

LAND MANAGEMENT MANUAL

for Academic Practitioners in the Greater
Kampala Metropolitan Area (GKMA)



MAKERERE UNIVERSITY

2022

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Kampala Metropolitan Area (GKMA)

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FOREWORD

Land is an invaluable asset for Ugandans living or just arriving in urban areas. At the same time the management of land, its regulation and allocation, is a major challenge for government and city institutions.

The ever-increasing urban population and needed infrastructure development have heightened the demand for and value of land. With this comes land conflicts which are often attributed to the complex land tenure in Greater Kampala Metropolitan Area.

Due to the sky rocketing prices of land in GKMA many people have been forced into insecure land holdings without formal documents of ownership, while others have been left homeless because of forced evictions for development purposes.

Given the extent to which need, value and competition for land has intensified, the issue of land management should dominate public discourse and media attention.

It is on this premise that Friedrich-Ebert-Stiftung Uganda in partnership with the Department of Physical Planning and Architecture at Makerere University Kampala have developed this manual to cover the various land management aspects ranging from land acquisition, forced land evictions, land tenure systems to land disputes mechanisms.

Through a literature review, key informant interviews and focused group discussions with representatives from government agencies, critical civil society organisations, and academics, the manual highlights land management information, and it is hoped that this will serve as a useful guide to academics as well as empower communities and stakeholders to reduce cases of land mismanagement arising out of ignorance of basic concepts.

We are grateful to the research team at the College of Engineering, Design, Art and Technology, Department of Physical Planning and Architecture at Makerere University Kampala, led by Dr. Tamale Kiggundu Amin for compiling the findings that translated into this land manual. We also would like to thank the different respondents for their insights and valuable contributions without which the manual would not have been possible.

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Senior Project Manager
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TABLE OF CONTENTS

LIST OF FIGURES	iv
ACRONYMS AND ABBREVIATIONS	v
ACKNOWLEDGEMENTS	1
EXECUTIVE SUMMARY	2
CHAPTER ONE	3
1.0. INTRODUCTION	4
1.1 Background	4
1.2 Justification for this Land Management Manual	6
1.3 Specific Objectives for the Land Management Manual	6
1.4 Methodology	6
1.5 Key Terms Related To Land Management in Uganda	7
CHAPTER TWO	11
2.0 LAND LAWS AND POLICIES IN UGANDA	12
2.1 Land Laws Introduced Before the 1995 Uganda Constitution	12
2.2 The 1995 Constitution of Uganda	13
2.3 The Land (Amendment) Act 2010	13
2.4 Other Critical Laws Used in Land Administration in Uganda	14
CHAPTER THREE	15
3.0 LAND TENURE SYSTEMS, OWNERSHIP AND ADMINISTRATION	16
3.1 Land Tenure Systems in Uganda	16
3.2 Key Programmes Implemented to Improve Land Administration	17
3.3 Key Institutions Involved in Land Administration	19
3.3.1 Area Land Committees	19
3.3.2 District Land Boards (DLBs)	19
3.3.3 District Land Offices	19
3.3.4 Ministry Zonal Office (MZOs)	19
3.3.5 Uganda Land Commission (ULC)	20
CHAPTER FOUR	21
4.0 LAND RIGHTS AND CONSIDERATIONS FOR LAND TRANSACTIONS	22
4.1 Rights and Obligations of Landowners	22
4.2 Rights and Obligations of Tenants	24
4.3 Family Relations and Land Rights	24
4.4 Documentation of Land Transactions	24
4.5 Contents of a Good Land Agreement	26

CHAPTER FIVE	27
5.0 LAND ACQUISITION	28
5.1 Private Land Acquisition	28
5.2 Compulsory Land Acquisition by the State	28
5.3 Land Compensation	29
5.4 Institutional Framework for Compensation	30
5.5 Principles of Land Acquisition	30
CHAPTER SIX	31
6.0 FORCED LAND EVICTIONS	32
6.1 Illegal Land Evictions	32
6.2 International Guidelines for Forced Evictions	32
6.3 Guidelines for Forced Eviction in Uganda	35
6.4 Seeking Further Help Regarding Illegal Land Evictions and other Land Related Matters.	36
6.5 Categories of People Not Protected By Law in Cases of Forced Land Evictions	36
CHAPTER SEVEN	37
7.0 LAND DISPUTE RESOLUTION	38
7.1 Common Land Disputes	38
7.1.1 Dispute resolution Mechanisms	40
7.1.2 Alternative Land Dispute Resolutions Mechanisms (ADR)	41
7.1.3 Advantages of Alternative Dispute Resolution Mechanisms (ADR)	43
REFERENCES	43

LIST OF FIGURES

Figure 1: Map of the Greater Kampala Metropolitan Area (GKMA)

ACRONYMS AND ABBREVIATIONS

ADR	Alternative Disputes Resolution
ALC	Area Land Committee
BLB	Buganda Land Board
CCO	Certificate of Customary Ownership
CGV	Chief Government Valuer
CSO	Civil Society Organisation
DLB	District Land Board
EOC	Equal Opportunity Commission
FAO	Food and Agricultural Organisation
FES	Friedrich-Ebert-Stiftung
GCALA	Guidelines for Compensation Assessment under Land Acquisition
GKMA	Greater Kampala Metropolitan Area
HRAPF	Human Rights Awareness Promotion Forum
KCCA	Kampala Capital City Authority
LC	Local Council
LIS	Land Information System
MAAIF	Ministry of Agriculture, Animal Industry and Forestry
MoLHUD	Ministry of Lands, Housing and Urban Development
MZO	Ministry Zonal Office
NFA	National Forestry Authority
NGO	Non-Governmental Organisation
NH&CC	National Housing and Construction Corporation
NPPB	National Physical Planning Board
SLAC	Systematic Land Adjudication and Certification
UCCA	Uganda Consortium Corporation Authority
UHRC	Uganda Human Rights Commission
ULC	Uganda Land Commission
VGRGT	Voluntary Guidelines on Responsible Governance of Tenure

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This land management manual is the result of a collaboration and partnership between Friedrich-Ebert-Stiftung (FES), the funding partner, and the College of Engineering, Design, Art and Technology, Department of Architecture and Physical Planning of Makerere University, the implementing partner.

The Makerere University research team comprised of Dr. Kiggundu Amin Tamale (Head of the Architecture and Physical Planning Department), Professor Mukiiibi Stephen, Mr. Eriaku William, Miss Nakanwagi Orashida and Miss Aliamo Eunice.

The research team would like to thank our key respondents and individuals from several agencies and Ministries including the Ministry for Kampala and Metropolitan Affairs, Ministry of Lands Housing and Urban Development (MoLHUD), Ministry of Local Government (MoLG) as well as agencies such as the Uganda Land Commission, National Housing and Construction Corporation, District Land Boards, Ministry Land Zonal Offices, District Physical Planning Committees, Office of the Chief Government Valuer, and Uganda State House's Land Enforcement Department.

Special thanks also go to several Civil Society Organisations and non-state agencies including the Buganda Land Board (BLB), Uganda Land Alliance, ACTogether and Slum Dwellers International, who contributed to the preparation of this manual.

EXECUTIVE SUMMARY

This land management manual is an important tool for students, academics and urban practitioners in the Greater Kampala Metropolitan Area (GKMA) where urbanisation and industrial development are fast occurring, leaving in their wake a chain of land disputes, including forced evictions, with diverse ramifications on the communities. It is the urban planners of tomorrow who will have to guide political leaders with the land management and administrative knowledge required for better service delivery in land related aspects of their respective constituencies.

The manual provides students and practitioners with an insight into the various working terminologies used in the most common five spheres of land management. These include: land ownership, describing who can own land; rights and interests in land; land transactions, including compulsory land acquisition and the attendant requirements of valuation; family land related aspects; and protection of one's land. These terms are defined and described as required by the law and given their legal meaning.

By detailing Land Laws and Policies in Uganda, it introduces the reader to the main framework of the laws that provide direction and guidance in governing, administering and resolving land disputes. This part provides both a historical and a contemporary understanding of the legal framework - focusing largely on the 1995 Constitution and the various laws and policies that have been crafted in the aftermath period of 1995. Here, the focus is not only on land laws but also on other laws that affect the management and administration of land, for example, the National Physical Planning Act, 2010 and the Uganda Succession Act, Cap 162.

The Land Management Manual also provides a comprehensive appreciation of the various tenure systems in Uganda and how they are owned and administered. Here, it also discusses the key programmes implemented by the government to improve land administration, including decentralization of land registration services; modernization of the land registry; issuance of certificates of customary ownership and occupancy; and strengthening surveys and mapping. Also explained are the key institutions involved in land administration at the sub-county level with the Area Land Committees, at the local government level, such as the district land committee, and at the national level with the general land registry.

