access to various forest resources that satisfy the needs of the forest-neighbouring communities should be emphasized. However, there was a concern on the money collected from park permits such as guerrilla tracking permits which are never shared with the forest-neighbouring communities who participate in the protection of the wildlife.

FG1-5 Forest Land Use, Tenure and Land Conversion

| FG1-Dim | Dimension Description | Score | | | | Score Description |
|---------|-----------------------|-------|---|---|---|---|
| | | A | B | C | D | |
| 5 | i | | | | | Forest boundaries are generally not clearly surveyed and demarcated and ownership is highly contested |

| | | | | | | |
|---|----|---|--|--|--|---|
| | | various uses and ownership are clearly defined and demarcated | | | | |
| 5 | ii | In rural areas, forest land use plans and changes in these plans are based on public input. | | | | Public input is sought in preparing and amending land use plans but the public comments are largely ignored in the finalization of the land use plans |

Boundaries, Ownership and Uses of the Country's Forest Estate

The National Forest Plan 2013 clearly indicates that forest cover approximately 24% (3,604,176 ha) of the total land area. Of this, 17% is designated as Central Forest Reserves (CFRs) managed by NFA, 18% consists of National parks and Wild life reserves managed by UWA, 0.85% is jointly managed by UWA and NFA, and 0.03% are Local Forest Reserves (LFRs) managed by respective Local governments. The remaining 64% of forested land includes the large areas of forest and woodland found on private and communal lands, and hence managed by private and local community forest owners.

The uses of the different forested areas under the Permanent Forest Estate (PFE) are clearly stipulated including ecological and biodiversity protection as the main functions for NPs and WRs. These areas also play an important role of bolstering ecotourism. In CFRs, the functions include production of forest goods and services to meet economic and social needs of society. However, it also important to note that CFRs of ecological and biodiversity importance also provide goods and services under the zoning scheme that sets aside about 20% of the natural forest as strict nature reserves, 30% as buffer zones and 50% as production zones. With regards to forests on private and communal lands, the owners are the responsible bodies for managing these forests as long as they are registered as it is provided for in the National Forestry and Tree Planting Act.

While the ownership and uses are almost clearly known especially for the PFE, there are gaps regarding the demarcation of these areas. Out of the 506 CFRs only 22 have management plans approved by the minister as required by the law. These are the only reserves whose boundaries can be confirmed to be clear but they also to some extent lack physical features that demarcate them. They are defined on the digital maps but need ground truthing. Forests under UWA are well demarcated and have pillars physically identifiable at the boundaries. However, it is important to note that at the gazettelement of the Forest reserves, boundaries were established and therefore exist on the cadastre. Regular re-opening and maintenance of the forest boundaries is greatly lacking. With regards to other forested areas including the LFRs and forests on private and communal lands, hardly any clear demarcation exists.

The Panel discussion revealed that all reserves forest were surveyed and demarcated (before they were gazetted and declared as forest reserves) but the markers have often been removed by the people with an interest of claiming land ownership beyond the forest boundaries. This has also happened due to lack of regular boundary re-opening and maintenance activities by NFA. For the forested areas under UWA, there is evidence of clear boundary demarcation almost in all areas. Therefore, the most appropriate score was D given that only 36% of the forest estate is under government and yet the 64% of the forest cover is on private and communal land which is not surveyed or demarcated.

Forest Land Use Plans

Participation in planning and decision making is provided for in the Forestry Policy, 2001 and the National Forestry and Tree Planting Act, 2003. The Forest Act provides for consultation in the preparation/revision of these management plans. However, only 4% of the CFRs have forest management plans and none of the LFRs or forested areas on private/communal land has an approved management/land use plans. The Forest reserves under UWA have to some extent had engagement of the communities during the revision of the management plans. The multiplicity of stakeholders may to some extent limit the consideration of all the inputs from consultations, and hence, there is no evidence in existing forest management plans that the views of the communities are incorporated

The panellists noted that the whole idea of involving communities has not been popularized. That is, in many instance, people/communities are not aware that they have a right to participate in the development of these plans. In other instances, some of the contributions (especially in terms of demands/expectations) from the public are unrealistic and thus are never reflected in the documents. It was further noted that there are different actors in the sector, and hence it may be difficult to discern everyone’s contribution in the final document.

FG1-6 Controlling Illegal Logging and Other Forest Crimes

| FG1-Dim | Dimension Description | Score | | | | Score Description |
|---------|---|-------|---|---|---|--|
| | | A | B | C | D | |
| 6 i | Country’s approach to controlling forest crimes, including illegal logging and corruption | | | | | The government partially monitors the extent and types of forest crimes and makes partial and unsystematic efforts to control it |
| 6 ii | Inter and intra agency efforts and multi-stakeholder collaboration to combat forest crimes, and awareness of judges and | | | | | Officials inside the forest agency occasionally work together to combat forest crime, but there is weak coordination with other agencies; government rarely collaborates with civil society organizations and representatives of local communities, and; |

conflicting powers and actions within the forestry agency depending on the location and nature of the resources under monitoring. Across agencies, there is hardly any collaboration, with the exception of cases where NFA is engaged in CFM arrangements with the neighbouring communities.

There is an umbrella framework referred to as the Environment and Natural Resources (ENR) working group which meets monthly and all departments including CSOs, NEMA share on several aspects including forest crimes. However, NFA may not be fully conversant with all the agencies fighting forest crime. On the aspect of Judges and judicial officers, only a few are knowledgeable about the effects of forest offences. Fortunately, NEMA has produced a compendium of all environmental laws that judicial officers can use to acquaint themselves.

The Panel discussion revealed that within the forest agency, there is an umbrella framework known as the ENR sector working group which includes CSOs that hold monthly meetings to share on several issues including forest crimes. However, given the multiplicity of players (with different power levels) in controlling forest crime, not much is often shared on this issue. With regards to the judges and prosecutors, it was reported that about 1-2% are knowledgeable about the nature, extent and effects of forest offences. It was further reported that in the past NEMA had prepared a compendium of all environmental statutes which was used for conducting tailor-made training at the Law Development Centre. However, these courses are no more and thus a big knowledge gap in the judges and prosecutors.

CHAPTER 5 KEY ISSUES AND POLICY RECOMMENDATIONS

5.1 THE POLICY MATRIX FOR UGANDA

| | Dimension Description | Policy Issues | Recommendations |
|----------|--|---|--|
| 1 | Panel 1- Land rights recognition | | |
| 1.1 | Individuals' Rural Land Tenure Rights are Legally Recognized and Protected in Practice | Rights protection has been achieved in law but challenges still exist in translating the provisions in the legal framework into practice | Enforcement mechanisms however need to be improved to ensure that rights protection is delivered in practice |
| 1.2 | Customary Tenure Rights are Legally Recognized and Protected in Practice. | Although no registration of customary rights is required in law, there is a growing need to have customary rights recorded to guarantee security of tenure. This has not taken root on a broad scale and needs to be up-scaled and encouraged by government. | Government should provide incentives to record rights and tools to the authorities mandated with this duty of rights recordation. |
| 1.3 | Indigenous Rights to Land and Forests are Legally Recognized and Protected in Practice | Indigenous peoples rights are not recognized in Ugandan law and therefore, protections accorded to indigenous peoples do not flow to the people in Uganda that comprise this category. | Uganda needs to recognize the category of people defined as indigenous in the International Convention on Indigenous and Peoples Rights as such in order for this category to have their rights to land secured and protected. |
| 1.4 | Urban Land Tenure Rights are Legally Recognized and Protected in Practice | Rights of the urban poor are not yet recognized and ably protected in practice. This is because the parameters of legal protections accorded to tenants by occupancy do not necessarily protect the urban slum dwellers who may not qualify in law to be protected as such. This has perpetuated the ever growing problem of slum dwelling. | The Urban Policy needs to address the issue of the urban poor especially taking into account the nature of their land rights. |
| 2 | RESPECT FOR AND ENFORCEMENT OF RIGHTS | | |
| 2.1 | Accessible opportunities for tenure individualization exist | Although clearly stipulated in law, the practice of recognition of customary rights has not yet been initiated so there are doubts as to whether it will work in practice. | There is need for government to operationalize these legal provisions by creating a system for the recordation or documentation of customary rights and providing budget support for it. |
| 2.2 | Individual land in rural areas is registered & | Survey approaches that secure poor peoples rights to land especially in the | Systematic demarcation was a clear demonstration that it is possible to |

| | Dimension Description | Policy Issues | Recommendations |
|-----|---|--|--|
| | mapped | rural areas need to be up-scaled and promoted to ensure an increase in the rural area that is registered and mapped. | map and register rural land in Uganda within the existing legal framework. There is need to roll out and spread the benefits of systematic demarcation to a broader scale through encouraging increased sporadic and systematic adjudication and registration of land. |
| 2.3 | Individual land in urban areas is registered & mapped | The pilots in the study demonstrate that it is possible for the urban informal dwellers to have their rights to land ascertained even though they are not the owners of such lands. There is need to scale up pilots such as the STDM which enabled the mapping and registration of urban rights to land and property. | The STDM model is particularly a useful tool that provides affordable solutions to guaranteeing not only tenure security but organized urban settlements. |
| 2.4 | The number of illegal land sales is low | Illegal land sales are low because land sales are concentrated in the urban area especially Kampala and the surrounding cosmopolitan areas. Furthermore, the illegal land sales are concentrated on registered land which is only 20% of the land in Uganda. If a percentage is taken of illegal land sales in the urban and on registered land only, the percentage will rise considerably. | There is great need for the urban land policy and for land administration to address this concern by having updated cadastres and streamlined procedures for land transactions. |
| 2.5 | The number of illegal lease transactions is low | There are no authentic figures regarding illegal lease transactions. The Land Registries also contribute to fraudulent land transactions through back-door practices which lead to loss of land by rightful owners which in turn undermines public confidence in the national land registration system. The counterfeit land titles circulating in the market further create additional uncertainty in the market. The existing registration system and procedures are too disorganized and ineffective to prevent such cases. | There is need to put in place mechanisms for monitoring land market performance and transactions to ensure that mechanisms can be instituted to address the gaps and pitfalls. |
| 2.6 | Women's property rights are registered | There is an absence of methodology to capture the extent of women's land rights registration in Uganda. | There is need to carry out nationally acceptable research on the gender asset gap for Uganda, that uses globally agreed to and comparable indicators and parameters. |

| | Dimension Description | Policy Issues | Recommendations |
|----------|--|--|---|
| 2.7 | Women's property rights to land are equal to those by men both in law and in practice | The land laws offer a lot of protection to women on paper – but many women – particularly those in rural areas, have not benefited from these policies in reality. | Equality as prescribed in law needs to be actualized through practice change in the land administration system in Uganda. |
| 3 | RIGHT TO COMMON LANDS | | |
| 3.1 | Forests & common lands are clearly identified legally and responsibility for their use is clearly assigned | Although recognized in law, these common lands remain open access resources as the definition of their use and management is not clearly assigned. | Practice directives and/or guidelines need to be developed to ensure that common property resources are registered and protected in practice |
| 3.2 | Rural group rights are formally recognized & can be enforced | Although provided for in the law, enforcement remains a challenge. There is need to devise enforcement mechanisms to ensure that rights recognition doesn't remain on statute books. | Land rights administration structures need to be empowered with tools and enforcement procedures to ensure that group rights are recorded and supported to function. |
| 3.3 | Use rights to key natural resources on land (incl. Fisheries) are legally recognized and protected in practice | There is a significant effort being made by the designated institutions to protect these resources. However, due to limited resources both human and capital, their efforts fall short. | There is a need to increase funding to law enforcement and the protection of natural resources in Uganda. |
| 3.4 | Multiple rights over common land & natural resources can legally coexist and be registered | | |
| 3.5 | Multiple rights over the same plot of land & its resources (e.g. trees) can legally coexist and be registered | Although recognized, the registration of these rights needs to be actualized. The land register does not as yet accommodate the multiple layers and these rights are not reflected on the national cadastre. | The Land Information System in Uganda needs to be developed further to capture the nature of rights in Uganda, which is mostly multiple layered rights over the same parcel. |
| 3.6 | Multiple rights over land & and mining/sub-soil resources on the same plot can legally coexist and be registered | Although in the law, these rights need to be realized in practice at the government is often tempted to compulsorily acquire such rights in land. | Guidelines need to be developed that streamline the process of dealing with the interests that accrue as a result of existing rights in the face of resources being discovered on privately owned land. |
| 3.7 | Accessible opportunities exist to map & register group rights | | |
| 3.8 | Boundaries of communal land are demarcated | Demarcation communal lands has not been actualized and there are no guidelines to facilitate this process. | Mechanisms need to be put in place for the demarcation of communal lands. |

| | Dimension Description | Policy Issues | Recommendations |
|-----|---|--|---|
| 4.1 | Restrictions regarding rural land use are justified and enforced | The law in Uganda only focuses on urban land. However, there is growing interest in rural land as Uganda opens up to investment. | It is critical that the legal framework take into account rural land, especially ensuring that land use change serves public purpose. |
| 4.2 | Restrictions on rural land transferability effectively serve public policy objectives | | |
| 4.3 | Rural land use plans are elaborated/changed through clear public process & resulting burdens are shared | | |
| 4.4 | Rural lands the use of which is changed are swiftly transferred to the assigned purpose | | |
| 4.5 | Rezoning of rural land use follows a public process that safeguards existing rights | Although provided for in law and policy, the practice of this has not yet been actualized. | Public participation in zoning needs to be integrated to ensure compliance, buy-in and sustainable development. |
| 4.6 | For protected rural land uses (forest, pastures, wetlands, parks) plans correspond to actual use | Almost all the rural land uses do not have land-use plans. There are a few exceptions where farmers are involved in tree planting schemes such as the SPGS, TGB and other carbon schemes in which beneficiaries are expected to prepare land use plans prior enrolment in to the scheme. | The National Land Use Plan should include provisions for rural land use planning that ensures the protection of community resources and clearly stipulate the need for their sustainability and management. |

PANEL 3: URBAN LAND USE, PLANNING, AND DEVELOPMENT

| | | | |
|----------|--|--|--|
| 5 | RESTRICTIONS ON RIGHTS: LAND RIGHTS ARE NOT CONDITIONAL ON ADHERENCE TO UNREALISTIC STANDARDS | | |
| 5.1 | Restrictions on urban land ownership and transferability effectively serve public policy objectives | <p>Despite the Constitutional provision that Planning supersedes tenure, the multiplicity of tenure systems compounded by the multiple laying of rights over the same parcel is a practical challenge to land use planning in Uganda's urban areas. Apart from Leaseholds, it has been impossible to impose any restrictions on land use.</p> <p>Although it is not possible any longer to revert to a single tenure system for urban areas, options available include</p> | There must be a credible system in place to attain correct land values beyond the traditional approaches and speculation. This will improve the land market in the urban areas and enable the local authorities obtain enough finances to pay for infrastructural development. |

| | Dimension Description | Policy Issues | Recommendations |
|---|---|--|--|
| | | widening the coverage and compliance to property tax. This will push those who do not comply with the development plans to sell out to those who can put the land to the best and sustainable use. | |
| 5.2 | Restrictions on urban land use effectively and comprehensively serve public policy objectives | <p>The National Urban Policy should prioritize public interest and purpose in urban planning and as such provide restrictions that are enforceable to achieve this.</p> <p>Lack of regulatory framework for enforcement of restrictions on land use has led to the sprawling development of urban areas in Uganda.</p> | <p>A well funded regulatory framework with clear timeframes stipulated needs to be put in place.</p> <p>Information needs to be made public regarding the processes and procedures that a developer is required to comply with in order to obtain a development permit. This will eliminate corruption and complacency.</p> <p>A complaints mechanism needs to be put in place and punitive measures instituted against technical officers who unduly delay processes.</p> |
| 6 CHANGES IN LAND USE/MANAGEMENT REGULATIONS ARE MADE TRANSPARENTLY & PROVIDE BENEFITS FOR ALL | | | |
| 6.1 | Processes of urban expansion/infrastructure development are transparent and respect existing rights | <p>The lack of clear rules and regulations regarding land use restrictions is a big bottleneck to achieving compliance.</p> <p>There is lack of transparency in the decision making processes for urban expansion.</p> <p>Provision of public information on land use planning and restrictions quells a lot of unrest, improves public confidence and fosters compliance. This needs to be prioritized.</p> | <p>Social and downward accountability mechanisms need to be embedded in the National urban Policy currently under development if urban planning for growth is to take effect, given the complex land tenure system currently existing in Uganda's urban areas.</p> <p>To ensure that spatial planning is respected, there is need to harness a participatory approach to planning in which all stakeholders participate in the formulation of the rules and regulations.</p> <p>Plans should not be for selected areas but should cover the whole urban area taking into account rights of women, the urban poor and the vulnerable.</p> |
| 6.2 | Changes in urban land use plans are based on a public process with input by all | Strong institutions are critical to efficiency in urban planning. The training of urban planners to have the | The Draft National Urban Policy needs to be made more transparent and coherent to public participation in |