The manual also describes the various processes which define land transactions and the attendant rights and obligations of the various parties involved in such relations such as land owners and tenants. It also provides an insight into how land rights are affected by family relations, more specially the rights and obligations of spouses in relation to matrimonial/family land especially during transactions. And it gives the reader an overview of the documentation used during land transactions and the key requirements that one must look out for a legal transaction to avoid fraud or breach of the law.

The publication delves into the basics governing land acquisition. These include the compulsory land acquisition which has various requirements that one must know, for example, the uniqueness surrounding compensation under such circumstances. Additionally, it looks at the private acquisition which among others includes inheritance and purchase.

Finally, the manual discusses issues concerning land evictions, the principles governing lawful and humane evictions which must be followed by the government when evicting people from land, and the categories of people who are not protected by eviction laws. And it describes land dispute resolution mechanisms, both informal and formal, which can be used to solve land related misunderstandings. Here, common land disputes within society are also mentioned.



CHAPTER **ONE**

1.0 INTRODUCTION

1.1 BACKGROUND

Globally, land is recognised as an essential commodity and a source of livelihood for most people. Land also plays an important role in urbanisation processes, particularly in infrastructure and housing development, linking urbanisation with physical planning. Present-day Uganda is characterised by a complex land tenure system. This has complicated land use, ownership and disposal in areas such as the Greater Kampala Metropolitan Area (GKMA).

GKMA is the most productive and most urbanised region in Uganda. GKMA hosts over 10% of the country's population and contributes over 40% of Uganda's Gross Domestic Product (GDP) (World Bank, 2017). Greater Kampala also generates 46% of the country's formal employment and hosts 70% of Uganda's manufacturing plants (World Bank, 2017).

However, land conflicts and disputes in the region point to a lapse in land tenure administration and management, especially with regard to boundaries, land ownership and transmission, occupation, trespass, fraudulent transactions and succession disputes (Kyeyune, 2017; Rugadya, 2009; Owaraga, 2012).

An example of one of these disputes over ownership of land in GKMA can be seen in Kasokoso, Wakiso district, where the National Housing and Construction Corporation (NH&CC) intends to implement a Slum Redevelopment Project. About 100,000 tenants are to be affected by the project. NH&CC says they are the rightful owners of the two titles that govern the land, having acquired a freehold title to the land in 2012.

The residents reject the NH&CC's claims of ownership, fearing the loss of their land, and have resorted to protests, sometimes violent, in their attempts to stave off eviction attempts. The violence reached a climax on November 5th 2013, when angry tenants set fire to a car belonging to the Wakiso District Chairman, Mamerito Mugerwa, and almost lynched the Kira Municipal council's Mayor when he called for a meeting to attempt to convince citizens to agree to allow the re-development of the land to happen.

Some of the key issues highlighted in this manual include land tenure and ownership, land interests and acquisition, the responsibilities of landowners and tenants, forced evictions, and the topic of land rights.

This manual serves as a key resource in highlighting issues of land management in the GKMA as well as for exploring various policy and legal frameworks concerning modes of acquiring rights and interests in land, and the requirements that have to be fulfilled for compulsory acquisition of land by the government.

It is hoped that the information provided will serve as a useful guide for academics by providing critical information on key aspects related to land in a simplified manner. It is further anticipated that this increased access to information will reduce cases of land theft arising out of ignorance of these basic concepts, as well as empowering communities and other stakeholders.

Figure 1. Map of Greater Kampala Metropolitan Area



Source: Kampala Capital City Authority

Besides Kampala city, there are also several key urban centres located in the GKMA region including Mukono, Kira, Entebbe, Makindye Ssabagabo, Nansana, Wakiso, Mpigi, Kyengera, Nsangi and Kasanje. It is projected that by 2040 Kampala will be one of Africa's megacities, with approximately 10 million inhabitants (World Bank, 2017). The increase in population will inevitably lead to greater competition for land, heightening the potential for conflicts and disputes in the region.

Due to recent industrial development and expansion, as well as rapid urban growth in the GKMA, land ownership has increasingly become an important policy issue that requires urgent attention, with land disputes and conflicts also being reported in Wakiso, Mpigi and Mukono districts.

1.2 JUSTIFICATION FOR A LAND MANAGEMENT MANUAL

This land management manual is both timely and important in light of increasing land-related disputes in the GKMA, where urbanisation and industrial development are fast occurring. Fevered land speculation and the lure of quick profits has led to many people working as property brokers, while poor rural populations are selling their land to move to the cities. This range of culminating factors has led to conflicts, corruption, forced evictions, family disputes and even murders.

During the 2021 general elections, several new local government leaders were elected across Kampala and the GKMA. This new intake of officials, many of whom are young, will need to be well informed about critical land policy issues if they are to improve service delivery in the region. It is also important to note that these issues, which will affect development in the region, are highlighted and documented for future intervention.

Existing land administration-related challenges in the GKMA such as forced evictions and disputes stem partly from a lack of knowledge among landowners and tenants. This can be improved by educating the various stakeholders including landowners and tenants about their rights and obligations under the existing land laws.

1.3 SPECIFIC OBJECTIVES FOR THE LAND MANAGEMENT MANUAL

- Equip and influence academia to produce evidence-based social policy change.
- Inform and influence decision-makers, academics and political actors in support of improvement and implementation by government on critical land management issues in the the Greater Kampala Metropolitan Area (GKMA)
- Provide critical and relevant knowledge to key stakeholders to support improvement of citizen service provision in the most effective and efficient ways in the GKMA; and
- Identify best practices for improved land management and planning that are transferable to greater Kampala and Uganda in general.

1.4 METHODOLOGY

The methodology used in developing this manual included but was not limited to:

Concept Paper

A concept paper was developed indicating the purpose and objectives of the academic manual, the problem statement, and the methodology to be used in the manual development, and the stakeholders involved. This was submitted to FES and was approved.

Literature Review

The literature review involved analysing secondary data such as the Constitution of Uganda (1995), the Land Act (1998), and its successive amendments (2004, 2010 and 2016), the Physical Planning Act (2010), the Handbook on Land Ownership, Rights and Interests (2016), Uganda National Land Policy (2013), Guidelines for Land Acquisition and Compensation in Uganda (MoLHUD, 2017), Uganda National Environmental Management Policy and Law (1994), Land Sector Strategic Plan (2011); Land Sector Strategic Plan (2013-2023) and other reports from various Ministries, Institutions and CSOs, amongst others.

Key Informant Interviews

Interviews with key informants and stakeholders targeted respondents from critical organisations and agencies such as Uganda Land Commission, Ministry of Lands, Housing and Urban Development, National Housing and Construction Corporation, District Land Boards, Land Zonal Offices, District Physical Planning Committees, the Chief Government Valuer, Uganda Land Alliance, Uganda State House's Land Enforcement Department, Religious entities, Mayors, District Chairpersons and Civil Society Organisations.

Focus Group Discussion

Focus group discussions involved but not limited to discussions with students of Makerere University studying Land Use Planning and Urban Planning as well as the lecturers of Land Use and Land Management courses and programmes.

Drafting the Academic Manual

Compilation and analysis of the data and information resulting from the literature review, alongside key informant interviews and focus group discussions.

Validation Workshop.

Invited all the relevant stakeholders particularly those involved in the key informant discussions, focus group discussions and others, in order to get their concrete input on the academic manual.

Incorporation of Comments/Ideas

After the workshop, the ideas from the workshop were incorporated into the manual to produce the final academic manual.

1.5 KEY TERMS RELATED TO LAND MANAGEMENT IN UGANDA

Below are several key concepts in land management as defined by the 1995 Constitution of Uganda, Uganda Consortium on Corporate Accountability (2018), United Nations guidelines (2020) as well as the Uganda Land Act Cap 227 (1998).

Land Tenure System

This is a system that governs the ownership of land. According to the 1995 Constitution of Uganda and the Land Act Cap 227 (passed in 1998) there are four recognized forms of land tenure in Uganda: freehold, leasehold, Mailo and customary tenure. These four forms are all defined in Chapter Three of this land manual.

Landowner

Section 2 of the Land Act defines a landowner as 'any Ugandan citizen who owns or holds land under any of the four recognised systems of land tenure in Uganda and as stipulated in 1995 Constitution of Uganda.'

Tenants by Occupancy

These include bona fide and lawful tenants (see below). They are considered tenants of the registered owner of the land which they occupy, and are required to pay annual ground rent.

Bona Fide Occupant

Section 29 (2) of the Land Act defines a bona fide occupant as 'any person who, before the coming into force of the 1995 Constitution of Uganda, had either occupied and utilised or developed any land unchallenged by the registered owner or an agent of the registered owner for 12 years or more; or had been settled on land by the government or an agent of the government; which may include a local authority, for instance local council chairpersons.