| | Dimension Description | Policy Issues | Recommendations |
|----------|--|---|---|
| | stakeholders and benefit sharing | <p>requisite skills in integrated planning for growth of towns and cities is critical. Financing for infrastructural development and enforcement of regulations is paramount to orderly development and growth.</p> <p>There is need for a coordinated policy and planning response in order to manage the rapid spatial expansion and population growth in Uganda's urban areas.</p> | <p>land use change and planning for change.</p> <p>Cities and urban areas need to invest in building the knowledge base of the citizenry to ensure that they participate in orderly urban development.</p> <p>Creation of committees in the urban areas comprising a cross section of the urban dwellers and actors ensures improvement in service delivery and quality of life in the city.</p> |
| 6.3 | Changes in assigned urban land use are swiftly followed by actual land use changes. | The failures in urban planning are due to a myriad of issues including lack of resources and regulation enforcement. However, it is also true that those engaged in urban planning have neither been well linked to the values of planning and urban development nor to the knowledge bases that guide development. | The intentions in the draft National urban Policy if actualized would go a long way in ensuring that urban land use change actually occurs in a sustainable manner. |
| 7 | LAND USE PLANS ARE CURRENT, IMPLEMENTED, DO NOT DRIVE PEOPLE INTO INFORMALITY, AND COPE WITH URBAN GROWTH | | |
| 7.1 | A policy to ensure delivery of low-cost housing & services exists and is progressively implemented. | Currently there is no policy on low cost housing. | There is need for the development of a comprehensive policy to guide the development of low cost housing. This policy should focus on and address the problem of informal settlements/ slum developments in order to fulfill the need to develop decent and affordable housing for all. This should include provision for service providers in the urban areas specifically the real estate property developers and others engaged in housing to provide for lost cost housing or subsidized housing to minimize the problem. |
| 7.2 | Land use planning effectively guides urban spatial expansion in the largest city | The fast rate of urban growth is not matched by urban planning which has led to sprawling development of Kampala. Development has been guided more by infrastructure and industrial development in the country | If implemented, the draft National urban Policy proposes to address inadequate planning and implementation frameworks for the physical development plans. The Draft policy envisages reversing this by coordinating and monitoring the |

| | Dimension Description | Policy Issues | Recommendations |
|----------|--|---|--|
| | | that dictate the economies of scale rather than spatial planning. | planning of conurbations including metropolitan areas, establishing a land use data base, enforcing compliance to all physical development plans in urban areas and the decentralization of urbanization among others |
| 7.3 | Land use planning effectively guides urban development in the 4 next largest cities | Strong institutions are critical to efficiency in urban planning. The training of urban planners to have the requisite skills in integrated planning for growth of towns and cities is critical. Financing for infrastructural development and enforcement of regulations is paramount to orderly development and growth. | There is need for more commitment from government to ensure an increase of financial and human resource capacity to ensure urban planning is effectively implemented in Uganda. |
| 7.4 | Urban planning processes are well suited to cope with future urban growth | Lack of regulatory framework for enforcement of restrictions on land use has led to the sprawling development of urban areas in Uganda. | There is need for a coordinated policy and planning response in order to manage the rapid spatial expansion and population growth in Uganda's urban areas. |
| 8 | DEVELOPMENT PERMITS ARE GRANTED PROMPTLY AND BASED ON REASONABLE REQUIREMENTS | | |
| 8.1 | Requirements for residential building permit are appropriate, affordable & complied with | | |
| 8.2 | A building permit for a residential dwelling can be obtained quickly and at low cost | Despite the existence legal provisions, there are no regulations in place to stipulate the detailed procedures. The law is quiet regarding timeframes. This makes it difficult to obtain the development permission. | A well funded regulatory framework with clear timeframes stipulated needs to be put in place. Furthermore, information needs to be made public regarding the processes and procedures that a developer is required to comply with in order to obtain a development permit. This will eliminate corruption and complacency. |
| 9 | TENURE REGULARIZATION SCHEMES IN URBAN AREAS | | |
| 9.1 | Formalization of urban residential housing is feasible and affordable | Formalization of housing has mainly been supported by donor funded projects. It is however not clear how the above processes happen outside projecterised funding as there are no clear procedures for the formalization of housing should an individual; or community seek to do so. | Clear guidelines and procedures for formalization of housing should be developed in a participatory manner and made public. |

| | Dimension Description | Policy Issues | Recommendations |
|--|--|--|---|
| 9.2 | In cities with informal tenure, a viable strategy exists to delivery tenure security, infrastructure & housing | There are no guidelines to support the implementation of the implementation of the slum upgrading strategy. | The pronouncements in this strategy need to be translated into a regulatory framework for it to be enforceable. |
| 9.3 | A condominium regime allows effective management and recording urban property | | |
| PANEL 4: PUBLIC LAND MANAGEMENT | | | |
| 10 | IDENTIFICATION & MANGEMENT OF PUBLIC LAND | | |
| 10.1 | Criteria for public land ownership are clearly defined and assigned to the appropriate level of government | | |
| 10.2 | There is a complete recording of publicly held land | Government land will continue to be encroached upon and the cost of eviction will be a lot higher in terms of social and political consequences on the Government if the inventorying of Government land is not made complete. | The need to prioritize the Financing the government Land Inventorying is critical to the protection of public land |
| 10.3 | Information on public land holdings is publicly accessible | Improving Transparency of processes is of paramount importance. Managing land resources must contribute to democratic governance, through development of mechanisms for efficient, transparent and participatory management of land resources. Public land is held in trust and all citizens have a stake. | Transparency measures through making public information regarding acquisition, use and public benefit be made readily available to the public should be put in place. |
| 10.4 | Management responsibility for different types of public land is unambiguously assigned | Improving the staffing of the land administration function is a prerequisite to streamlining the management of public land. The establishment of a decentralized land administration system in Uganda has been constrained by a serious lack of capacity (personnel, transport, buildings, furniture and equipment). | There is need to invest in development of staff capacity that can respond to the contemporary challenges of managing public land. |

| | Dimension Description | Policy Issues | Recommendations |
|-----------|--|--|---|
| | | Local authorities do not have sufficient resources to recruit, train and deploy qualified staff. | |
| 10.5 | Responsible public institutions have sufficient resources to fulfil their land management responsibilities | Because of inadequate resourcing of these institutions leads intermediaries such as banks and mortgage finance institutions, real estate agents, land developers, solicitors and other land related businesses who are expected to play an important role by facilitating all manner of land transactions are forced to assume higher levels of risk that ultimately undermine their competitiveness. These specialized intermediaries form a conduit through which the land information gap between public sector land administration institutions and land owners and private sector participants in the land market can be resolved. However, in spite of these observations, how to improve access and delivery of land services in a manner that is inclusive and improves the overall efficiency of the land market remains elusive. | Financing the land sector adequately to enable it deliver effectively and efficiently is a matter that must be addressed through the Land Sector Strategic Plan (LSSPII) for the next ten years. |
| 10.6 | All essential information on public land allocations to private interests is publicly accessible | Developing a regulatory framework to govern acquisition of public land for private benefit needs to be prioritized. There are no streamlined procedures for divesting public land for private benefit. Because of this, the sitting officers tend to use their own discretion to give away lands. | This has resulted in massive land grabbing. A regulatory framework is necessary to streamline the management and administration of public land for public interest and benefit. |
| 11 | THE STATE ACQUIRES LAND FOR PUBLIC INTEREST ONLY AND THIS IS DONE EFFICIENTLY | | |
| 11.1 | There is minimal transfer of public land to private interests | Expropriations of public land in Uganda's have not been for public interests. They have mainly been for private interests. Over the past ten years particularly, key public lands have either been divested or faced threat of divestiture. There are no guidelines or criteria guiding the expropriation of public land. It is quite | There is need for the implementation of the National Land Policy to clarify the uses to which public land may be put. In this regard, emphasis should be placed in developing safeguards to ensure that public land may only be expropriated in public interest. Furthermore, the provision in the National Land Policy threat public |