Lawful Occupant

Persons occupying land by virtue of various repealed land laws: i) the Busuulu and Envujjo Law of 1928; ii) the Toro Landlord and Tenant Law of 1937; and iii) the Ankole Landlord and Tenant Law of 1937. Other lawful occupants include: Persons who entered land with the consent of the registered owner including a purchaser; and persons who had occupied land as a customary tenant or Kibanja holder but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title (Kibanja is commonly perceived as a small piece of land, usually below an acre that is not titled)

Kibanja Holder/Customary Tenant

Persons who had settled on land in Buganda as customary tenants with the consent of the Mailo landowner under the Busuulu and Envujjo Law 1928. A Kibanja holder holds an equitable interest in Mailo land which can be transferred with consent of a registered owner. It is also worth noting that Kibanja is peculiar to Mailo land found mostly in Buganda, and that Kibanja holders are referred to as 'Bibanja'.

Lease

Legal permission to use a piece of another person's land with exclusive rights for a set period of time of three years or more, for a specific agreed purpose and within a set of terms agreed between the lessor and the lessee.

Lessor

A landowner who creates a lease and allows another person (a lessee) to use a piece of land with exclusive rights for a set period of time, for a specific agreed purpose and within a set of terms agreed between the lessor and the lessee.

Lessee

A lessee is defined by the Uganda Consortium on Corporate Accountability (2018) as a 'person who is given permission to use a piece of another person's land (a lessor) with exclusive rights for a set period of time, for a specific agreed purpose and within a set of terms agreed between the lessor and the lessee'.

Exclusive Possession

This is defined as 'Possession or utilisation of land without interference from the landowner for a given period' (Uganda Consortium on Corporate Accountability, 2018).

Sublease

A sublease according to the Uganda Consortium on Corporate Accountability (2018) and the Uganda Land Act 1998 is a 'lease granted by a lessee to a third party with the consent of the lessor for a period of not less than three years. The original lessee becomes the sub-lessor and the sub-lessee becomes the lessee'.

Tenancy

This is an 'agreement where a landowner grants another person permission to occupy land and enjoy exclusive possession for a period below three years, in exchange for rent. Tenants do not acquire an interest in their rented land, but simply enjoy rights to its use for the duration of the tenancy' (Uganda Consortium on Corporate Accountability, 2018 and the Uganda Land Act, 1998).

License

A license according to the Uganda Land Act 1998 is the 'Permission given to enter another person's land for some specific purpose, entry which without such permission would amount to trespass. A license does not grant the licensee exclusive possession or an interest in the land.

Interest and Rights In Land

According to the Uganda Consortium on Corporate Accountability (2018) an interest relates to ownership which might be legal (a registered owner and their successors) or equitable (for example tenants in occupancy or unregistered landowners). A right, unlike an interest, relates only to the use of the land for a specific purpose with the consent of the landowner.

Legal Interest In Land

'An interest held in land by a landowner who has registered under the Registration of Titles Act. This includes owners of land in the Mailo, freehold and leasehold tenures who have been registered' (Uganda Land Act 1998).

Equitable Interest In Land

According to the Uganda Consortium on Corporate Accountability (2018) 'An interest held in land which has not been registered. This might include tenants by occupancy, the interest of a spouse in family land, or a purchaser of land who has not yet been registered as the landowner, amongst others. All interests which have not been registered under the Registration of Titles Act are equitable interests'.

Persons Having An Interest In Land

This can be defined as 'Anybody who has a credible claim of interest in respect of land which the government seeks to acquire under the Land Acquisition Act. This includes anybody who has an interest in land affecting the land in question' (Uganda Consortium on Corporate Accountability, 2018).

Land Transactions

Land transactions according to the Uganda Land Act 1998 are 'Anything to do with the transfer of ownership of land. This includes selling, leasing, mortgaging or pledging, subdividing, creating rights and interests for other people in land, and creating trusts of land'.

Family Land

According to the Uganda Land Act 1998, family land is 'Land that may be any (or several) of the following: a) where the ordinary residence of a family is situated; b) where the ordinary residence of the family is situated and from which the family derives sustenance; c) which is treated as family land according to the norms, culture, customs, traditions or religion of the family'.

Ordinary Residence

The Uganda Consortium on Corporate Accountability (2018) defines ordinary residence as 'The place where a person continuously resides and a place which they intend to make their home for an indefinite period'.

Land from which a Family Derives Sustenance

According to the Uganda Consortium on Corporate Accountability (2018), 'this can mean :a) land which a family farms; or b) land which the family treats as the principal place which provides the livelihood of the family; or c) land which the family freely and voluntarily agrees shall be treated as the family's principal place or source of income for food'.

Caveat

This is 'a document which a person who claims an interest in registered land registers at the Registry of Lands in order to stop any transactions from being carried out in respect to the land. A caveat filed by a spouse on family land is a spousal caveat while a caveat filed by a beneficiary is a beneficiary's caveat' (Uganda Consortium on Corporate Accountability, 2018).

Land Grabbing

This is 'a colloquialism referring to the expropriation of land belonging to an individual or a group of people, regardless of whether it is registered land or not registered. It is often committed by wealthy individuals or public, private and foreign investors against weaker, individual tenants. 'Land grabbing' may involve unlawful, violent and/or illegal acts, but can also refer to deceptive legal practices, the use of intimidation or exploitation of legal knowledge that the weaker party does not have access to.

Land Evictions

This is the removal from land by a landowner of a tenant-by-occupancy or Kibanja holder. An eviction is illegal if the lawful or bona fide occupant or Kibanja holder is removed with either the threat or use of violence without a court order. Evictions in which the actions of a landowner force tenants to leave by making it difficult or unsafe for them to stay on the land are also deemed illegal' (Uganda Consortium on Corporate Accountability, 2018).

Resettlement

According to the Uganda Land Act (1998), resettlement is 'The act of moving individuals or groups of people from one location to another and providing them with land, shelter and other basic needs. It can be on a permanent or temporary basis'.

Compensation

The money paid to a person with an interest in land to reimburse them for the loss they suffer when the government takes possession of land they own by compulsory acquisition. It must be fair and adequate and should be paid in time, before the land is taken.

Ground Rent

This is 'The money which occupants and Kibanja holders must pay to landowners annually. The amount paid as ground rent by tenants-by-occupancy and Kibanja holders are nominal and are determined by District Land Boards with the approval of the Minister of Lands' (MoLHUD, 2017). Failure to pay ground rent gives legal grounds for the eviction of a tenant.

Valuation

Valuation has been defined as the process of determining the value of a given piece land and the structures on it. This is a key process during compulsory acquisition, and determines the amount of compensation that will be paid to the landowner' (MoLHUD, 2017).

Freehold Interest

A 'freehold interest of estate' exists when someone owns real estate with a form of ownership which is indefinite. Most Buganda landlords today have Mailo leaseholds (99 years etc) rather than freehold.



CHAPTER **TWO**

2.0 LAND LAWS AND POLICIES IN UGANDA

2.1 LAND LAWS INTRODUCED BEFORE THE 1995 UGANDA CONSTITUTION

According to Mwebaza (2014), In 1900, the British government signed an agreement with the Kabaka of Buganda, who was represented at the time by the three regents, Sir Apollo Kaggwa, Zakaraya Kisingiri and Stanislas Mugwanya. This agreement fundamentally changed the structures of land ownership and transfer in Buganda and beyond, dividing the land of Buganda into two categories; Mailo land and Crown land. Mailo land was assigned to the monarchy, which in turn began to distribute it to chiefs and notables. Crown land, meanwhile, was reserved for government purposes, with its title nominally assigned to the Monarch of England as "Custodian". This agreement with the Kabaka led to the first major displacement of people from land they had occupied long before the British arrived in Uganda.

Along with other consequences, the Mailo land system created a situation where both Baganda peasants and immigrants on large tracts of undeveloped land were rendered legally landless. Their traditional customary right to use the land for grazing and farming, which had been unwritten, was terminated. Instead, if they wished to use the land, they were compelled to pay 'Busuulu' and 'Envujjo' rent to the holders of certificates on the land they had hitherto used by right of history and custom. This legal device turned bona fide occupants into tenants.

Now that tenants were by law required to pay 'Busuulu' and 'Envujjo' rent to the land's newly-imposed owners, these landlords began to hike the rates. The colonial government intervened by enacting the Busuulu and Envujjo law of 1927 in Buganda, followed by the Toro Landlord and Tenant Law of 1937. Both the 1927 and 1937 land laws were designed to assure tenants security of tenure and to free them from the fear of arbitrary eviction.

Besides, after Uganda declared independence from the United Kingdom in 1962, the Mailo system of administration was retained, including the Busuulu and Envujjo Law. All former Crown lands came into public ownership under the Public Land Act of 1969, which was enacted to govern the management of these estates' (Mayanja, 2021). Being public land, Mailo land had already been placed under the Uganda Land Commission by the 1967 Constitution.

Mayanja (2021) further states that 'in 1975 Idi Amin's government issued the Land Reform Decree, which declared all land as public land, to be held in trust by the state for the people of Uganda and administered for their benefit by the Uganda Land Commission established in 1995. This Decree also abolished the Mailo tenure structure as well as the Busuulu and Envujjo Law'.

The 1975 Land Reform Decree was an attempt to improve the ways in which land was owned, distributed and administered, and it substantially and dramatically changed the legal basis of land tenure in Uganda. However the provisions of the Land Reform Decree were not fully implemented due to a lack of budget and personnel, as well as because of resistance by landowners who had benefited under the previous system and who stood to lose their land.

The eventual outcome was that both landowners and administrators continued to behave as they had before the Decree, while Freehold and Mailo titles were not converted into leases as ordered. So, except for the abolition of payment of Busuulu and Envujjo, original tenure systems continued as if the Decree had not been promulgated.

2.2 THE 1995 CONSTITUTION OF UGANDA

The 1995 Constitution of Uganda repealed the 1975 Land Reform Decree and vested all land in the citizens of Uganda, structuring it under the four land tenure systems- customary, leasehold, freehold and Mailo (Article 237 (1) of the Constitution of Uganda, 1995). Meanwhile Article 26 (1) protects the right of individuals or groups to own property either individually or in association with others.

The 1995 Constitution was the first document in Uganda to recognise customary land holding as a land tenure system, and by doing so it simplified secure land ownership for Ugandans, the majority of whom hold land under customary tenure. It did this by creating a route by which customary tenants could acquire certificates of customary ownership, which they could then convert to freehold titles. The Land Act Cap 227 reiterated these provisions.

Another critical land reform introduced by the 1995 Constitution of Uganda and the Land Act Cap 227 was the recognition of the rights of legal and bona fide occupants on Mailo land with the consent of the registered proprietor.

2.3 THE LAND (AMENDMENT) ACT 2010

The Land Amendment Act 2010 represents an attempt by the government to review the existing laws governing land and to improve land administration in Uganda. The Land (Amendment) Act 2010 also has the following advantages:

- **It serves the interests of both landlords and tenants, whose rights and obligations are now better defined and strengthened**
- **It mitigates conflict by offering clearer guidance and effective means of mediation between landlords and tenants**

2.4 OTHER CRITICAL LAWS USED IN LAND ADMINISTRATION IN UGANDA

1. The Uganda National Land Policy 2013
2. Uganda Registration of Titles Act as Amended in 2020
3. National Physical Planning Act 2010
4. Local Government Act Cap 243
5. Uganda Succession Act Cap 162
6. The land Acquisition Act Cap 227
7. NEMA Act Cap 153
8. Mining Act 2003
9. Kampala Capital City Act 2010



CHAPTER **THREE**

3.0 LAND TENURE SYSTEMS, OWNERSHIP AND ADMINISTRATION

3.1 LAND TENURE SYSTEMS IN UGANDA

Both the 1995 Constitution of Uganda and the Land Act Cap 227 provide for four land tenure systems.

3.1.1 MAILO LAND TENURE

Mailo land is registered and owned in perpetuity, with its holder having a title deed for it. This land tenure system stems from the allocation of land as laid out in the 1900 Buganda agreement, though there have been some legislative alterations to that original agreement.

Mulira (2021) states that 'under the 1900 Buganda agreement, the British colonial government granted and allocated mile-square blocks of land to Buganda's nobility in exchange for political co-operation. As a result, the land in Uganda held under Mailo tenure (about 9,000 square miles) is mainly confined to Buganda (Central Uganda) and Bunyoro (Western Uganda)'.

A huge amount of Buganda's urban areas are built on Mailo land leased from its landlords, and the main owner of Mailo land is the Buganda Kingdom. The Mailo land system recognises occupancy by tenants (known in Luganda as Kibanja holders) whose relation to their overlords or landlords is governed and guided by the provision of the Land Act.

3.1.2 FREEHOLD LAND TENURE

This is a form of ownership which holds land freely and in perpetuity and is enshrined in the 1995 Constitution.

Transactions of freehold land are governed by the Uganda Registration of Titles Act (Cap 230). Titles can be acquired by buying land or converting Mailo, customary or lease ownership to freehold. Freehold is the premier mode of private land ownership under English law and has nothing to do with the 1900 Buganda agreement, which instead focused on Mailo land tenure.

3.1.3 CUSTOMARY LAND TENURE

An arrangement under which land is owned by indigenous communities and administered in line with their customs and norms. This is governed by customary laws.

Land under this tenure may be communally or jointly owned by a particular group of people. Land use under this tenure is commonly controlled by elders, clan heads or other traditional groups with a defined administrative structure and authorities. This tenure is common in North, East and Western Uganda.

Most tracts of land under customary ownership do not have titles. Their boundaries are characterised by features such as ridges, trenches, trees and provisional marker stones.

The Land Act 1998 specifies that customary land occupancy conveys legitimate rights with or without documented evidence and offers what is known as a 'certificate of customary ownership' after registration of land.

This tenure is regulated by customary rules which are limited in their operation to a particular description or class of persons. The 1998 Land Act states that customary land tenure shall be governed by rules largely acknowledged as obligatory by a given community.

3.1.4 LEASEHOLD LAND TENURE SYSTEM

A lease on land grants a lessor permission to use another person's land with exclusive rights, for a period of five years for a specific purpose as stipulated in the terms and conditions of the lease agreed between the lessor (landowner) and the lessee (the tenant or person who will use the land). The lease is then registered in accordance with the Registration of Titles Act of 1924, which governs the procedures of registering leasehold (Land Act, Cap 227 Section 40(2)).

In Uganda, leaseholds can be contracted between any individual who wishes to utilise an area of land, and individual holders of freehold or Mailo land, local authorities or government, or the Buganda Land Board (BLB), a body which administers the land owned by the Kingdom of Buganda. Leases may be granted to both citizens and foreigners.

While shorter leases may be offered, particularly for businesses, leases on land are commonly forty-nine (49) or ninety-nine (99) year contracts with opportunities for renewal (Land Act, Cap 227 Section 40 (2)).

3.2 KEY PROGRAMMES IMPLEMENTED TO IMPROVE LAND ADMINISTRATION

These programmes are guided by a general policy and legal framework, as well as the Land Sector Strategic Plans. Key parts of these frameworks include but are not limited to:

3.2.1 DECENTRALISATION OF LAND REGISTRATION SERVICES

In response to the limited access citizens had to land registration services, which was a major challenge for communities located far from the capital, the government enacted the 1998 Land Act which decentralised land management and dispute settlement mechanisms away from the capital. This shifted the focus of land administration to the local level as a way of encouraging community involvement in land management decisions.

The Act also provided for the creation of the District Lands Boards (DLB) and Area Land Committees among other regulatory structures. Meanwhile the Ministry of Lands, Housing and Urban Development also decentralised its land registration services, relocating them to the Ministry Zonal Offices (MZOs) which are computerised and offer all land-related services. The MZOs are located at their respective district headquarters. These are explored in more detail in 3.3.4.

3.2.2 MODERNISATION OF THE LAND REGISTRY

The growing number of manual land records resulted in inefficiency, inaccuracy and a lack of adequate internal controls, and the database was slow and laborious to operate. In 2003 the MLHUD began to digitise the Land Registry to address the shortcomings of the manual system. This process involved transposing existing records into a computer database and indexing them to facilitate search and retrieval of the data.

The result has been a substantial improvement in the speed of delivery of land services such as search requests, processing of land titles and other routine tasks.

The modernisation of the Land Registry has led to the development of a comprehensive national Land Information System (LIS). The LIS is not only aimed at comprehensive computerisation but also supports reforms intended to improve the efficiency and effectiveness of the Land Administration system. The LIS also supports land valuation and physical development planning functions. This has led to an increase in the rate of registration of titles.

3.2.3 SYSTEMATIC LAND ADJUDICATION AND CERTIFICATION (SLAAC)

Land surveying is a prerequisite for the registration of a land title, but private surveying services are very costly. For the average citizen, this is an obstacle in the registration process. To tackle this, the MoLHUD introduced a program funded by the World Bank for systematic demarcation of land under the Systematic Land Adjudication and Certification (SLAAC) system. Through this, land rights, rights holders and interested parties are ascertained in a methodical and systematic manner. The program is being rolled out in Western, Eastern and Southern Uganda, and is expected to eventually cover the entire country. However, the program is unlikely to benefit Mailo landowners due to the complexities of tenancy and/or occupancy agreements in the GKMA.