| | Dimension Description | Policy Issues | Recommendations |
|-----------|---|---|--|
| | | clear that more and more public land is being divested for private benefit and not public interest. | land may be expropriated for carefully selected investment must be accompanied by regulations and procedures for the determination of the investments; and safeguards against abuse put in place. |
| 11.2 | Acquired land is transferred to destined use in a timely manner | Capacity gaps still exist that would propel performance of the land sector forward in terms of timely delivery of land services. | There needs to be constituted support to the Public institutions in terms of improving human resource and supporting the further improvement of the land transaction chain to ensure even better results. |
| 11.3 | Threat of public land acquisition does not lead to pre-emptive behaviour by private parties | | |
| 12 | TRANSPARENCY & FAIRNESS OF EXPROPRIATION PROCEDURES | | |
| 12.1 | Fair compensation is provided for expropriation of all rights regardless of their registration status | Uganda has experienced enormous challenges with the compensation processes, many times court action has ensued or public outcry as a result of low compensation rates. Fair market value – based on willing seller/willing buyer – is not sufficient to adequately compensate owners whose properties are condemned. | Property valuation needs to consider “just” compensation to affected property owners which should cover not only the value of the property taken, but also all other reasonable and necessary costs generated by the employment of eminent domain. Furthermore, in cases of eminent domain for economic development, just compensation should include value beyond fair market value based on a reasonable percentage of the value of the future use of the property taken compulsorily. |
| 12.2 | Land use change resulting in selective loss of rights is compensated for | It is critical that reforms in compensation consider providing the lands owner with a development share or a benefit share resulting from the land use change. | Compensation for Land Use change should be premised on shareholder arrangements on development rights. This means that compensation would not be based on the market value of the land at the time as that value would sky rocket in the years following the land use change. |
| 12.3 | Those expropriated are compensated promptly | The government of Uganda does not make prompt compensation in the case of expropriation of land. | The administrative bottlenecks in effecting timely compensation need to be addressed by improving compensation procedures and efficiency. |

| | Dimension Description | Policy Issues | Recommendations |
|---|--|---|---|
| 12.4 | Independent and accessible avenues for appeal against expropriation exist | There is no legal mechanism in Ugandan law for appeals against expropriation. Currently, there is no provision for lodging a complaint against expropriation by an individual who has an interest in land that is to be acquired by government. | The Land Acquisition Act needs amendment to this effect. |
| 12.5 | Timely decisions are made regarding complaints about expropriation. | Administrative decisions regarding complaints about expropriation are often not prudently handled and degenerate into situations of conflict. Often times, the politicians take over the mediation of such disputes. There are no administrative procedures in place or guidelines for the mediation of such complaints. | As matter of right, the law must emphasize the tenets of actual notice, public participation and opportunities for negotiation, independent adjudication and prompt compensation. Transparency in expropriation is critical to the entire process. |
| PANEL 5: TRANSFER OF LARGE TRACTS OF LAND TO INVESTORS | | | |
| 13 | Transfers of Public Land to Private Use Follow Clear, Transparent, and Competitive Processes | | |
| 13.1 | Divestiture of public land transactions is conducted in an open transparent manner. | <p>there is currently no enabling legislation that specifies the procedures for any of these agencies to allocate land to investors.</p> <p>There is also no legal definition of “public”, “government”, and “local government” land, which makes it difficult to determine which agency has authority or a given parcel of land.</p> <p>There are no specific criteria or procedures for identifying government land that would be suitable for a given investment.</p> <p>It is not clear which Government department has ultimate authority over the resettlement or compensation.</p> | Increased transparency is urgently required to ensure that land acquisitions follow standard procedures and to enable future monitoring and analysis of investment planning and implementation. The government should make information about land available for investment publically available to all interested parties – not just investors. Before any government land is offered for private investment, a public land use planning process should be implemented ensure that the proposed land use change is in the public interest. In addition, the Ministry of Land should publish an inventory of existing claims to the land to ensure that legitimate rights holders are entitled to participation in any joint venture or compensation |
| 13.2 | Leases of public land & real estate are in line with the market (unless justified on equity grounds) and collected | Serious administrative problems in property tax management such as low property tax administrative capacity; lack of political will for property tax enforcement; over-reliance on | There is need for Civil society engagement in policy advocacy and influencing initiatives to foster change in the political environment that will result in the change in property tax management. |

| | Dimension Description | Policy Issues | Recommendations |
|------|--|--|---|
| | | individual property valuation, with no use of simpler mass valuation techniques; and fiscal cadastre information is incomplete and out of date. The result is that local authorities experience low revenue yields and the country as a whole suffers from vertical and horizontal inequalities and economic inefficiencies. The low yield of property tax in Uganda is the combined result of inappropriate policy and poor administration. | |
| 13.3 | Unless justified by equity objectives, public land is transacted at competitive market prices. | Public land is given away at non-competitive rates in a bid to transact investors. | Whereas Government lowers prices in a bid to attract more investors, the investments are aimed at making profit out of use of public land and Government resources. There needs to be a considered balance in establishing property rates in a manner that does not stifle investment nor cause financial loss to the state. |
| 13.4 | The public captures benefits arising from changes in permitted land use | <p>The valuation approaches currently applied to compensation in the face of investment on land do not reflect the true value of the land and neither does it give a land owner continued and real benefit from the business enterprise.</p> <p>Benefits that could accrue to the public as a result of land use change could be numerous, ranging from employment to infrastructure development. These however do not accrue because there is no government policy governing minimum wage payment or even public benefits from investments.</p> <p>There is no regulatory framework to support these processes.</p> | <p>Benefit sharing should be an integral part of investment contracts and must be designed in a manner that they are incremental and not one off. It further should include different modalities for land acquisition rather than sale.</p> <p>Compensation for Land Use change should be premised on shareholder arrangements on development rights. This means that compensation would not be based on the market value of the land at the time as that value would sky rocket in the years following the land use change. It is critical that reforms in compensation consider providing the lands owner with a development share or a benefit share resulting from the land use change.</p> |

| | Dimension Description | Policy Issues | Recommendations |
|-----------|--|--|---|
| 13.5 | A policy to improve equity in access to and use of assets by the poor exists, is implemented effectively, and monitored. | Whereas the Land Policy exists, an implementation plan is yet to be developed given that it was only passed in 2013. | Prioritization must be given to the development of a regulatory framework that would deliver on the above policy aspirations. |
| 14 | Private Investment Strategy | | |
| 14.1 | Land to be made available to investors is identified transparently & publicly, in agreement with right holders | <p>There is an investment law, but the procedure is not streamlined due to lack of regulation. Examples of these are:</p> <p>There are no codified rules or regulations governing the UIA's authority to facilitate investor access to land.</p> <p>The Act does not specify whether the UIA is responsible for helping investors acquire land from private owners or from other government agencies that hold land, such as the ULC or the District Land Boards.</p> <p>The Act does not specify how the UIA should interface with the other government institutions that have played roles in recent land acquisitions, including the Ministry of Agriculture and the National Forestry Authority.</p> <p>The Act does not stipulate any social or environmental safeguards that apply to agricultural investments in Uganda.</p> <p>The Act also does not cross-reference relevant environmental laws and regulations governing the project development in Uganda</p> | Improving the regulatory environment is a pre-requisite for improvement of the investment climate in Uganda. |
| 14.2 | Investments to go forward are selected based on expected economic, socio-cultural & environmental impacts in an open process | | |
| 14.3 | Public institutions transferring land to investors are clearly | The Investment Code Act does explicitly authorize the UIA executive director to "liaise with Government | It is important to clarify the roles and responsibilities of the UIA vis-à-vis other government agencies with |

| | Dimension Description | Policy Issues | Recommendations |
|------|--|---|---|
| | identified & regularly audited | <p>Ministries and departments, local authorities, and other bodies as may be necessary” to help investors acquire land (Section 15(2) of the Investment Code Act). However, no rules or regulations have been promulgated to govern the exercise of this authority.</p> <p>The procedure for determining fees regarding the value of the land is not clear neither is there clarity on the setting of ground rent and property rates.</p> | <p>respect to land acquisition for agricultural investment. This clarification could be accomplished through amendments to the Investment Code Act, the Land Act, and other relevant legislation, or through the promulgation of new laws that regulate all of these agencies. Distinguishing the authorities of the ULC, the District Land Boards, and the Ministry of Lands in will be particularly critical to align agency competencies and responsibilities.</p> |
| 14.4 | Public bodies transferring land to investors share information and coordinate to minimize and resolve overlaps (incl sub-soil) | <p>The Investment Code Act and the Land Act, among other relevant laws, assign unclear and sometimes overlapping authorities to different government institutions that in practice play a role in the process of transferring land to investors. There are neither established procedures governing the authorities of either the UIA or the ULC to manage government land nor are there any regulations to guide the interaction of different government agencies, for example in identifying government land suitable for a particular investment.</p> <p>There is no coordinated mechanism for sharing information within public institutions. Many times, Institutions only discover that their lands have been divested.</p> | <p>Coordination in the delivery of land for investment and monitoring of investment performance is critical to the growth and development of the Sector. Ideally the Ministry of Lands Housing and Urban Development should be the coordinator of all the other government departments and actors. It is of paramount importance that administrative measures be instituted by the Ministry responsible for lands to coordinate land based investments.</p> |
| 14.5 | Investors’ compliance with contractual obligations is regularly monitored & remedial action taken if needed | <p>Currently there is no regulatory framework to monitor investors’ compliance with the contractual obligations neither are there prescribed remedial actions for investor bad behavior.</p> | <p>There is need to develop regulations and guidelines for regulating land based investments. The Guidelines are necessary for drawing up contracts, evaluating contracts, awarding land, monitoring compliance and evaluation benefits. These guidelines should include safeguards protecting land owners and the public from negative impacts of investments and public participation in the investment processes.</p> |
| 14.6 | Safeguards are used routinely and | <p>Beyond the UIA registry, no official data on government or private land</p> | <p>There is need to streamline rules and regulation for large scale land</p> |