3.2.4 ISSUANCE OF CERTIFICATES OF CUSTOMARY OWNERSHIP AND OCCUPANCY

The 1998 Land Act provides for issuance of Certificates of Customary Ownership and Certificates of Occupancy. This program is pro-poor and aimed at protecting women, vulnerable groups and families. The MoLHUD established a secretariat for Voluntary Guidelines on Responsible Governance of Tenure (VGGT) to address land-related issues and challenges associated with Certificates of Customary Ownership (CCOs) such as land disputes, multi-layered structures of rights, illegal land use rights, and historical land injustices, amongst other topics. The secretariat is comprised of members from the MoLHUD, Food and Agricultural Organisation and Makerere University.

3.2.5 STRENGTHENING SURVEYS AND MAPPING

The MoLHUD is implementing base mapping and geodetic reference framework projects. A geodetic reference framework forms the spatial foundation for the creation of any Land Information System (LIS), while a base-map is a reference map onto which users can overlay multiple layers of spatial or geographic data, such as vector or raster data, to visualise geographic information. The base-map provides the background detail necessary to orient a map location, such as streets (with labels) and parcel lines.

This is intended to:

- 1. Improve land administration services such as surveying and mapping, land registration, land valuation, development of legislation and land revenue generation in the GKMA, and to improve the reliability of such services.**
- 2. Increase public confidence in the land administration sector and enhance socio-economic development in the GKMA**

3. Address land administration issues and support;

- Physical planning
- Land Information System (LIS)
- Systematic Land Adjudication and Certification (SLAAC).
- Revision of the Topographic Maps at all scales

3.3 KEY INSTITUTIONS INVOLVED IN LAND ADMINISTRATION

3.3.1 AREA LAND COMMITTEES

In an attempt to make land services more accessible, Section 64_67 of the Land Act (1998) provides for the establishment of Area Land Committees at each Sub-County or division level, as well as codifying the qualification requirements of members, their remuneration and the governance of meetings of the committee. In an advisory capacity these committees assist their respective District Land Boards on matters related to land, including ascertaining rights in land by adjudicating upon and demarcating land. The 2004 Land (amendment) Act was enacted in an attempt to further streamline the administrative structures of the land administration system.

3.3.2 DISTRICT LAND BOARDS (DLBs)

The 1995 Constitution directs that a District Land Board be established in each district. In performing their duties regarding ownership and management of land, DLBs must enforce and uphold the provisions of the Constitution, the Land Act and the Land Regulations. Their duties include:

- Holding and allocating land in the district that does not belong to any person or authority
- Facilitating the registration and transfer of interests in land
- Commissioning surveys, maps, drawings and estimates
- Compilation and maintenance of a list of compensation values for destruction of crops, buildings of a non-permanent nature and other property, in consultation with the technical officers of the district
- An annual review of this list of compensation rates

3.3.3 DISTRICT LAND OFFICES

The District Land Office provides each district with accessible technical services such as land registration, as well as ensuring that the district administration and the District Land Board have access to relevant land information. The office is comprised of a Land Officer, a Physical Planner and a District Staff Surveyor.

3.3.4 MINISTRY ZONAL OFFICE (MZOs)

Although the 1995 Constitution provides for the establishment of functional Land Offices in every district, there are very few districts with fully-fledged Land Offices able to provide land services. The MoLHUD thus decided to establish twenty-one Zonal Land Offices in selected cadastral zones. So far MZOs have been established in Kampala, Wakiso, Mukono, Masaka, Mpigi, Jinja, Mbarara, Lira, Mbale, Gulu, Arua, Masindi, Kibaale, Kabarole,

Tororo, Soroti Moroto, Kabale, Luwero, Rukungiri, and Mityana districts. The MZOs serve the districts within their assigned area of jurisdiction.

A district which is not able to recruit the relevant staff for its Land Office can therefore access similar services from the closest MZO. MZOs provide or facilitate services such as:

- **Conducting searches and verifying property**
- **Land transfers**
- **Registration of land titles**
- **Processing of deed plans**
- **Processing of mortgages**
- **Physical planning services**
- **Valuation services.**

3.3.5 UGANDA LAND COMMISSION (ULC)

The Uganda Land Commission (ULC) was established by Uganda's 1995 Constitution, and its budgets and plans are funded on a yearly basis via an annual vote by the Ministry of Finance, Planning and Economic Development. The 1998 Land Act and some parliamentary laws regulate the operation of the ULC. The functions of the Commission are not decentralised but the Commission may liaise with the independent District Land Boards with regard to government land in any particular District.

The Commission has the following powers in performing its duties:

- **It may acquire by purchase, exchange or otherwise the holding of land rights, as well as easements on and interest in land.**
- **It may erect, alter, improve or demolish any building or other erection on any land held by it**
- **It may sell, lease, or otherwise keep the land held by it**
- **It is permitted to do such other things as may be necessary for or incidental to the exercise of those powers and the performance of those functions.**



CHAPTER **FOUR**

4.0 LAND RIGHTS AND CONSIDERATIONS FOR LAND TRANSACTIONS

In its 2017 publication titled 'What the Law Says on Land Evictions', the Ministry of Lands, Housing and Urban Development outlines the following as the rights and obligations of landowners and tenants:

4.1 RIGHTS AND OBLIGATIONS OF LANDOWNERS

The rights and obligations of landowners include but are not limited to:

RIGHTS	OBLIGATIONS
A customary, Mailo or freehold proprietor owns land forever	Must recognise the rights of any lawful and bona fide occupants on his or her land and their development on the land
A leasehold's proprietor owns land for a given period of time under the terms and conditions stipulated in the lease agreement	Must recognise the rights of successors of the lawful and bona fide occupants and their development on the land
May sublease, mortgage, pledge or sell the land	Must use land in accordance with other policies and laws governing land use
May subdivide the land for the purpose of sale or any other lawful purpose	To provide the tenant with the legal document showing the legal ownership of land
May pass on the land to anybody by will or gift	
Is entitled to be given the first option to buy out the interest from tenants by occupancy who may be occupying that land and willing to sell	

4.2 RIGHTS AND OBLIGATIONS OF OF TENANTS

RIGHTS	OBLIGATIONS
Enjoys the security of occupancy on the land they occupy	Must pay annual nominal ground rent to the landowner
May acquire certificate of occupancy by applying through the landowner	Transfer of legal ownership of the land into own name in case of freehold land
With the permission of the landowner, a tenant may sublet and/or subdivide their kibanja	To invest in and develop the land
May assign, pledge or create third party rights in the land with the consent of the landowner	To meet all the financial obligations like payment of the ground rent
May end occupancy of a piece of land or return the kibanja to the landowner	Tenants by occupancy are required to give the land's owner first option where they wish to sell their interest and vice versa where a landowner wants to sell land. This must be on a willing buyer and seller basis (Section 35 of the Land Act)
Transfer of legal ownership of the land in his/her names in case of freehold land	Tenants by occupancy and kibanja holders can also register a caveat at the Registry of Lands where they have reasons to suspect that the registered landowner intends to enter a land transaction which will affect their rights and interest
To sell the land if so desired	Any person who buys registered land in Buganda must observe the rights of Kibanja holders on the land
They must be given the right of first option to buy the land if the landowner wants to sell the land	Where the tenant by occupancy or kibanja holders sells their interest without giving the landowner first option, he or she commits an offence and loses the rights to occupy the land (Land Act Amendment 2010)
They have the right to hire out the land	A person who sells or buys registered land which has tenants by occupancy must respect and observe their rights
	In cases of non-payment of the annual nominal ground rent, tenants may not be evicted without a court order of eviction (Section 35 of the Land Act Amendment 2010)

4.3 FAMILY RELATIONS AND LAND RIGHTS

Family Land, defined earlier in this document, is provided for under section 38 of the Land (amendment) Act, 2004. A spouse or any other person cannot sell, exchange or transfer, pledge, mortgage, give away or enter into any other transaction in respect of family land except with the prior consent of their spouse. A spouse is defined as a wife or husband within a legally subsisting marriage. Any transaction entered into without the consent of the spouse is null and void (MoLHUD, 2017).

Rights of spouses to give consent for transactions on family land (Uganda Registration of Titles Act as Amended 2020; MoLHUD, 2017);

1. Spouses of the owners of family land are entitled to occupy this land
2. They have the right to access and live on family land. (Section 38A for the Land Act)
3. Where the spouse of a landowner does not agree to a transaction concerning family land in which they are deemed to have a stake, for example the sale of family land, that transaction will be deemed illegal and unlawful
4. Even if a buyer of family land is unaware that the landowner has a spouse, the sale is unlawful. The buyer has the right to demand the refund of any money paid to the landowner
5. A spouse who suspects that their partner intends to sell family land or enter any other deals on the land without their permission can register a caveat at the Registry of Lands. This caveat does not expire.
6. This protection applies only to married couples living together in a Christian, civil, customary, Islamic or Hindu marriage. Persons who live together as a couple but are not married are not protected
7. If a married couple legally end their marriage, they no longer benefit from this protection

4.4 DOCUMENTATION OF LAND TRANSACTIONS

Land transactions might include its sale, leasing, mortgaging or pledging, subdividing, creation of rights and interests for other people, and creating a trust of the land (Section 3 (2) of the Land Act).