| | Dimension Description | Policy Issues | Recommendations |
|------|---|--|---|
| | effectively reduce the risk of negative effects from large scale land-related investments | acquired by approved domestic or foreign investors are available. Thus, it is not possible to determine how much land foreign investors have acquired for agricultural production in Uganda. | <p>acquisitions. This should include:</p> <ul style="list-style-type: none"> • The types of land that the UIA can help investors acquire (e.g. public or private, and if public, whether only lands held by the ULC or also lands held by the District Land Boards); • A process for making information about both public and private landholdings available for investment publically available, possibly through a registry; • Transparent procedures for investors to identify lands appropriate to specific investments; • Detailed criteria for determining the eligibility of interested in investors to acquire farmland, including specific minimum financial and technical qualifications; • A transparent, up-front process for establishing all claims on lands proposed for investment – whether public or private – compensating occupants, and resolving any existing disputes; • The type of rights that investors can acquire on public vs. private land, including whether these rights can be transferred and what happens to the land in case of investor bankruptcy; • A model contract for transferring land rights to an investor that specifies, inter alia, the type of rights being transferred, the terms of the transfer (e.g., purchase price, annual rent, taxes), the identity of existing rights holders and any compensation paid or resettlement plans; • Mechanisms for addressing any disputes that arise over any land transfer or compensation; • Procedures for verifying investment implementation, revoking investment licenses from non-performing investments, and liquidating any land or other assets from investors whose licenses have been revoked. |
| 14.7 | The scope for investment leading to | Uganda does not have a resettlement policy neither does it have an anti- | The World Bank had supported the Ministry of Lands to develop a |

| | Dimension Description | Policy Issues | Recommendations |
|-----------|--|--|--|
| | resettlement is clearly circumscribed & procedures exist to deal with it in line with best practice | eviction law. This has left citizens prone to evictions without resettlement in the face of investments. | Resettlement Policy. UN habitat together with a local NGO Shelter and Settlement Alternatives had in 2012 proposed an anti-eviction law. These processes must be developed further to conclusion. |
| 15 | Policy Implementation is Effective, Consistent and Transparent and Involves Local Stakeholders | | |
| 15.1 | Investors provide sufficient information to allow rigorous evaluation of proposed investments' impacts | Investor information is not made public. There is no way of knowing whether or not the information provided by the investor is sufficient to allow rigorous evaluation of the proposed investment impacts. | The National Land Policy proposes the development of guidelines and a regulatory framework for the amount of land an investor can access. This needs to be prioritized. |
| 15.2 | Approval of investment plans follows clear criteria with reasonable timelines | Since it was never envisaged that there would be investors in the agriculture sector, no regulatory or framework was developed setting the criteria for approval of investment plans. | Guidelines are necessary for drawing up contracts, evaluating contracts, awarding land, monitoring compliance and evaluation benefits. |
| 15.3 | Right holders or their representatives negotiate land issues freely with investors and access relevant information | Due to the absence of clear and transparent procedures for the UIA and other relevant government agencies to facilitate investor access to land makes it difficult to monitor this process and ensure it adheres to the letter and spirit of the law The lack of clear procedures for identifying and compensating legitimate claimants to either private or government lands allocated for investment is particularly problematic. The Investment Code Act does not specify how to determine who is eligible to receive compensation, the criteria for determining the value of compensation, or the actor responsible for implementing (or monitoring) this process | Procedures need to be established to create an enabling environment in which investors and rights holders negotiate freely. |
| 15.4 | Contractual provisions regarding benefit sharing are publicly disclosed | The lack of transparency that currently surrounds land acquisition for agricultural investments in Uganda complicates credible analysis of investment outcomes and increases opportunities for fraud and corruption | Benefit sharing should be an integral part of investment contracts and must be designed in a manner that they are incremental and not one off. It further should include different modalities for land acquisition rather than sale. |

| | Dimension Description | Policy Issues | Recommendations |
|---|--|---|--|
| | | | Compensation for Land Use change should be premised on shareholder arrangements on development rights. This means that compensation would not be based on the market value of the land at the time as that value would sky rocket in the years following the land use change. It is critical that reforms in compensation consider providing the lands owner with a development share or a benefit share resulting from the land use change. |
| 16 | Contracts Involving Public Land Are Public With Agreements Monitored & Enforced | | |
| 16.1 | Information on spatial extent & duration of approved concessions is publicly available | <p>There is lack of publically available data on the land acquisition process and its outcomes undermine effective monitoring and increase the likelihood of abuse. The UIA does not have sufficient resources to monitor even the most basic information about approved investments.</p> <p>There is neither a map or publically available registry of government lands allocated to investors nor does the UIA monitor the outcomes of these investments in terms of, for example, job creation, income generation, or rural development.</p> | Due to lack of coordination among Government departments and agencies, spatial data and duration of concessions is not available to even government departments. Once this is improved, information categorized as public information, which includes land information under the Access to Information Act will be made public. |
| 16.2 | Compliance with safeguards on concessions is monitored & enforced effectively & consistently | There is no clear regulatory framework for monitoring compliance. | A regulatory framework that clearly ensures monitoring compliance needs to be put in place with clear guidelines for carrying out compliance audits. |
| 16.3 | Avenues to deal with non-compliance exist & allow to obtain timely and fair decisions | Currently, there is no monitoring and auditing framework. It makes it difficult to assess non compliance by investors. | There is need to develop a regulatory framework to ensure that avenues are availed for this exercise. |
| PANEL 6: PUBLIC PROVISION OF LAND INFORMATION: REGISTRY AND CADASTRE | | | |
| 17 | Mechanisms for recognition of rights | | |

| | Dimension Description | Policy Issues | Recommendations |
|-----------|--|--|--|
| 17.1 | Land possession by the poor can be formalized in line with local norms in an efficient & transparent process | The lack of consistent approaches that may sometimes be non-transparent or effective creates grayness in tenure security on customary land. Furthermore, the gender dimension to this is rarely considered by the traditional and local mechanisms. | There is need to figure out how tenure security for customary rights can be achieved. |
| 17.2 | Non-documentary evidence is effectively used to help establish rights | | |
| 17.3 | Long-term unchallenged possession is formally recognized | Although the law recognizes this, the constitutional proviso has been subject to abuse by people out to grab other people's land. Its application has since been marred by fraud and endless court battles. | A practical approach to guarantee rights of tenants through capturing these in the Land Information system to guarantee their security and recognition is paramount. |
| 17.4 | First-time registration on demand includes proper safeguards & access is not restricted by high fees | Although affordable, corruption often impacts on the fees making it impossible for the majority of Ugandans to register their property. Besides, the fact that the law provides that non-registration does not affect the status of land ownership, many a people are exploring this provision in avoidance of the lengthy and bureaucratic systems that are often marred by corruption. | It is important for the Land Sector to streamline procedures, making it easy and simple for the rights seeking public to access services. The Ministry responsible for Lands needs to become more stringent on corruption. |
| 18 | Completeness of the land registry | | |
| 18.1 | The total cost of registering a property transfer is low | The Ministry responsible for Lands has never given the total cost of registering a parcel. | An indicative figure needs to be given to enable the public plan for first time registrations. |
| 18.2 | Information in registry records is linked to maps that reflect current reality | There is a challenge with verifying the accuracy of land data because there is no complete record of data in the land offices both at the central government and Local Government land offices. | There is need to ensure that the necessary funding is provided to avoid loss of investments already made and take full advantage of the benefits of the reforms in Land Administration and Management that have accrued. The Ministry could explore retaining some funds from the fees received from land services to sustain the LIS. |
| 18.3 | All relevant private encumbrances are | The Caveats on matrimonial land and | The LIS system needs to be improved |

| | Dimension Description | Policy Issues | Recommendations |
|-----------|---|--|--|
| | recorded. | <p>property to be lodged by spouses are rarely registered mainly because spouses have not lodged these caveats. This caveat does not lapse as long as the marriage subsists and is mandatory (Section 39 of the Land Act). But this is not enforced as such.</p> <p>Rights of tenants by occupancy on registered land must be entered onto the encumbrance page of the certificate of title. These have neither been recognized in the newly developed land information system nor has a mechanism been developed for their recordation.</p> | to capture all statutorily recognized secondary and derived rights to land as encumbrances. The LIS needs to capture rights of tenants by occupancy and spouses as encumbrances on registered land. This is a constitutional and statutory matter. |
| 18.4 | All relevant public restrictions or charges are recorded. | Not all relevant public restrictions are recorded such as easements, restrictive covenants and Profits a` prendre are recorded. This is due to the absence of maps and land use information, making enforcement of these restrictions difficult. | The recording of public restrictions and charges needs to be indicated on certificates of title to enable enforcement and encourage compliance. |
| 18.5 | There is a timely response to requests for accessing registry records. | | |
| 18.6 | The registry is searchable | | |
| 18.7 | Land information records are easily accessed | | |
| 19 | Reliability: registry information is updated and sufficient to make meaningful inferences on ownership | | |
| 19.1 | Information in public registries is synchronized to ensure integrity of rights & reduce transaction cost | Information in Public registries is not synchronized. The critical registries are the birth and deaths registry, Marriage registry, and the Land Registry. These three registries need to be synchronized to reduce fraudulent dealings on land and delays in land transactions. | Linking the public registries would greatly reduce fraudulent dealings and reduce transaction costs. |
| 19.2 | Registry information is up-to-date and reflects ground reality | Not all zonal offices have the requisite tools and personnel to function as required. This creates gaps in the | There is need for this process to be completed for all the zonal land offices and the system maintained and |

| | Dimension Description | Policy Issues | Recommendations |
|-----------|---|---|---|
| | | implementation of the institutional set up for achieving fully fledged functioning of the land registries across the country. | constantly updated. The capacity of the technical staff at the zonal offices needs to be enhanced to match the capacity requirements for the growing demand for land services. |
| 20 | Cost-effectiveness & sustainability | | |
| 20.1 | The registry is financially sustainable through fee collection to finance its operations | Fees for Land Services are charged to the consolidated fund and not re-invested in land services delivery. This means that the Ministry of Lands, Housing and Urban development depends on budget allocations from the central Government through the Ministry of Finance, Planning and Economic Development to fund its budget. This is risky as the central government has never in its history prioritized financing of the land sector activities. This makes the registry not financially sustainable. | There is need for the Ministry of Finance and Ministry of Lands, Housing and Urban Development to rethink the sustainability of the land administration function. |
| 20.2 | Investment in registries & cadastre is sufficient to respond to future demand for high quality services | The investments already made for the development and implementation of the LIS and other PSCP II Land Component activities including buildings, equipment and human resources need to be sustained in the medium to long term. | There is need to ensure that the necessary funding is provided to avoid loss of investments already made and take full advantage of the benefits of the reforms in Land Administration and Management that have accrued. The Ministry responsible for Lands could explore retaining some funds from the fees received from land services to sustain the LIS. |
| 21 | Fees determined transparently to cover cost of service provision | | |
| 21.1 | Fees have a clear rationale, their schedule is public, and all payments are accounted for | | |
| 21.2 | Informal payments are discouraged. | | |
| 21.3 | Service standards are published and regularly | There is no standard procedure for monitoring compliance of Land sector | Improvement is required in |

| | Dimension Description | Policy Issues | Recommendations |
|---|--|--|---|
| | monitored. | staff with set service standards. | monitoring compliance of land administration staff in delivering land services to the rights seeking public. |
| PANEL 7: LAND VALUATION AND TAXATION | | | |
| 22 | Valuations are based on clear principles, applied uniformly, updated regularly, and publicly accessible | | |
| 22.1 | There is a clear process of property valuation | Environmental values are currently not taken into account in the course of valuation nor is there a clear procedure for considering the rights of secondary and derived users of land. The system seems to be based on individualized primary rights holders only. | Valuation methodologies should take into consideration land users and uses. It is only then that the correct values will be captured. |
| 22.2 | Valuation rolls are publicly accessible | Valuation rolls exist in almost all municipalities and towns in Uganda but the inclusiveness of these cannot be determined as there is no complete cadastre on which these should be based. There is also a very unclear framework upon which the valuation rolls are based. | For the reforms in property taxation to succeed, property tax reform must be comprehensive, linking property information, valuation, assessment collection and enforcement. |
| 23 | Land & property taxes are collected and the yield from doing so exceeds collection cost | | |
| 23.1 | Exemptions from property taxes payment are justified and transparent. | The Exemptions provided for in the law narrow the tax base and increase the tax burden on the poor and small businesses. This is therefore not justified. | The tax base should be reviewed to achieve the principles of equity and efficiency. It is recommended that the exemption given to owner-occupied residences be removed (be replaced with a lower tax rate for example) and vacant sites in urban areas be taxed to raise revenue as well achieve other objectives e.g. to curb land speculation and to achieve a regulatory effect which would have been difficult under the normal land-use instruments. |
| 23.2 | Property holders liable to pay property tax are listed on the tax roll | There are lots of property holders who are liable to pay property taxes and yet they are not listed on the tax roll. | There is need to update the tax roll as collection of taxes in this regard is self regulating. |
| 23.3 | Assessed property taxes are collected | Serious administrative problems in property tax management such as low | The tax policy concerning tax base definition and exemptions requires |

| | Dimension Description | Policy Issues | Recommendations |
|------------------------------------|---|--|--|
| | | property tax administrative capacity: lack of political will for property tax enforcement; over-reliance on individual property valuation, with no use of simpler mass valuation techniques; and fiscal cadastre information is incomplete and out of date. | urgent reforms. |
| 23.4 | Receipts from property taxes exceed the cost of collection | There is hardly any data on land revenue sources and revenue collection performance in the local governments and this is one of the biggest problems as it makes revenue monitoring and planning difficult. The local government budgets normally tend to group the revenues from land under the code for miscellaneous sources of local revenue. This makes it difficult to isolate land revenues from other revenues hence hampering the assessment of revenue performance and projection. | There is urgent need to develop a comprehensive and complete cadastre-comprising a physical cadastre (cadastral surveying information and mapping), a legal cadastre (ownership information) and a fiscal cadastre (for taxation purposes). The window of opportunity is the Land Information System (LIS) which is partially developed. |
| PANEL 8: DISPUTE RESOLUTION | | | |
| 24 | Responsibility For Conflict Resolution Is Assigned To Competent Bodies And Decisions Can Be Appealed Against | | |
| 24.1 | There is clear assignment of responsibility for conflict resolution. | There are multiple institutions handling land disputes especially at the lower level whose mandates are not clearly aligned neither are the reporting mechanisms clarified. These are often marred by political interference in their functioning. | There is need to streamline the land justice delivery mechanism and separate politics from justice delivery. |
| 24.2 | Conflict resolution mechanisms are accessible to the public. | there are specific factors that impact on access to justice for the people of Uganda, especially the poor and the factors include the high cost of litigation, lack of awareness of rights, technicalities in using the formal justice system, attitudes and orientation of personnel in the justice system, lack of co-ordination among legal and service providers, gaps in the monitoring the quality of services provided, breakdown in the justice system in war affected areas, and aspects of social difference as a basis of | Whereas there is accessibility in terms of existence throughout the country, the challenge is still persisting in regard to effectiveness of service delivery and cost which is escalated by continuous adjournments. A solution must be sought to enable these institutions, especially the formal institutions be comprehensively accessible to the public |

| | Dimension Description | Policy Issues | Recommendations |
|---|--|--|--|
| | | marginalization (age, health status and gender). | |
| 24.3 | Mutually accepted agreements reached through informal dispute resolution systems are encouraged. | Alternative Dispute Resolution is encouraged through the use of mediators or the traditional leaders. The courts of law now apply ADR for most cases before going into formal hearing. According to the JLOS baseline survey 2012, public confidence in the enforcement of existing laws stands at 29%, use of ADR generally is at 80% but only 26% of the cases in courts and tribunals are resolved through ADR. The Services of legal aid are recognized by government as crucial to resolving land disputes. | The role of mediation and Alternative Dispute Resolution needs to be strengthened further as it has supported land dispute resolution. This could be made more effective by linking the informal mechanisms of dispute resolution such as the traditional leaders to the formal mechanisms (courts). |
| 24.4 | There is an accessible, affordable and timely process for appealing disputed rulings. | It is not possible to determine from the data available whether these courts are accessible and affordable. It is evident thought that they are not efficient in disposing of land matters. | JLOs needs to devise appropriate approaches of case disposal either by promoting continuous court sessions for land layered with efficient ADR systems or by increasing the number of judges. |
| 25 | The Share Of Land Affected By Pending Conflicts Is Low And Decreasing | | |
| 25.1 | Land disputes constitute a small proportion of cases in the formal legal system. | Case backlog is still a major challenge for land dispute resolution. | There is a need to increase the number of judges or create land justice sessions where judges come from other divisions to expedite the resolution of cases. |
| 25.2 | Conflicts in the formal system are resolved in a timely manner. | The Justice Law and Order Sector has not prioritized the land justice and yet all the other cases or conflicts seem to be arising as a result of land disputes. | There is need to prioritize and improve land justice delivery. |
| 25.3 | There are few long-standing land conflicts (greater than 5 years). | There is no readily available literature synthesizing the long standing disputes. On average it takes 8 years to hear a matter. This is in itself discourages justice and makes the chain of justice unbearable. | There is need to improve efficiency in justice delivery through the recruitment of judges but also creating sessions that would shorten the amount of time spent on litigation. |
| PANEL 9: INSTITUTIONAL ARRANGEMENTS & POLICIES | | | |
| 26 | Clarity of mandates and practice: | | |