4.4.1 CATEGORIES OF DOCUMENTS IN LAND TRANSACTION

- Documents proving land ownership take many forms but are typically land titles, transfer forms, mutation forms and sales/ purchase agreements.
- A Purchase or sale Agreement is a document specifying the terms of an exchange of money for land
- A Caveat is a document which a person registers at the registry of lands in order to prevent any transaction from being carried out in respect to any piece of land in which they hold an interest. This includes spousal and beneficiary caveats.

4.4.2 KEY REQUIREMENTS TO BE FULFILLED WHEN UNDERTAKING A LAND TRANSACTION:

- Have an agreement in writing for any transaction (buying, selling, donating or bequeathing) relating to land
- Ensure that any agreement is signed by an adult who holds a legitimate legal interest in that land
- Ensure that all parties retain copies of the original agreement
- All parties (buyers and sellers) must sign on all pages of any agreement
- For titled land, conduct a search to ascertain any land's real owners or interest-holders
- Where an administrator(s) is registered on land, ensure that they have valid letters of administration to deal in the land and, where there is more than one, all of them must sign on any agreement
- In the event that either party in a land transaction is illiterate, the person writing the agreement for or on behalf of the illiterate party must indicate his or her full name and address as the writer of that document. Otherwise he or she commits an offence according to Sections 3 and 4 of the Illiterates Protection Act Cap 78. Courts must strictly observe the same.

4.5 CONTENTS OF A GOOD LAND AGREEMENT

A good Land Agreement should contain the following:

- Addresses of both the buyer and the seller
- Locations of both the buyer and the seller
- Full names, occupation, address, location and contact of witnesses for both the buyer and the seller
- Stamp and signature of the local council authorities if needed as witnesses
- Stamp and signature of the clan leader if required (typically in the case of customary land)
- Date of the agreement and date of the effective date of sale
- Attached copies of legal ownership documents
- Clearly indicate the land's location- the village, parish, division sub-county, county and district where applicable
- Land size, stated in both words and figures
- Describe what is on the land. This might include houses, trees, crops etc, and states whether they form part of the land being sold
- Boundaries and neighbours to the land being sold
- A statement of the nature or system under which the land is held- is it customary, freehold or Mailo tenure?
- A statement of the monetary value of the sale in figures and words or any other means under which the land is being transacted
- If the land is a gift, indicate it clearly



CHAPTER **FIVE**

5.0 LAND ACQUISITION

Article 26 (2) of the 1995 Constitution of Uganda states, '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 provision for:**
- **Prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and**
- **A right of access to a court of law by any person who has an interest or right over the property'**

The Land Acquisition Act (1965) provides the full legal procedure for compulsory land acquisition in Uganda. Land owners who disagree with a compulsory acquisition order can dispute it in court.

5.1 PRIVATE LAND ACQUISITION

Avenues of Land Acquisition Include:

Inheritance

When a landowner dies, their children or relatives may inherit their land as directed by the original owner's will. In this case, letters of administration must be processed and approved. This allows the beneficiary to acquire the land legally, by processing the transfer of the relevant land documents into the new owner's name.

Purchase

Purchase of land by an individual, company, organisation or government.

Lease

Given by a landowner to another person, this allows the lessee temporary ownership, allowing them to use the land for a specific period of time. The lessor retains final ownership over the land and can reclaim it after the expiry of the lease period, if the lease is not extended. Most leases stipulate pre-agreed terms for the renewal and extension of leases.

Donation

Land can be acquired through donation by an individual or a community. This is frequently seen in shared community projects, such as religious, educational or health projects where land is needed for the construction of a facility.

5.2 COMPULSORY LAND ACQUISITION BY THE STATE

Under compulsory land acquisition, the government acquires land in the interest of the public as per the Land Acquisition Act (1965) Cap 227; and Article 26(a) of the 1995 Constitution. In order for the government to acquire private land through compulsory acquisition, it must prove that it is doing so on the grounds of 'public

interest'. Public interest is defined as being a decision which protects the welfare or wellbeing of the general public, and may include any topic affecting the rights, health or finance of the public at large.

According to Article 26(a) of the 1995 Constitution of Uganda, public interest may arise where acquisition is necessary for:

- **Public use, for example a public market**
- **Defence, such as the establishment of an army barracks**
- **Public safety, perhaps the construction of a road**
- **Public order- government can set up a police post in an area**
- **Public morality- the confiscation of a property being used for immoral purposes**
- **Public health, such as the construction of a hospital**

Land acquisition is only deemed to be in the public interest if it is in the general interest of the community, not the particular interest of individuals.

5.3 LAND COMPENSATION

According to Article 26 (2)b)i) of the Constitution, before the government may take possession of any private land it must pay timely, fair and adequate compensation to all persons with an interest in the land in question. The compensation must be assessed at the actual market value of the land at the time of acquisition. The market value of the land means the price which a willing seller might be expected to obtain from a willing buyer at that time.

In the case of compensation arising from compulsory land acquisition by the government, the following legal procedures are mandated by the Land Acquisition Act (1965)

1. The statutory instrument made by the Minister of Lands shall specify;
 - **The location of the land to which it relates**
 - **The approximate area of the land**
 - **If a plan of the land has been made, a place and time at which the plan may be inspected.**
- 2) A copy of the declaration must be served to the registered proprietor of all land specified in the declaration
- 3) The land must be marked out and measured and a plan made if it has not already been made
- 4) A notice to persons having interest must be published in the Uganda Gazette and exhibited at specified places, directing that claims to compensation for all interest in the land must be made to the minister.
- 5) Inquiry and Award under his or her land specifying the true area of land is made.

5.4 INSTITUTIONAL FRAMEWORK FOR COMPENSATION

Assessor

The Minister of Lands is mandated to appoint an assessment officer (section 6(1) of the Land Acquisition Act). The officer should be a private valuer, and their role is to assess and compile a valuation report for approval and endorsement by the Chief Government Valuer. The valuation should consider local practices and Ugandan Law.

The Chief Government Valuer

The office of the Chief Government Valuer heads the Valuation Division in the Department of Land Administration. This in turn is located within the directorate of land management, in the MoLHUD. The division is mandated to provide timely and reliable real property valuation information to government.

Role of the Chief Government Valuer

- **Heading and supervising the Valuation Division, including planning and budgeting for the effective delivery of the valuation function**
- **Supervision of government projects**
- **Advising government on real property valuations**
- **Valuing property for rent by government**
- **Assessing stamp duty**
- **Advising government on determining rates for properties**

5.5 PRINCIPLES OF LAND ACQUISITION

PRINCIPLE OF EQUIVALENCE

Compensation should be fair, adequate and timely, and must be paid before the land is taken. The affected person must not be left in a worse financial position after the acquisition than he or she was before

PRINCIPLE OF SEVERANCE

This principle is used when the government exercises its power to take over private property for public use. If the value of the remaining property depreciates because of the intended use by the government of the land taken, the owner is entitled to additional compensation, called severance damage.

PRINCIPLE OF INJURIOUS AFFECTATION

This applies where part of a landowner's land holdings are acquired and this causes harm to their remaining land. This loss or damage must be non-physical and does not include any sentimental value. Examples of this principle include:

- **Direct physical interference or complete obstruction, and**
- **Loss of view or loss of privacy**



CHAPTER **SIX**

6.0 FORCED LAND EVICTIONS

6.1 ILLEGAL LAND EVICTIONS

Illegal land eviction is defined as the unlawful termination of a tenancy (MoLHUD, 2017). It may occur where a landlord prevents a tenant from accessing a rented dwelling or removes the tenant's belongings from the dwelling through force or intimidation, or by other means such as the cutting of utilities, changing door locks or other comparable tactics (MoLHUD, 2017).

Forced eviction, in other words, is "the permanent or temporal removal of individuals and/or communities from their homes and/or land which they occupy, without the provision of and access to, appropriate forms of legal or other protection"(Uganda Consortium on Corporate Accountability, 2018).

"The practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing" (MoLHUD, 2017).

To ensure that evictions are not unlawful, a tenant must be given notice to vacate a property. In the event that a court issues an eviction order, they must give a date at least six months after the date of the order, by which date the person to be evicted shall leave the land. The Courts may also grant any other order on expenses, damages, compensation or any other matter as they deem fit.

The increased value of land and the increasing demand for land has resulted in more evictions, both lawful and unlawful. This is because land has become a desirable commodity.

Drivers Behind Illegal / Forced Evictions

- Acquisition of land for development by government
- Disputes between landlords and tenants
- Acquisition of land for extractive industries
- Encroachment on protected land areas
- Acquisition of land for private investment
- Inheritance disagreements
- Fraud in land transactions, for example when land is sold twice

6.2 INTERNATIONAL GUIDELINES FOR FORCED EVICTIONS

UN guidelines (No 6 (2020) (A/HRC/43/43) which are not binding but only persuasive, have informed some of our domestic legislation such as the Land Eviction Practice Direction 2021.

- These UN Guidelines specify that forced evictions, as defined under international human rights law, must be prohibited in all circumstances, regardless of the ownership or tenure status of those affected. UN Guidelines further assert that states must ensure that protection against forced eviction and the human right to adequate housing and secure tenure are guaranteed without discrimination of any kind on the basis of race, colour, sex, language, religion, belief, birth or other characteristic

- UN Guidelines on eviction, 2020 require states to ensure equal rights of men and women in protection from forced eviction. All persons, groups and communities have the right to resettlement, which includes the right to alternative housing that must satisfy the criteria of adequacy. Adequacy is defined by accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location and access to essential services such as health and education
- UN guidelines lay out operational and procedural best practices to be followed at each stage of eviction- before, during and after. States and individuals are compelled to follow these guidelines despite them not being law. Additionally, a victim of forced evictions should be supported by quoting these guidelines for redress

A 2018 report by the Uganda Consortium on Corporate Accountability highlights key international guidelines on forced eviction:

- **Seek to minimise evictions and displacement by seeking alternatives**
- **Specify that evictions can only take place in exceptional circumstances, for the protection of the health and wellbeing of residents**
- **In such cases of exceptional circumstance, best practice must be followed at each stage of the eviction process**

According to the MoLHUD Guidelines (2017), the government and other involved actors must:

Before any proposed eviction,

- Explore fully all possible alternatives to eviction
- Hold effective consultations or public hearings with the affected persons including women and vulnerable and marginalised groups, to offer them an opportunity to review comments or object to the eviction decision and present alternative proposals
- Carry out a comprehensive and holistic eviction impact assessment to assess the potential costs and losses (material and non-material) of the proposed eviction. This impact assessment must take into account the different impacts of forced eviction on women, children, older persons and marginalised sections of society. It should be based on the collection of disaggregated data.
- Demonstrate that the eviction is unavoidable. Issue a notice in writing and inform the affected persons of the exact date of the eviction, a detailed justification of the decision and any plans for their resettlement. Ensure that no one is rendered homeless or vulnerable to the violation of their human rights.
- Take appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land is provided as close as possible to the original place of residence and source of livelihood of those evicted
- Ensure that all resettlement measures are taken and are consistent with guidelines and internationally recognised principles of human rights, and are completed before those who are to be evicted are moved from their original area of dwelling

During eviction, the government and other responsible authorities must:

- Ensure the presence of government officials/representatives and/or neutral observers at the eviction site
- Ensure that eviction do not take place during inclement weather, at night, during religious holidays or festivals, immediately prior to an election or during or before school/college examinations are scheduled to occur
- Take steps to ensure that women are not subjected to gender-based discrimination or violence and that the rights of children are protected
- Ensure that no one is subjected to attacks or other acts of violence, or arbitrarily deprived of property or possessions
- Respect the principals of necessity and proportionality when engaging in legal use of force
- Ensure that evicted persons are not forced to demolish their own dwellings or other structures

After eviction, the government and other authorities responsible for eviction must:

- Immediately provide just compensation and sufficient alternative accommodation or restitution
- Immediately provide for the evicted persons or groups:
 - Essential food
 - Portable water and sanitation
 - Basic shelter and housing
 - Appropriate clothing
 - Essential medical services
 - Livelihood sources
 - Fodder for livestock and access to common property resources
 - Education for children and child care facilities
- Ensure that members of the same extended family or community are not separated as a result of the eviction
- Ensure equal participation of women in all the planning processes and in the distribution of basic services and supplies
- Ensure that the identified relocation sites fulfil the criteria for adequate housing according to international human rights law
- Ensure that the human rights of women and children, indigenous people and other vulnerable groups are equally protected, including their right to property ownership and access to resources
- Guarantee the rights of all affected persons relating to the concerned resettlement. Particular attention must be paid to ensuring that indigenous people, minorities, the landless, women and children are represented and included in this process

- Ensure that any resettlement is carried out with the full participation of all affected persons, groups and communities and states, in particular taking into account all alternative plans proposed by the affected persons, groups and communities
- Ensure that those affected by eviction do not suffer harm to their human rights
- The United Nations guidelines contain the provision of monitoring and evaluation and follow up:
- States should actively monitor and carry out quantitative and qualitative evaluation to determine the number, type and long-term consequences of evictions including forced evictions
- Monitoring reports and findings should be made available to the public and concerned international parties in order to promote the development of best practice and problem-solving experiences based on lessons learned
- States should appoint an independent national body, such as a national human rights institution, to monitor and investigate forced evictions and states' compliance with these guidelines and with international human rights law. (UN Basic Principles and guidelines on Development-Based Eviction and Displacement. UN Human Rights Council, 2007)

6.3 GUIDELINES FOR FORCED EVICTION IN UGANDA

According to the MoLHUD (2017), the following are the guidelines to be followed during forced evictions:

1. Nonpayment of the annual nominal ground rent is the only grounds for evicting a tenant. Landlords may serve an eviction notice to a tenant who defaults on payment after a period of one year to show cause as to why the tenancy should be terminated.

- If the tenant disputes the notice then he or she may refer the matter to the court within a period of six months after the date of service of notice by the registered owner
- When the tenant does not challenge the notice within the prescribed period or pay the outstanding rent within a period of one year from the date of notice, the registered owner may apply to a court for an order to terminate the tenancy for non-payment of rent
- When a court issues an eviction order, they must give a date at least six months after the date of the order, by which the person to be evicted shall leave the land.
- A person who attempts to evict, evicts or participates in the eviction of a lawful or bona fide occupant from registered land without an order of eviction commits an offence and is liable on conviction to imprisonment not exceeding seven years.
- Any tenant who sells his or her Kibanja without giving the landowner the right of first refusal commits an offence and is liable to imprisonment not exceeding four years, or a fine of UGX 19,920,000/=, or both, and forfeits their tenancy rights to the landowner.

2. A change in the ownership of a title effected by the landowner through sale or donation or as a result of succession does not in any way affect the existing lawful interest of lawful or bona fide occupants, and any new landowner is obliged to respect the existing interest they find in newly-acquired land. A change of ownership is not grounds for eviction.

6.4 SEEKING FURTHER HELP REGARDING ILLEGAL LAND EVICTIONS AND OTHER LAND RELATED MATTERS.

Communities and individuals affected by illegal land evictions and land-related matters can report problems to different law enforcement agencies such as:

- The nearest Police Post Station
- Land Protection Unit (under Police)
- Local council committee members
- Office of the Resident District Commissioner or Resident City Commissioner
- The Magistrate's Courts and all courts of appeal
- Ministry of Lands, Housing and Urban Development

6.5 CATEGORIES OF PEOPLE NOT PROTECTED BY LAW IN CASES OF FORCED LAND EVICTIONS

The following categories of people are not protected by law because they do not legally occupy the land. This does not mean that they should be inhumanely evicted. The human rights related protection mechanisms during evictions must be followed in evicting them such as ensuring that their property is not destroyed; that they are not tortured among others:

- Unlawful occupants, illegal tenants, trespassers, licensees (persons with oral or written agreement for a specific period of time or given terms and conditions), people renting agricultural land and people renting houses.
- When someone does not qualify as a bona fide occupant, it is that person's responsibility to take reasonable steps to look for the landowner and undertake negotiations with them concerning his or her occupancy on the land. They can seek the help of a mutually acceptable mediator.