| | Dimension Description | Policy Issues | Recommendations |
|------|--|--|--|
| 26.1 | Land policy formulation, implementation & arbitration are separated to avoid conflict of interest | | |
| 26.2 | Responsibilities of the ministries and agencies dealing with land do not overlap | | |
| 26.3 | Administrative (vertical) overlap is avoided | | |
| 26.4 | Land right & use information is shared by public bodies; key parts are regularly reported on & publicly accessible | The Development of a Sector Wide Approach to Planning (SWAP) and Establishment of Project Monitoring & Evaluation Framework although a good idea, has not been operationalized by the ministry responsible for lands. | This needs to be put to work as Uganda will be implementing its new Land Sector Strategic Plan II and the National Land Policy, all require information collation and sharing to determine impact in implementation. |
| 26.5 | Overlaps of rights (based on tenure typology) are minimal and do not cause friction or dispute | <p>Overlaps on Mailo land have historically created friction and tension. Despite being the most legislated tenure in Uganda's history, concerns around tenant - land lord relations are escalating requiring a once for all solution</p> <p>The impasse created through the multiple of rights on the same piece of land has taken on a political face, making this a potent area for conflict. It is the tenure where large scale eviction of tenants is experienced.</p> <p>Customary tenure is currently the tenure most susceptible to abuse and violation of human rights. There are mass evictions without compensation for lack of proof of ownership.</p> | <p>A land redistribution program needs to be undertaken to resolve the challenges surrounding Mailo land in Uganda.</p> <p>Documentation of customary rights through the systematic demarcation program and applying the social tenure domain model is critical to stabilizing customary tenure.</p> |
| 26.6 | Ambiguity in institutional mandates (based on institutional map) does not cause problems | Under Land Justice, the ambiguity is found in the land justice delivery mechanisms. Ministry of Justice and Constitutional Affairs have a conflicting mandate with the Ministry of Lands, Housing and Urban Development over management of Land Tribunals and the execution of the mediation function. This resulted in the non- funding of the Land Tribunals and their being | The challenges around the institutional map can be resolved through exploring the development of strong coordination and information sharing mechanisms among government departments |

| | Dimension Description | Policy Issues | Recommendations |
|-----------|--|---|---|
| | | <p>rendered redundant.</p> <p>Furthermore, the Judiciary is challenged by the Ministry of Lands, Housing and Urban Development's response to</p> <ul style="list-style-type: none"> • Execution of court orders and decisions • Appearance to court of technical officers especially Registrars of title as expert witnesses. <p>In this, the Judiciary finds the Ministry of Lands non-responsive and therefore obstructing justice.</p> | |
| 27 | Equity and non-discrimination in the decision-making process: | | |
| 27.1 | Land policies & regulations are developed and adjusted to new circumstances in a participatory manner involving all stakeholders | There is lack of protocols to govern stakeholder participation in land policy and regulations development | there is need to improve the collation and analyze the data so that not just populist views are taken up, but logically derived solutions to identified gaps, challenged and overlaps as there has been a tendency to use the words " <i>the people have spoken</i> " or " <i>the people have said</i> ". |
| 27.2 | Land policies address equity & poverty reduction goals; progress towards these is publicly monitored | There is no monitoring framework to address equity and poverty goals as embedded in the Land Policies. | Mechanisms for regular monitoring need to be developed. |
| 27.3 | Land policies address ecological & environmental goals; progress towards these is publicly monitored | | |
| 27.4 | Implementation of land policy is costed, matched with benefits and adequately resourced | Although Chapter 8 of the National Land Policy recognized the importance of costing to ensure implementation, financing will depend on political will to see this policy implemented. The Land sector does not appear as one of the priority sectors. This means that it will keep getting marginalized even when it is land that holds up the Ugandan economy. It is therefore likely | Civil society needs to create a pressure group that impresses upon the state the need to prioritise funding for the land sector in Uganda. |

| | Dimension Description | Policy Issues | Recommendations |
|----------------------------|---|---|---|
| | | that the costing will not be matched with the resourcing posing serious challenges in policy implementation. | |
| 27.5 | There is regular and public reporting indicating progress in land policy implementation | There is no reporting framework in place. This makes reporting sporadic based on government priorities and interests. | A reporting framework needs to be developed and information made publicly available. |
| 27.6 | Policies are in place to help to improve land access & use by low-income groups and those who suffered from injustice in the past | Although provisions exist in the National policy, it is not clear whether these will be prioritised in the Land Sector strategic Plan and whether financial resources will be tagged to their implementation. | This is yet to be realized since the policy is too new. The National Land Policy needs to be resourced to enable it deliver on its commitments above. |
| 27.7 | Land policies proactively and effectively reduce future disaster risk | Whereas the Policy is in place to prevent settlements in high risk areas, regulations to effect the policy provisions are not yet developed. | The development of regulations needs to be prioritized. |
| PANEL 10 - FORESTRY | | | |
| FGI -1 | Commitments to Sustainability and Climate Change Mitigation | | |
| 28.1 | Country signature and ratification of international conventions | All the treaties have been domesticated with action plans developed but the main challenge has been translating the actions plans into transformational activities on ground. The government is heavily reliant on donor funds to implement most of the action plans. | The government as a regulator and enforcer should work towards implementing activities that harness the achievement of the goals of the different international conventions that we are committed to. National and local level budgets should prioritise implementing specific activities in the different action plans. Further, the agencies responsible for their implementation such as the Climate Change Unit, NEMA, REDD+ focal point, need to be politically and financially supported to operationalize them without fear or favour. Further, the role of the different actors in the sector needs to be stepped up in order to reinforce the transformational activities on ground, that is, civil society, researchers, private sector |

| | Dimension Description | Policy Issues | Recommendations |
|---------------|---|--|--|
| 28.2 | Implementation of incentives to promote climate change mitigation through forestry | Uganda has a fairly good policy and legal framework to enable implementation of PES and REDD+ initiatives. However the implementing unit, mainly the Forestry Sector is poorly funded and is not prioritized during budgetary allocation. Further, it is important to consider the sustainability of PES/REDD+ initiatives in the country, as well the challenges highlighted by the pilot projects including low payment levels, limitation in scope/project areas, short time-frame and lack of financially competitive alternative livelihood options | There is need to increase budgetary allocation to the Forestry sector and PES/REDD+ approaches as sustainable forest management strategies need to be popularized among policy makers to improve their relevance at national and local levels, and thus gain priority in the budgetary processes |
| FGI -2 | Recognition of Public Goods Aspects and Promoting Sustainable Use | | |
| 29.1 | Public good aspects of forests recognized by law and protected | Public good aspects of forests are recognised by law in Uganda, however enforcement is poor. In some cases there are no guidelines and regulations to operationalise the laws that provide for public good aspects of forests. | The capacity of agencies mandated to enforce the laws needs to be enhanced and they need political and financial support to adequately perform their activities |
| 29.2 | Forest management plans and budgets address the main drivers of deforestation and degradation | In order to systematically address the drivers of deforestation and forest degradation, there is a need for a well stipulated road map/management plan for each forested area. However only 4% of the central forest reserves have approved forest management plans. Activities, if any, in all the other forests are adhoc. Further, in all districts, the forestry sector is high income earner (e.g. through timber stamping for transport licences for poles, charcoal and timber), it is the least funded. | There is need to urgently revise and/or develop forest management plans that prioritise the mitigation of deforestation and forest degradation, and this should be given the budgetary allocation. |
| FGI -3 | Supporting Private Sector to Invest Sustainably in Forest Activities | | |
| 30.1 | Country's commitment to forest certification and chain-of-custody | The framers of the Forestry Policy, 2001 aspired to promote certification as a strategy to promote commercial timber industry. This however is not | There is need to include certification of timber from all categories of forests and other non-wood forest products in forestry regulations and guidelines |