CHAPTER **SEVEN**

7.0 LAND DISPUTE RESOLUTION

7.1 COMMON LAND DISPUTES

i. Inheritance Disagreements

In cases where the owner of the land dies without writing a will, family members sometimes then fail to agree on an administrator of the estate of the deceased, which is a legal prerequisite for the proper disposal of an estate. This is more common in Mailo land than in customary land, though it also often occurs with freehold land in the GKMA.

ii. Landlords and Tenants' Disagreements

This is common in the Mailo tenure system. This is because the landlord remains the certificate holder of the land. Disagreements commonly arise when a tenant wants to process their own title for a kibanja, which requires the main land title, which might not be easily availed by the landlord. Another frequent topic of disagreement concerns developments on land, if a tenant wishes to develop rented land in such a way that is not of interest to their landlord. In these cases the tenant will run into issues during the process of applying for physical planning approval, because the land title is held by the landlord.

iii. Forgery of Land Documents

This is especially common on customary land tenures where clan leaders hold the power and authority to sell land. In the case of freehold titled land, forgery is frequently witnessed in the processing of falsified letters of administration by family members after the death of a landlord who failed to leave a will.

iv. Illegal Surveying

Surveying is illegal if done without the knowledge of one or more members of the family which owns the land. However, by the time other family members find out, the land may already have been sold to a different owner.

v. Unpaid Or Delayed Instalment Payments

Failure by the buyer to pay instalments to the seller in the agreed timeframe may lead to a double sale of the land in question. A dispute arises when the first buyer is not refunded their money.

vi. Resale of land

Some landlords fraudulently sell the same piece of land to more than one buyer. The scam is only revealed when a buyer starts developing the area and other owners suddenly appear. This often results in a situation where the same piece of land is the subject of two or more titles in different names.

vii. Unlawful Land eviction

This is common in customary and leased land when a large sum of accumulated ground rent forces people not to pay or renew their lease in time, resulting in a dispute.

viii. Transaction on Restricted Areas

The desirable nature of land and the unpredictability of court judgements leads to fraudulent parcelling, resulting in the illegal sale of pieces of land which encompass restricted areas like swamps, government land, land under court injunction, forestry land and others.

ix. Overlaps of Measurements

This is a common disagreement in which the measurements on paper do not match what is taken on the ground, and boundaries overlap with neighbouring land. This is frequently due to the use of unqualified surveyors.

x. Delayed Lease Renewal

Some tenants are not updated on the expiry date of their lease and do not bother to renew their lease in time. Therefore the piece of land they are on can be applied for by someone else. Regaining Leased Land from a Lessee.

This is almost impossible after a tenant has established permanent investment on land. Renewal of the lease is almost automatic, but even so, some people intentionally delay payment. In any case if the lessor insists on regaining the land, the lessee will evaluate the cost of their investments and demand a refund from the lessor, who may not be able to pay.

xi. Processing and Provision of Incorrect Titles on Land Tenures

An example of this is the processing and provision of a freehold title on leasehold land (Buganda kingdom land state or owned land) or on Mailo tenured land. This is caused by misunderstandings or ignorance on the part of applicants, administrators or regulators.

xii. Double Leasing of Land

Occasionally two or more people can have lease titles on the same piece of land. This is particularly common in government land, because there are two bodies that lease land- the Uganda Land Commission and the District Land Board. The Uganda Land Commission occasionally leases out land without the District Land Board being made aware and the District Land Board may then end up leasing the same land to another person.

xiii. Land Encroachment

Sometimes an entity uses land beyond their boundaries. This is common in customary land due to the use of unlawful or impermanent features in boundary marking. Traditionally objects like trees, elephant grass and sisal plants are used as markers, but they can easily be uprooted. Another common case of this relates to government land which is not in use, or to the illegal exploitation of restricted areas like swamps, rivers or forests.

This encroachment can either be intentional or due to unclear boundaries or overlaps, and can lead to charges of criminal trespass. This is very common in the GKMA, and conflict is often seen between landowners and bibanja owners or interested bibanja owners.

xiv. Court Attachments

In a situation where one party wins a court case with costs applied to the losing party, the losing party may appear unable to pay the costs. To ensure the costs are paid, the court may end up attaching or confiscating land which does not belong to the losing party, such as customary land, leased land or government land, in error.

xi. Compensation Conflict

In cases of lawful eviction (due to compulsory land acquisition by a company, organisation, individuals or the government) different beneficiaries will crop up to claim for compensation. These conflicts are often seen in Mailo land tenure where a landlord also demands for compensation alongside their tenant. This is due to

the dual ownership of the tenure. The landlord claims for compensation because he is the certificate holder. However, the landlord had also 'sold' the land to the tenant, who has established permanent investments which will be destroyed, and is therefore also legitimately claiming for compensation.

This conflict is also seen in customary land where there is no legally documented ownership of land, making the compensation question an unclear one, and in situations where the legal owner dies without leaving a will and where their relatives cannot agree on the administrator of the estate of the deceased.

xvi. RECLAMATION OF DONATED LAND

While donations are frequently made and are an important mechanism of land transfers, donors sometimes fail to adequately document these donations. Descendants may then dispute the donation, demanding proof that the process was properly completed and demanding that the land be returned if the proof is not sufficient.

xvii. Intermeddling and Fraudulent disposal of trust property

This is particularly common in the estates of deceased persons. Relatives or administrators conspire, collude or contrive to mismanage and dispose of inherited land, depriving beneficiaries of their interests. This is very common in the GKMA.

7.1.1 LAND DISPUTE RESOLUTION APPROACHES.

I. Notice of publications

Adequate notice is an important step in preventing land disputes. Notice for various processes such as application for letters of administration, application to lodge a caveat on registered land, or eviction notices are all preventive mechanisms of land disputes.

II. Community Dialogues

Technical staff, land committees, land boards, church leaders, clan leaders and politicians have to organise outreach efforts in the disputed area. This mechanism is important because community involvement in dispute resolution itself helps heal divides and, given the fact that they know their own land arrangements, local populations are often best equipped to come up with permanent resolutions and own them, even using them as references in future disputes. This reduces rates of land grabbing, encroachment and fraud.

In addition community dialogues can simultaneously be used to teach participants about current laws and policies, dispute mechanisms, land management procedures including surveying, physical planning, land registration, lawful eviction and compensation, different land tenure systems and their management mechanism and other aspects, and referral pathways in land management.

III. Court Resolution

In a situation where amicable dispute settlement fails, the dispute can be taken to court.

IV. Court Injunctions

The court has the power and authority to declare a court injunction on disputed land. This aspect is usually implemented in situations where there is a risk of violence, unlawful eviction or even death. An injunction stops any use of the disputed land until a clear court ruling can be reached.

V. Re-Adjusting of Physical Plans

In the event that the measurements on a survey document clash with the physical boundaries of somebody else's land, the best solution is often to re-adjust the physical plan, or negotiate with the owner of the boundary that the measurement overstepped.

VI. Opening of Boundaries

Restricted areas like road reserves, wetlands, public spaces and forests are frequently encroached upon and the government may undertake clearing or surveying operations to make people aware of boundaries. Customary land are advised to conduct block survey on their land.

VII. Subdivision of Customary Land

In cases of internal family or community disputes over customary land, clan leaders may sometimes be called upon to subdivide the land into small units which can then be allocated to family heads, who can in turn subdivide the divided land between their children. By transferring ownership to family heads, land can then be divided and properly registered.

VIII. Refund of Money

This dispute resolution mechanism is employed in cases where land has been sold or leased twice. The only remedy here is for the individual to seek a court order demanding a refund of the amount paid, which is usually ordered to be paid with interest.

7.1.2 ALTERNATIVE LAND DISPUTE RESOLUTIONS MECHANISMS (ADR)

Alternative Dispute Resolution (ADR) is an alternative process to the formal court-based litigation approach. ADRs are undertaken in different forms:

a) Mediation

Mediation is a structured negotiation, introducing a third party who can assist the two sides to settle their dispute. Kakooza (2007) states that mediation can provide more efficient, mutually satisfactory and time-saving strategies in resolving land disputes than can be gained from court litigation. Under mediation, the parties decide to seek the assistance of a third party, and this party decides whether to mediate. As the mediation gets underway, the third party selects from a number of available approaches and is influenced by various factors, such as the environment, their training, the participants' arguments, and the nature of the conflict.

Once applied, these approaches yield clear outcomes for the disputants, the mediator, and other parties (Kakooza, 2007). The mediator comes into the dispute as a neutral third party whose presence lends guidance in the flow of negotiation, helping the disputants in resolving their conflict. The Land Act provides for mediation as an alternative dispute resolution. Sections 88 and 89 of the Land Act provide for Customary Dispute Settlement and Mediation as well as describing the functions of the mediator.

b) Negotiations

This refers to the process of working out an agreement by direct communication between the parties (usually landowners and tenants).

c) Reconciliation

This term is often incorrectly used interchangeably with mediation. An independent party assists the parties to settle their differences, or the parties themselves take the initiative to apologise and create peace between or amongst themselves after realising their mistakes

d) Arbitration

An adjudicatory rights-based approach where one or more arbitrators hears adversarial presentations by each side in the case, then issue a decision based on the facts and applicable laws. Such decisions may be binding or non-binding depending on the agreements the parties make when entering into arbitration

e) Counselling and advice

Where a person not party to the dispute talks to the aggrieved person and gives alternatives which might settle the matter in a peaceful way

7.1.3 ADVANTAGES OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS (ADR)

- Cost effective
- Saves time; its completion is determined by the parties and the time they allocate to completing it
- It is user friendly and offers more control to disputants to reach an amicable settlement
- Parties have a choice on how to settle the dispute
- Flexible processes which are not subject to any written rules and may be tailored to circumstance
- Fosters reconciliation, peace and harmony
- Decision are reached by the parties under the guidance of the mediator

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