| | Dimension Description | Policy Issues | Recommendations |
|---------------|--|--|---|
| | systems to promote sustainable harvesting of timber and non-timber forest products | reflected in the National Forestry and Tree Planting Act, 2003. | to ensure that principles of sustainable forest management are adhered to. Government should consider putting in place incentives that will encourage forest owners and trader to embrace certification of forest products. |
| 30.2 | Country's commitment to SMEs as a way to promote competition, income generation and productive rural employment | There are two sides of government when it comes to SMEs in the Forestry Sector. One side supports SMEs development through the provision of legal frameworks, while another side has taxation regimes that may stifle the development of SMEs. | Government should improve access to micro-finances and revise the tax regimes for cottage industries. |
| FGI -4 | Livelihood Aspects of Local, Traditional and Indigenous Forest-Dependent Communities | | |
| 31.1 | Recognition of traditional and indigenous rights to forest resources by law | The lack of recognition of indigenous/traditional rights by the supreme law is denying the rights of communities such as the Batwa and Benet who are known as forest-dwelling communities. | The law needs to be amended to be more explicit on the recognition of indigenous/ traditional rights for forest communities. |
| 31.2 | Sharing of benefits or income from public forests with local communities by law and implemented | Currently, there are guidelines for the benefit-sharing in forests managed by NFA, while for the forests under UWA, the communities are entitled to only 20% of the gate entry fees which are far much less when compared to the permit fees. | Put more emphasis on speeding up the process of developing the guidelines and later implementation. Implementation needs to be strengthened. |
| FGI -5 | Forest Land Use, Tenure and Land Conversion | | |
| 32.1 | Boundaries of the countries forest estate and the classification into various uses and ownership are clearly defined and demarcated. | Clear ownership and demarcation of forest areas requires existence of forest management plans as clearly stipulated in the National Forestry and Tree Planting Act, 2003. | District forest officers and other responsible bodies in the forestry sector need to be supported to establish, maintain and open boundaries of all categories of forests. |
| 32.2 | In rural areas, forest land use plans and changes in these plans are based on public input. | The level of development of the forest management plans it to low and thus public input although provided for in the law, minimally practiced. | District forest officers and other responsible bodies in the forestry sector need to be supported (technically and financially) to develop/revise forest management |

| | Dimension Description | Policy Issues | Recommendations |
|---------------|---|---|---|
| | | | plans in a participatory manner. |
| FGI -6 | Controlling Illegal Logging and Other Forest Crimes | | |
| 33.1 | Country's approach to controlling forest crimes, including illegal logging and corruption | There are several players with different levels of facilitation, power and support currently in charge of forest crimes | There is need to translate action plans into transformational activities on ground by (a) fast tracking the process of formulating and operationalising forest regulations to manage forest crimes, and (b) facilitating the mandated units |
| 33.2 | Inter and intra agency efforts and multi-stakeholder collaboration to combat forest crimes, and awareness of judges and prosecutors | Given the lack of co-ordination with the forestry agency, some other agencies/people take advantage of the situation and perform roles relating to combating forest crimes that they are not mandated to do. In the process, the level of forest crimes especially illegal timber harvesting and charcoal production, escalate. | The mandated agencies within the Forestry Sector should be publicised and facilitated (technically and financially) to execute their duties. The tailored short courses should be re-instituted at the Law Development Centre to make more judges and prosecutors knowledgeable about environmental crimes. |

5.2 RECOMMENDATIONS FOR STATISTICAL REPORTING

6.0 CONCLUSION

The Land Governance Assessment Framework for Uganda was carried out at an opportune moment when the land reform process is just began with the passing of the National Land Policy, the Development of the National urban Policy and the National Land Use Plan, and the review of 16 land related laws to synchronize them with the new policy framework. This means that a new implementation framework must be developed to ensure the implementation of all these reforms. The policy issues and recommendations therefore, find their place in the changing land governance context of Uganda.

The findings of the LGAF can be categorised into four major categories.

- a) Streamlining the Regulatory framework
- b) Financing of the Land Sector
- c) Capacity Development to implement the said reforms.
- d) Sustainability of land sector reforms
- e) Stakeholder participation

Streamlining the regulatory framework

The Land Governance assessment has revealed that although Uganda has excellent policies and laws, there are no practice directives, guidelines and procedures in place to implement these provisions. Technical staff therefore, find their hands tied and decide to either do nothing about the situation or take the law into their own hands to get some provisions implemented, often creating challenges and giving rise to corruption. Prioritization of putting in place these is critical to improvement of land service delivery. The critical areas where this is much needed is the acquisition of land for investments, divestiture of government land and taxation and valuation.

Financing of the Land Sector.

The intensions of land sector reforms cannot be achieved if there is no political will and public investment in the land sector. Whereas technical departments make efforts to implement reforms and programs within the existing budget, they often fall short. Attention needs to be paid towards building on the gains of the Land Information system development which should see the documentation of customary rights and the multiple layers on parcels of land that are constitutionally guaranteed rights. The urban land question cannot be solved without investment of public resources.

To date, the land sector has heavily relied on donor funding which many times do not take projects to conclusion. An example is given of the Government Land inventory, a process that aimed at protection of public lands from encroachment and abuse. This leaves the land sector to various vulnerabilities including abuse by those in urban planning has particularly suffered due to lack of funding.

Furthermore, it is not possible to fully operationalize the land rights administration institutions and therefore have land registries function efficiently and effectively in a sustainable manner if there is no public investment. There needs to be an approach for the land sector to retain some of the resources it raises to support its own sustainability.

Capacity Development

Many of the challenges in this assessment hinged on lack of technical capacity and adequate human resource capacity to implement the provisions in the law. The key areas identified were the use of the Land Information system which has moved from the manual to a computerised system, the lack of capacity in valuation especially where investments and environmental goods are involved, capacity in property tax management, capacity in documentation and/or recordation of customary rights, especially group rights and communal lands. This is a constraining factor to realising the gains had in the law and policy reform processes. Understanding of gender and other secondary rights and the need to integrate these into the land registration system land remains elusive to the technical staff.

Sustainability of Land Sector Reforms

All land sector funds are paid out of the consolidated budget. However, the land sector has never been a priority sector despite being the 3rd income earner for the Government through the offer of land services. There have been major investments by the World Bank in the land sector reforms especially the functioning of the land registries. Infrastructure has been put in place. This needs to be maintained and scaled up because land is key not only to the economic life of Uganda, but to the political and social stability of the country, ingredients necessary for a conducive investment climate and sustainable economic growth. As such, the land sector needs to set up mechanisms to retain a portion of the funds raised in service delivery to invest in the functioning of its institutions. This reduces the fears around budget cuts and non-prioritisation of the sector. Further it makes the sector less reliant on donor financing to run its affairs.

Stakeholder Participation

Uganda has performed particularly well with regard to public consultation and participation in policy development. There is however a glaring gap when it comes to acquisition of land for investment, expropriation of public land, urban and rural land use planning and land use change. Protocols need to be put in place to guide participation and this enables the institutionalization of participation. Furthermore, availing information to the public enhances constructive participation. In this regard, deliberate efforts are needed to improve performance in this regard. This is however only possible if political

interference in the functioning of the land sector is averted and technical staff feel secure in the execution of their mandates.

6.2 WAY FORWARD

The LGAF has been a beginning in understanding the land governance situation in Uganda. This process needs follow on actions especially in developing

- a) The monitoring framework for the Land Sector
- b) The reporting framework for land sector performance
- c) Public provision of land information.

The Monitoring Framework for the Land Sector

The policy matrix identifies key policy issues that the Land Sector needs to consider. Although many, prioritization is key with the participation of all key stakeholders. Indicators that are measurable within sector capacity need to be developed including third party monitoring of the land sector performance. Results of the monitoring need to be shared with all stakeholders.

Currently an opportunity to include issues in the policy matrix exists with the development of the Land Sector Strategic Plan II and the Land Policy Implementation Strategy.

Streamlining the Reporting Framework

The Land Sector should move away from reporting activities in its budget framework papers only, which reports are important for government business to institutionalizing reporting for public information. An annual progress report that includes the activities of all actors would give a complete picture of sector performance. This has never been quantified nor captured and it is important to create a complete understanding of what sector performance is.

Public Provision of Land Information

Once monitoring and reporting frameworks are streamlined, information that should be made public become easier to synthesize. There is need to make this happen and to increase public knowledge and participation in the land sector.